

Dawn Raids under Indian Competition Law

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Recently, on March 18, 2025, the Director General (“**DG**”), which is the investigation arm of the Competition Commission of India (“**CCI**”), raided multiple premises of various global media agencies and industry bodies at Delhi, Gurugram and Mumbai in relation to alleged media cartelization.¹ The premises of Dentsu, GroupM, Publicis, Interpublic Group of Companies, Inc (“**IPG**”), Omnicom, Havas, and industry bodies – Indian Broadcasting and Digital Foundation, Advertising Agencies Association of India, and the Indian Society of Advertisers were raided.² Notably, the said raids are of significance as they were conducted ahead of the broadcast of cricket Indian Premier League (“**IPL**”) that holds great potential for advertising revenue. In backdrop of the major Disney – Reliance merger that created India’s largest media and entertainment powerhouse, and a proposed merger of Omnicom with IPG which would make Omnicom the world’s largest advertising agency³, a price collusion amongst competitors could result in distortion of competition in the industry. Reportedly, an investigation into price collusion and discounts of ad rates against broadcasters/media agencies has been launched by the CCI which is supposedly linked to a leniency application filed by Dentsu.⁴ As the details of the said investigation and leniency application (if any) have not been disclosed/published by the CCI, it cannot be conclusively stated that such investigation or leniency application exists, or that the said dawn raids have been conducted in connection with the same.

Be that as it may, the anti-trust ‘search and seizure operations’ popularly known as ‘dawn raids’ are unannounced and surprise visits by the officials of the DG office that involves sealing of premises, search and seizure of books and other documents, confiscating of laptops, mobile devices, scrutinization of emails, recording of statements of executives etc. An enterprise which is being raided may not be aware of the details or the purpose of such visits; however, by understanding the legal mandate and procedure of such raids, the enterprise may act in its best interest and assist the DG/CCI during such raids. Given the uncertainty attached to such dawn raids, this article provides an overview of the legal framework and clarity on other aspects of due process specific to anti-trust dawn raids in India.

Authority of the DG to conduct dawn raids

The authority of the DG to conduct a ‘search and seizure operation’ *i.e.*, the dawn raids is derived in accordance with the provisions of Section 41(8) of the Competition Act, 2002 (as amended in 2023) (“**Act**”). In terms of the said provision, the DG during the course of investigation may make an application to the Chief Metropolitan Magistrate, Delhi (“**CMM**”) for an order of seizure of such information, books, papers, other documents or records that the DG reasonably believes may be destroyed, mutilated, altered, falsified or secreted. In view of provisions of Section 41(2) of the Act, the DG may generally require the discovery and production of documents, issue commissions for examination of witnesses or documents, issue summons and examine any person on oath etc. However, the DG may collect such evidence through dawn raid(s) only when it has reasonable grounds to believe that the same may be destroyed, mutilated, altered, falsified or secreted and when the same is authorized by an order of the CMM.

Additionally, in view of Section 41(9) of the Act, the DG may also make a requisition of the services of any police officer or any officer of the Central Government to assist and accompany during the course of the dawn raid(s).

Scope of dawn raids

An application to the CMM may be made by the DG only in relation to an on-going investigation. In view of provisions of the Act, the CCI may direct the DG to conduct an investigation / inquiry into anti-competitive agreements, abuse of dominant position as well as combinations. The scope of the dawn raid(s) conducted by the DG is limited to the order

¹ <https://www.reuters.com/world/india/indias-antitrust-raids-global-media-giants-groupm-publicis-dentsu-ran-through-2025-03-19/>

² <https://www.storyboard18.com/agency-news/corporate-affairs-ministry-cci-probes-49-cases-31-reports-filed-18-under-investigations-60057.html>

³ <https://www.campaignasia.com/article/indian-cci-raid-groupm-publicis-ipg-and-dentsu-offices-over-alleged-price-fixing/501407>

⁴ <https://www.reuters.com/world/india/indias-ad-industry-raids-followed-tip-offs-under-leniency-scheme-sources-say-2025-03-21/>

of the CMM in relation to an on-going investigation. In view of Section 41(10) of the Act, the CMM after considering the application and hearing the DG, may define the scope of the dawn raid, and authorize the DG:

- i. To enter the place or places where the requisite information, books, papers, other documents or records are kept.
- ii. To search the said place or places in the manner specified in the order; and
- iii. To seize information, books, papers, other documents or records as it considers necessary for the purpose of the investigation.

