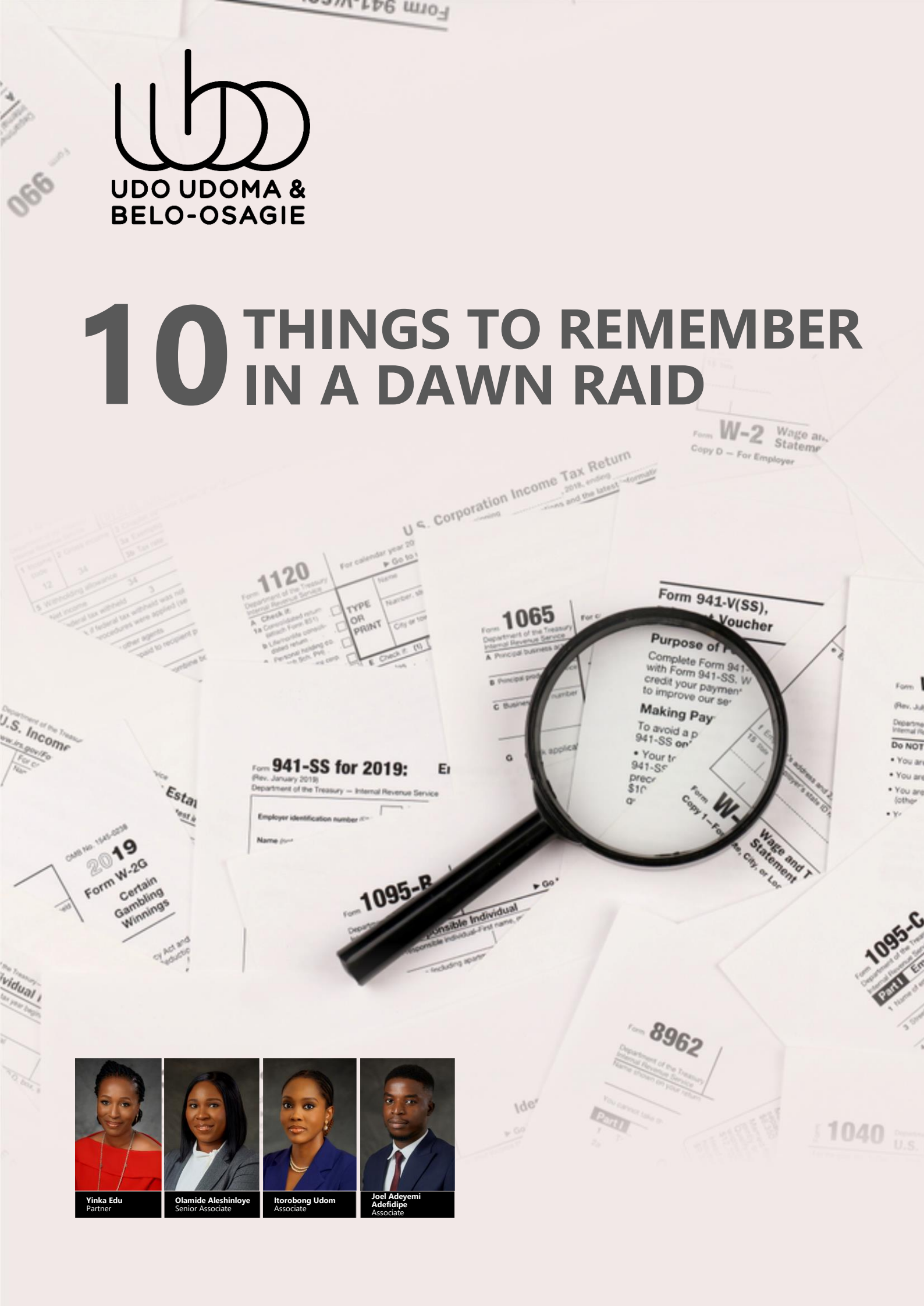




UDO UDOMA &
BELO-OSAGIE

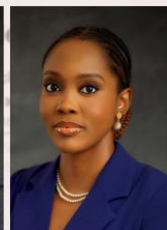
10 THINGS TO REMEMBER IN A DAWN RAID



Yinka Edu
Partner



Olamide Aleshinloye
Senior Associate



Itorobong Udom
Associate



Joel Adeyemi
Adedipe
Associate



1. INTRODUCTION

- 1.1. Regulatory authorities in Nigeria are empowered by law to enter and search any premises in their efforts to regulate individuals, corporate organisations, and sectors under their control on suspicion of a contravention of the law. This update will focus on dawn raids in the context of competition law. Dawn raids are unannounced inspections, searches, and seizures of materials from any premises to determine whether there has been any contravention of the competition laws, or to drive compliance. These raids may be carried out if the regulatory authority has reasonable suspicion that a legal infraction is imminent, ongoing, or has already occurred. To assist the investigators in retrieving current and accurate information, an unannounced visit is made to the premises of the unsuspecting company or its employees.
- 1.2. For competition law, the Federal Competition and Consumer Protection Commission (the "FCCPC") is the principal authority charged with the administration and promotion of competitive markets in Nigeria. By section 27 of the Federal Competition and Consumer Protection Act, 2018 (the "FCCPA" or the "Act"), the principal legislation governing competition law in Nigeria, the FCCPC is empowered to conduct dawn raids. Specifically, the FCCPC is authorised to enter and search any premises, as well as inspect and remove any article, document or extract from such premises for the purpose of establishing whether any undertaking has engaged, is engaging or is likely to engage in any conduct that contravenes the provisions of the FCCPA.
- 1.3. Since its inception, the FCCPC has conducted dawn raids on various undertakings, including a recent visit to three steel manufacturing companies in Ogun State, based on intelligence suggesting that these companies might be involved in anti-competitive behaviour. Therefore, it is imperative for corporate organizations to effectively prepare for and understand how to handle a dawn raid, as it can be invasive and disruptive.

