

# GrandVision Competition Law and Antitrust Compliance Policy

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## **1. Responsibilities of GrandVision and GrandVision Group Employees**

GrandVision is committed to proactively ensuring full compliance with all legal as well as good-governance principles. This includes all aspects of competition law and antitrust compliance. In general, GrandVision employees are forbidden from engaging in any practices that violate competition laws, and compliance with the competition laws is the responsibility of every employee. This means that everyone has a responsibility to gain a sufficient understanding of the competition laws in order that they can recognize situations which may involve competition law issues.

Where there is a question as to whether a current business practice or a commercial decision might be in conflict with any aspect of competition law, each employee must immediately consult their line manager or Management Team member.

This document is aimed at providing some specific guidelines about existing antitrust regulations, and a set of procedures on how to deal with potential investigations from competition authorities (so-called “dawn raids”). The annexes contain templates that different countries will need to customize in order to provide the necessary communication about dawn raids by the competition authorities.

## **2. Agreements and Coordinated Policies Eliminating or Restricting Competition**

Existing laws prohibit all agreements or understandings which have as their object or effect the prevention, restriction or distortion of competition. The form the agreement takes is of no importance: it can be written or verbal, formal or informal – it can be considered a so-called concerted practice, i.e. a deliberate and intentional collaboration between individual companies for the purpose of eliminating or restricting competition in a given market.

Restraints on competition are divided into two types: horizontal and vertical restraints.

### **2.1 Horizontal Agreements**

Normally, agreements or concerted practices between competitors raise the most serious concerns under competition law. With regard to prices and conditions of supply, every retailer is free to set and alter their own prices, and in doing so, they may, in the absence of any external coordination, take account of the conduct of their competitors. However, it is a violation of competition law to agree or cooperate in any way with competitors to fix or stabilize prices.

#### **It is prohibited to:**

- jointly determine selling or purchase prices;

- jointly determine price increases;
- jointly fix specific minimum or maximum prices or price ranges;
- jointly agree rebates, discounts and other conditions of supply;
- exchange price-related information with competitors;
- fix production, buying and selling quotas between competitors.

## 2.2 Vertical Agreements

Vertical business partners include retailers, customers, licensees, licensors and suppliers. With respect to agreements with such vertical business partners, the following principles must be considered.

### **It is prohibited to:**

- fix or set the resale price of any product for retailers or dealers;
- fix or set resale prices in letters, special offers and the like;
- require the retailer to adhere to the recommended resale prices;
- terminate the agreement with a retailer because of their refusal to adhere to the recommended resale prices;
- coordinate the pricing policy with the retailer according to the current market situation;
- prohibit the retailer from granting any rebates or discounts;
- provide the retailer with formulas to calculate prices;
- state the retailer's profit margin;
- prescribe maximum and minimum ranges for resale prices;
- prohibit passive sales outside a sales territory allocated to a reseller, or to customer groups not allocated to a reseller.

### **Certain restrictions are only acceptable in particular circumstances:**

- (quasi-)exclusive selling or purchasing obligations;
- restrictions of active sales outside a sales territory or a customer group allocated to a reseller;
- non-compete clauses.

### **It is possible to:**

- give a non-binding price recommendation for resale prices of branded products, provided no direct or indirect pressure is exercised to enforce such a recommendation;
- mark all stated resale prices as "recommended resale prices".

## 2.3 Intra-Corporate Agreements

Agreements between affiliated companies do not, in principle, fall within the scope of competition law. Therefore, the abovementioned competition rules do not apply to the relation of the parent company to its affiliates, or the relation between sister companies. However, it has to be borne in mind that all information disseminated by the parent company to its affiliates in order to then be provided to customers, such as advertising materials, brochures, price lists, internal calculation documents, marketing plans etc., must meet the requirements of competition law.

## 3. A Guide to DOs and DON'Ts

### 3.1 Horizontal Agreements - DON'T

- Don't agree, explicitly or implicitly, on market share, prices, client or territory allocations with competitors, either directly or indirectly, including membership of formal or informal panels.
- Don't, either directly or indirectly, send ambiguous "signals" to competitors about your commercial policy, pricing policy or strategy.
- Don't use "battle cry" phraseology (e.g., references to "driving competitors out of the market").
- Don't exchange commercially sensitive information with competitors, including in informal communications and in the context of trade associations:
  - marketing-related information;
  - details pertaining to product launches, budgets, etc.;
  - client-related information: terms and conditions, credit terms.
- Don't participate in meetings (such as trade association meetings) attended by competitors without having a clearly-defined agenda.
- Don't encourage customers or suppliers to provide you with competitors' prices or information about competitors' commercial policies.