It may be noted that Section 41(10) of the Act provides search of 'any place or places'. Therefore, a dawn raid may be conducted by the DG not only at the official premises of the enterprise(s) but also at the residences of the officials of the enterprise(s) and any other place as may be specified under the order of the CMM and the search warrant. Additionally, in view of Section 41(12) of the Act and relevant provisions of Section 103(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("**BNSS**"), a person may also be searched if such person is reasonably suspected of concealing about any article or material for which a search is to be made.

Prior to the Competition (Amendment) Act, 2023 ("**Amendment Act**"), the DG during the course of dawn raids have had recorded statements of the officials of the enterprises. However, post Amendment Act, the scope of dawn raids as defined under Section 41(10) of the Act does not provide for the same.

Procedure to be followed during the course of the dawn raids

In view of provisions of Section 41(12) of the Act, the dawn raids are to be conducted in accordance with the provisions of the erstwhile Code of Criminal Procedure, 1973 which has now been replaced by the BNSS *i.e.*, the Bharatiya Nagarik Suraksha Sanhita, 2023.

In terms of Section 103(1) of the BNSS, upon production of the search warrant, an officer or any person executing the search warrant is to be allowed to ingress any closed place by the person who is residing therein or is in-charge of that place. In case, an ingress into such place is not allowed then the officer executing the search may break open door or window to enter such place. Even otherwise, in terms of Section 41(3) of the Act, it is a duty of all the officers, employees and agents of a party to accord all assistance in connection with the investigation to the DG and produce all information, books, papers, other documents and records to the DG.

Before commencing the search, the officer in-charge of the dawn raid shall call two or more independent witnesses to attend and witness the search as per Section 103(4) of the BNSS. The provision of Section 103(5) and 103 (6) of the BNSS, the search shall be conducted in the presence of such witnesses. Further, a list of all the things seized (information, books, papers, other documents and records etc.) in the course of search and of the places in which they were respectively found shall be prepared by the officer in-charge of the dawn raid and be signed by the witnesses, a copy of which shall be supplied to the occupant of the place searched or any other person on his or her behalf. Also, in terms of proviso to Section 41(10) of the Act, certified copies of such seized things or materials may also be provided to the party or person from whose place(s) such things or materials have been seized. Additionally, in view of Section 105 of the BNSS, a recording of search and seizure through audio-video electronic means shall be recorded which shall be forwarded to the magistrate.

In view of Section 41(11) of the Act, once the search is complete, the DG may keep the information, books, papers, other documents and records etc. seized during the dawn raid in its custody till the conclusion of the investigation and shall return the same to the party or person from whose place(s) such things or materials were seized. Further, the

CMM shall also be informed of such return. However, before returning the same, the DG may take copies of such material.

Further, Regulation 36 of the Competition Commission of India (General) Regulations, 2024 ("**General Regulations**"), documents / material obtained through search and seizure operations are to be mandatorily marked as 'confidential' and kept separately.

Due process issues faced by the parties

During the dawn raids the parties may face certain due process concerns. The foremost issue is the glaring lack of a framework for a party to object to the DG's actions during the dawn raid which gives wide – ranging and arbitrary powers to the DG. Another issue is the seizure of privileged documents as there are no clear guidelines that the DG is expected to comply with when dealing with confidential documents. However, as stated above, documents / materials seized during dawn raids are to be marked 'confidential' and kept separate. Further, the lack of legal representation during the raid may increase the risk of procedural violations going unchecked. However, in view of Section 103(6) of the BNSS, the occupant of the place searched or some person on his behalf is to be mandatorily permitted to attend during the search. Another issue which is faced by the parties is the seizure of things /materials beyond the scope of the search warrant. Currently, as a remedy, a party can only approach the High Courts of India by way of writ petition challenging the non-compliances with due process during the dawn raids.

Conclusion

In the absence of any specific remedies for the challenges faced by parties or enterprises during dawn raids, the most effective approach for the parties or enterprises is to ensure that their officials and employees are well-informed about the procedure for such raids and are prepared to handle such situations beforehand. Further, enterprises should consider conducting internal training sessions on handling dawn raids under competition law and take steps to sensitize their officials / employees. Additionally, having a 'dawn raid protocol' in place can also help their officials / employees to respond effectively to such surprise search and seizure operations in the best possible manner. Further, post dawn raids, the enterprises must approach their external lawyers and conduct internal meeting and debriefing to address the issues. A detailed review of things / materials seized by the DG during the dawn raid must be done by the enterprises and an analysis must be made to check if any false or incorrect information has been supplied during the dawn raid. Lastly, it should also be ensured by the enterprises that no material, emails, messages etc. are destroyed post dawn raids as the DG may thereafter seek additional information from the enterprises.

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