2. TEN THINGS TO REMEMBER IN A DAWN RAID

2.1. Verify the identity of the investigators:

The authority conducting the raid must be ascertained, and the investigators must identify themselves as having the authority to perform the exercise. It is crucial to request identification and search warrants or any other authorising documents.



TOP SECRET

In certain circumstances, Section 27(3) FCCPA allows the FCCPC to take interim measures where there is suspicion of a violation or contravention of the Act. These interim measures include authorising an investigating officer to conduct a raid pending the issuance of a warrant. In such cases, an affidavit must be shown deposited to by the Executive Vice Chairman of the FCCPC verifying the facts that necessitated the interim measure before the search is conducted. In this instance, where the officials are without a warrant, they must present other documentation authorising their entry into the premises before being granted access to the premises. The document should be verified by your lawyers to ensure its authenticity and legitimacy. Unidentified or unauthorized persons should not be allowed to conduct a raid, as granting access to unknown individuals may expose confidential information.

2.2. Identify the purpose or type of investigation:

Identifying the purpose or type of investigation is crucial in responding to a dawn raid. This information can be obtained from the authorising document, such as a warrant or other documents provided by the officials. It will help you determine the scope of the investigation, the specific documents or items being searched for, and the limit of the investigators' authority. This will guide you in providing only the necessary documents and materials, ensuring that the scope of the investigation is respected, and preventing the officials from exceeding their authority during the raid

2.3. Contact your external counsel:

Contacting the company's external counsel and inviting them to participate in the raid is beneficial for protecting the interests of the company and its employees. This is in addition to having the company's internal legal team present during the dawn raid. It is advisable to inform the investigators of the company's preference to have their legal counsel present during the investigation, although the investigators are not obliged to wait. The presence of legal counsel can ensure that the right answers are provided questions, the investigators follow due process, and they do not exceed their authority.



2.4. Keep a proper record of all that transpired:

Organisations should ensure that every event occurring during the raid is properly documented for the record and for future reference as may be required. The names of the officials, the time of their arrival, the area of the premises they searched, the individuals interviewed and their responses, and the documents or items they seized or took away should be recorded. Maintaining accurate records will aid the company in preparing a defence or submission if further investigations or prosecutions occur, or at least help them prepare for future raids.

2.5. Stay calm and cooperative:

A dawn raid is disruptive; it is crucial to remain composed and to cooperate with the investigators unless such cooperation would be self-incriminating. The FCCPA requires that a company under investigation be cooperative and provide all reasonable assistance and facilities to help the officials effectively discharge their duties. Obstructing or impeding an authorised official performing their duties is a criminal offence.

2.6. Appoint shadowers:

To manage a dawn raid effectively, it is advisable for a company to appoint shadowers who will monitor and document every action of the investigators. Investigators should not be left unattended at any time. Shadowers should be designated employees of the company who are familiar with the company's operations, the type of investigation being conducted, and the scope of authority of the officials. They should be periodically trained and updated on compliance ethics, regulatory engagement, what a dawn raid involves, its scope, and its impact on the company's business and reputation.

2.7. Be reactive, not proactive:

Rather than volunteering information, only provide information that is requested by the investigators. Let the investigators ask the questions and do not direct them to information sources that they have not requested. Answer questions honestly and to the best of your knowledge. Avoid speculating, providing misleading information, or answering questions you do not know the answer to. In addition, lying or providing false information can have criminal implications for both the individual and the company.



2.8. Do not destroy any document or item during or after a dawn raid:

During a dawn raid, avoids any action that could be perceived as tampering with evidence. Destroying any item, document, or data relevant to the investigation may be considered tampering with evidence, which is a criminal offence. Do not destroy any information, whether or not it is related to the investigation, as that may further arouse the suspicion of the investigators.

2.9. Know your rights:

Be aware of your rights during a dawn raid. Investigators may conduct dawn raids not only on the company's premises but also in the homes of employees, particularly with the increasing adoption of remote and hybrid work models. Employees have fundamental rights, including the right to privacy, the right not to incriminate oneself, and the right to answer questions in the presence of a lawyer. It is crucial for employees to know their rights and to be prepared to assert them during a dawn raid to avoid being coerced into giving self-incriminating information.

2.10. Do not incriminate yourself:

Do not sign any statement or document for the investigator without first seeking legal advice from internal and/or external counsel. If an employee considers their actions during or after the raid to be incriminating, they should immediately report this to their supervisors and legal counsel to prepare for the next steps and to better equip them to assist with further investigations and future raids.

CONCLUSION

Dawn raids can be challenging for companies and their employees, but keeping these tips in mind can help mitigate the impact of the raid, avoid any fallout from the exercise, and safeguard the company's interests. By prioritising robust compliance programs, regularly training staff, and implementing a clear dawn raid policy, companies can turn a potential crisis into a well-managed event.

This article has been authored by Yinka Edu, Olamide Aleshinloye, Itorobong Udom and Joel Adeyemi Adefidipe of the Competition and Compliance and Investigations teams at Udo Udoma & Belo Osagie. For more information about our Competition and Compliance and Investigations practice group offerings, please visit our website at www.uubo.org or email us at uubo@uubo.org.

DISCLAIMER: *This article is only intended for information purposes and should not be construed as legal advice on any subject matter in any circumstances. It does not and cannot be construed as creating any relationship, including a client/attorney relationship, between readers and our firm or any author nor does it serve as legal advice. The opinions expressed in this*

publication are the opinions of the individual authors and may not reflect the views of the firm or any individual attorney. You should contact your attorney for advice on any particular issue or problem.