### 3.2 Horizontal Agreements - DO

- Do avoid potentially compromising situations with competitors, even in social contexts. Remember: "competitors are neither colleagues nor friends".
- Do make clear to competitors at all times that you cannot and will not discuss competitively sensitive information.
- Do immediately object to any discussions that relate to any of the subjects outlined in paragraph 2.1 above; continue only when you are comfortable that the discussion has resumed an appropriate direction.
- Do immediately report any improper discussion with, or attempts to initiate one by, a competitor to your legal department.

- Do only attend meetings that have formal agendas, and ensure that minutes are taken of any meetings with competitors, whether they be bilateral or within a trade association.
- Do strictly follow the agenda – its use as an accurate record of the purpose and subject matter of the meeting is undermined by discussion of off-agenda items.
- Do leave meetings (for example trade association meetings) if sensitive information is discussed – and have your departure minuted.
- Do obtain necessary market intelligence from public sources and not from competitors.
- Do determine the source of lawfully obtained documents/data on competitors (“competitive watch”); keep a written record of the source and the circumstances in which documents/data were obtained.

### **3.3 Vertical Agreements - DON'T**

- Don't agree a resale price with the supplier.
- Don't agree with suppliers to exclude some products from promotions or special offers, unless there are strong objective reasons for doing so.
- Don't agree with suppliers on specific levels of margins.
- Don't allow suppliers to influence your resale pricing policy: if a supplier sends “signals”, always reply in writing, stating that the resale prices are set independently.
- Don't agree to inform suppliers about competitors' resale prices.

### **3.4 Vertical Agreements - DO**

- Do keep track of all requests from suppliers that may be seen as an attempt to influence resale pricing policy.
- Do keep track of YOUR WRITTEN ANSWER to suppliers and choose your wording carefully – i.e. “We have received your request and would like to remind you that all our retail prices are set totally independently.”
- Do contact your legal department if you are considering concluding a Vertical Agreement which contains one of the clauses listed under 2.2 that may be restrictive of competition.

### **3.5 Vertical Agreements - General Rules Regarding Pricing Issues**

Always follow the general rules regarding pricing issues:

- All end-prices for products sold in our stores must be fixed by GrandVision only, independently of our suppliers.
- As a consequence, you must never enter into any agreement, written or oral, with a supplier as to the level of prices.

- Our suppliers may provide suggestions for recommended prices and explain the rationale for such recommendations, but it must be clear that these are entirely non-binding recommendations, and they must again be reminded that our retail prices are always set independently. Where appropriate, hard or email copies of this communication must be kept, or file notes made.
- As a rule of thumb, a breach of European antitrust rules also takes place if all three of the following conditions are met at the same time:
  - A supplier provides recommended retail prices;
  - Recommended retail prices are followed to a significant extent;
  - You are involved in price policing.
- If a supplier becomes insistent, or even appears to threaten to terminate supplies, do not yield to the pressure but do contact your legal department.
- Never appear to accept any incentive from a supplier to apply the recommended price; contact your legal department in such cases.

#### 4. Guidelines on How to Deal with a Dawn Raid

At any time in the future, GrandVision companies may be subject to a surprise antitrust investigation of their premises (a so-called “dawn raid”). Employees, also, may be subject to these dawn raids at their private homes. If officials from the Competition Authority appear at your office or home and request to search your premises, please follow these guidelines. For immediate assistance, you must call your local qualified legal counsel.

##### Upon arrival:

1. Dawn raids usually commence around 9:30 a.m. However, dawn raids initiated by the Competition Authority may start as early as 6:00 a.m. and could last as long as Investigators deem necessary, even late into the night. Raids may also last several days.
2. Take the Investigators into a private room. They should not be placed in any areas where there are company documents or where they might hear staff talking informally.
3. Immediately alert key internal staff, legal counsel, and the people the Investigators have asked to see. You must immediately contact the people in the order listed below:

1. Axel Viaene	GrandVision General Counsel <a href="mailto:axel.viaene@grandvision.com">axel.viaene@grandvision.com</a>	+316 1158 7023
2. Maikel van Wissen	external lawyer <a href="mailto:maikel.van_wissen@linklaters.com">maikel.van_wissen@linklaters.com</a>	+316 5186 7379
3. Paulo de Castro	GrandVision CFO <a href="mailto:paulo.decastro@grandvision.com">paulo.decastro@grandvision.com</a>	+316 2155 5207
4. Theo Kiesselbach	GrandVision CEO <a href="mailto:theo.kiesselbach@grandvision.com">theo.kiesselbach@grandvision.com</a>	+3188 887 0173

##### Following arrival:

1. Do not be obstructive or hostile to the Investigators. It is GrandVision policy to cooperate, and you are under a legal obligation to do so actively throughout the inspection. Therefore, in no circumstances should any attempt be made to destroy or conceal documents, or to mislead Investigators. To do so could also lead to a fine.
2. It is critical to the subsequent conduct of the investigation that a professional rapport be established with the Investigators. Ask the Investigators to identify themselves (service passes/staff cards), and take a written note of their names. It can be helpful to ask them to wear badges that clearly denote that they are Competition Authority officials in order to clearly distinguish them from your own staff and external advisers during the investigation.

3. Ask the Investigators to show their mandate for conducting an inspection.
  - In case of an investigation conducted under judiciary supervision, Competition Authority officials will present a decision delivered by a court. Competition Authority officials will then also be accompanied by police officers.
  - Any persons accompanying the Competition Authority (such as a technical expert or officials from another competition authority) must be able to show identification and authorization from the Competition Authority.
4. Read the Investigators' mandate carefully in order to determine the precise scope of the investigation. Make copies of the mandate for each member of your team who will be shadowing the Investigators during the investigation.
5. The Investigators will hand over a certified copy of the legal decision and ask you to sign an acknowledgment that you have been notified of this decision. You may sign, as this merely certifies delivery. It does not imply submission to the investigation.
6. Check that the legal documentation appertaining to the decision authorizing the investigation has been issued in accordance with the Competition Authority's rules on the extent of jurisdiction. The decision also has to identify which premises are to be visited, and the investigation has to be properly requested by the (appropriate section within the) Competition Authority.
7. Most investigations are mandatory. In the unlikely event that the investigation is carried out on a voluntary basis (an ordinary investigation), you need to make a decision as to whether to allow the investigation. The decision to cooperate with the investigation cannot be altered once the investigation is under way.
8. Alert the relevant staff that the investigation is taking place. Instruct relevant staff (see Annex 1) to do nothing which might compromise your position. In particular, they should not conceal or destroy any documents (including electronic records) or alert any third parties (e.g., by telephone, email or text message) about the investigation. Speak to IT staff to ensure the preservation of back-up tapes.
9. Set up a key team to manage the dawn raid and minimize disruption to the business. The key team should include: your in-house lawyer; the legal counsel partner heading up the legal team; and a senior executive/board member. Identify both an IT specialist familiar with all the firm's systems and an administrator to be responsible for copying documents. You may contact other company offices, but caution should be employed in doing so. The purpose is to alert senior management to the investigation without causing a panic or encouraging conduct which could be regarded as obstructing the investigation (e.g., the destruction of evidence).
10. Hold an initial meeting with the Investigators and ask them to wait until the external lawyers arrive. External lawyers' attendance is now considered legally appropriate under the applicable European legislation; however, the Investigators are entitled to start the investigation before external lawyers arrive. Investigators may be willing to wait for a short period (often only 15-30 minutes) to allow a lawyer to arrive. They will not wait if an in-house lawyer is present or if it is a criminal investigation. Investigators may impose conditions on the delay, such as restrictions on external emails. Ask the Investigators to explain what they want to achieve and who they

wish to speak to, and agree in advance the manner in which the Investigators will be shadowed, the administrative arrangements to be made and the procedure for resolving any disputes. The Investigators are likely to want, as a priority, to secure a copy of the back-up tapes. They are likely to target their search, and may focus on the offices of the in-house legal team and the commercial team.

**During the investigation:**

In case the investigators refuse to wait until the external lawyer arrives, these are the powers they have during the investigation:

- to enter your premises – including, under certain conditions, private premises – using reasonable force;
- to seal the premises and furniture;
- to search for and review documents considered relevant to the investigation at the place where they are kept;
- to take copies of documents (the Competition Authority can take originals in the case of investigations supervised by the judiciary, to be returned within six months);
- to hold an oral hearing to get useful information or explanations relating to the need for the investigation (although they are unlikely to do so during the course of a dawn raid);
- to determine which individual will be required to answer the questions;
- to require electronic information to be produced, in hard or soft copy, for them to take away.

**The Investigators are not entitled to:**

- use force against any person;
- copy or take originals of documents which are not relevant to the purposes of the investigation;
- examine and/or copy documents, or take original documents, which are legally privileged;
- require answers which might involve a “confession” that the company or the individual has committed an offense under competition law (because of the so-called “right against self-incrimination”);
- copy an entire hard drive without first reviewing its contents.

11. The Investigators will divide up their work, so ensure that each of them is accompanied to the office in which the files they wish to see are located. Do not leave them alone. Ensure that each member of staff who is accompanying the Investigators has a copy of the mandate describing the scope of the inspection.

12. If the Investigators ask to see certain documents or want to take copies or originals of documents:
  - Before the Investigator reads the documents, check that they are not legally privileged. Take issue if you believe that they are legally privileged. Again, if the Investigator is not satisfied with your arguments, seek legal advice and/or postpone the issue for review at the end of the day.
  - Check that the documents are relevant (i.e. within the scope of the investigation: subject and period). The Investigators are entitled to review the documents themselves in order to determine relevance and may not be prepared to discuss the issue of relevance with you. However, try to take issue if you believe the documents to be obviously irrelevant. If the Investigator is not satisfied with your arguments, seek legal advice and/or try to postpone the issue for review at the end of the day. Ensure that three copies are made of each document (one for the Investigators, one for the company and one for legal counsel) and that each is numbered in the same way as the Investigators' copy. Check that copies accurately reflect originals and also capture marginal annotations, and check whether documents are double-sided.
  - Many of the documents requested by the Investigators may contain confidential information. If possible, you should establish a general understanding that the Investigators will consider all documents to be confidential, and will therefore not allow third parties access to these documents in subsequent proceedings. Alternatively, mark all of these documents (or at least the most sensitive ones) as "confidential/business secrets".
13. If the Investigators ask to see documents, or want to take copies of documents, that you believe to be legally privileged, you may insist on withholding the document from the Investigators.
14. If the Investigators ask for oral explanations about facts or documents:
  - Check that the questions relate to documents that are being produced or to facts relating to the subject matter of the investigation.
  - The questions should be answered as precisely and concisely as possible. Do not speculate or engage in an expansive discussion. If you do not know the answer, say so.
  - Check that the answer will not be in breach of the company's right against self-incrimination (i.e. will not involve a "confession" of a competition law offense). Since this can require a difficult judgment call, you should be guided by the legal advisers.
  - Ensure that you carefully record all questions and answers.
15. The company has a right to a copy of the Investigators' record of oral explanations. Make sure that the notes taken by the Investigators are correct. The Investigators

will probably bring IT experts with them who will scrutinize the IT systems (including individual email accounts).

- Usually, their first step is to secure the latest back-up tapes in order to guard against the possibility of documents being deleted subsequent to the beginning of the dawn raid.
  - It is normal practice for the Investigators to use search terms to deal with the large amount of emails etc. they have to check. You should still ensure that each document that they propose to take away is individually checked for relevance and privilege.
  - Best practice is to agree with the Investigators that each electronic document that they wish to take away is printed off in hard copy unless a document is too bulky to be printed off in a reasonable time.
16. At the end of an investigation, the Investigators must allow the company to take copies of: (i) the records of oral explanations provided; and (ii) the signed inventory of documents taken by the Investigators.
  17. Ascertain whether the Investigators will be returning on the following day and, if so, at what time and with how many Investigators. Where premises are sealed overnight by the Investigators, great care must be taken to ensure that these seals are not interfered with. Alert all staff and, in particular, warn security and cleaning staff. Consider posting a security guard to monitor the seals overnight.

## ANNEXES

### Annex 1 – Sample Email That May Be Sent to Staff During a Dawn Raid

DO NOT FORWARD OR REPLY TO THIS EMAIL OR DISCUSS ITS CONTENT BY EMAIL

Dear all,

As some of you may have already noticed, *[insert company name]*'s *[insert name of offices being raided]* offices are now being visited by officials from the Competition Authority as part of an investigation into alleged anti-competitive practices. *[insert company name]* is cooperating fully with the Competition Authority investigation. I would like to thank you in advance for assisting the Competition Authority with their investigations.

Surprise inspections (so-called “dawn raids”) are a preliminary step in investigations. The fact that the Competition Authority is carrying out this type of inspection does not mean *[insert company name]* is guilty of anti-competitive practices, nor will it prejudice the outcome of the investigation itself. *[insert company name]* is legally required to cooperate fully throughout the ongoing investigation, including during the physical inspection at our offices, but also after this has come to an end as the investigation continues. Accordingly, please bear the following guidelines in mind:

- Cooperate fully with the Investigators. *[insert company name]* is under an obligation to cooperate actively with the Investigators. We would therefore request that you comply with any request the Investigators may make, such as usage of telephone lines or photocopiers, help finding offices within the building or explanations regarding the IT system. If in doubt, please contact me or a member of the legal department.
- If an Investigator approaches you, contact *[local qualified legal counsel]* immediately.
- Do not destroy or conceal any documents. *[insert company name]* is under an obligation to supply complete information. Therefore, employees must not destroy or conceal any documents that may be of relevance to the ongoing investigation. To do so is an offense in itself which will result in financial penalties and seriously affect *[insert company name]*'s reputation.
- Do not discuss the investigation externally. *[insert company name]*'s duty to cooperate also means that you must not discuss this investigation with anyone outside the company. The Competition Authority could view this as “tipping off” firms which may also be (or become) subject to the investigation.

If you have any questions or doubts, please contact me or a member of the legal department.

## Annex 2 – Post Dawn Raid Rules – DOs and DON'Ts

Dear all,

As most of you are probably aware by now, our offices were visited on *[insert date]* by officials from the *[appropriate authority]*, as part of a nationwide investigation into alleged anti-competitive practices concerning frames and sunglasses. It appears that the *[appropriate authority]* is concerned that *[insert the issue under investigation here]*.

In accordance with its legal requirements, *[insert company name]* is cooperating fully with the investigation. I would also like to thank everyone who assisted the inspectors during their investigation.

Surprise inspections (so-called “dawn raids”) are a preliminary step in investigations. The fact that the *[appropriate authority]* has carried out this type of inspection does not mean that *[insert company name]* is guilty of anti-competitive practices, nor does it prejudice the outcome of the investigation itself.

Although the physical inspection at our offices has come to an end, the investigation is continuing. Further inspections and/or requests for documents and other information are not excluded. Accordingly, please bear the following guidelines in mind:

- Do not destroy any documents. *[insert company name]* is under an obligation to supply complete information to the investigating authority and may receive further requests to provide information. Therefore, employees should not destroy any documents that may be of relevance to the ongoing investigation. Although the investigation is limited to *[insert the issue under investigation here]*, as a precautionary measure please do not destroy any documents covering our relationships with our suppliers as a whole, or issues of pricing.
- Do not reorganize your filing. As the investigating authority may ask for further documents in the course of the investigation, you should not reorganize your filing in order to avert any suspicion that *[insert company name]* is not complying with its duty of cooperation.
- Do not discuss the investigation externally. The investigating authority could view this as “tipping off” firms which may also be (or become) subject to the investigation. This is strictly prohibited.
- Do not discuss the investigation with journalists. The press may take an interest in this investigation. If you receive phone calls from the press, do not discuss the investigation with the journalist but instead refer them to *[local qualified legal counsel (please mention the contact name of a person that could take care of inquiries by journalists)]*.

- Avoid direct communication with the investigating authority. Even though it is unlikely that you will receive direct phone calls or written communication from them, if you do, you should contact [*local qualified legal counsel*] or another member of the legal department first, before communicating with the investigating authority.
- As always, please take great care when creating documents to ensure that what you record is accurate and unambiguous, particularly in regard to pricing. Relevant, new documents may still be requested by the investigating authority and used in connection with their investigation.