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Distribution  
All Eltel companies

Checked by, Date  
Päivi Hautamäki, 28.07.2014

Approved by, Date  
Axel Hjärne, 31.07.2014  
Board, 5.08.2014

Replaces  
Competition Instruction, approved 17.06.2013

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## COMPETITION INSTRUCTION

### 1 PURPOSE

This Instruction contains the main competition rules and guidelines which all employees of Eltel should be aware of and highlights what must be taken into account in their day-to-day activities. The purpose of this Instruction is to highlight the most important rules and to make it easier for Eltel employees to identify potential competition problems in Eltel's business.

This Instruction is not comprehensive and cannot provide answers to all questions related to competition law. The main principles that are listed here are meant to be used as guidelines in the Group's daily business.

In case of any questions or potential suspicions of anti-competitive behaviour, you must always contact Group legal department.

#### Note!

- Always contact your supervisor and the Eltel legal department immediately if you notice or suspect any Eltel business conduct which might be prohibited under competition rules;
- Always consult the Eltel legal department if you are unsure of the scope or application of competition rules or how they should be applied;
- Remember that "I did not know it was illegal" is not an excuse or adequate defense in the eyes of the competition authorities.

### 2 APPLICABILITY AND SCOPE

This policy applies to all entities within the Eltel Group.

### 3 POLICY STATEMENT

Eltel Group (hereinafter also "the Group") strives to comply in all respects with all competition rules in all its activities.

### 3.1 Competition Restrictions

#### Executive summary

##### Cartel prohibition

Do not agree or even discuss with your actual or potential competitors about:

- Prices or pricing principles (including discounts and payment terms etc.);
- Other conditions of trade;
- Market areas or customer target groups or sharing of customers;
- Offers to customers;
- Confidential information which is not publicly available (e.g. investments, capacity, costs, R&D programs, marketing plans, planned price increases);
- Restrictions of production; production output; sources of supply or purchases;
- Boycotts in relation to other competitors, customers or suppliers;
- Mutually agreeing conditions to be applied in relation to other or certain competitors, customers or suppliers.

##### Abuse of dominant market position

If Eltel is in a dominant position (e.g. having over 40 -50 % market share):

- Do not apply predatory pricing (pricing below costs);
- Do not discriminate against customers; do treat similar customers in the same way; do not treat different customers in the same way without a valid reason to do so;
- Do not give loyalty or target rebates; do not bind customers with volume discounts for an excessive period of time (3 – 6 months is normally acceptable);
- Beware of exclusive sales or purchase agreements;
- Do not refuse to supply without a valid reason;
- Do not tie up different products or services in one sales package and sell them only together or give a better discount for the products or services when selling them together, without a valid objective reason;
- Always consult Group legal department in advance if you are uncertain about Eltel's position in the markets (dominant v. non-dominant).

### 3.2 The forms of most severe competition restrictions

#### 3.2.1 General

In May 2004 European Council developed the enforcement powers of the competition authorities of the EU Member States, called the network of European competition authorities (ECN). Each Member state has its own national competition authorities who apply the compulsory rules of competition laid down in the EC Treaty and national competition laws. ***Every company must use a principle of self-assessment and make an evaluation at its own risk as to whether the competition rules are followed in each case. This self-assessment method needs to be a part of Eltel's everyday risk management to avoid any unintentional breaching of competition rules.***

The most severe forms of competition restrictions are directly prohibited pursuant to both national law and EU competition rules (prohibition principle).

Such severe forms of restrictions include:

- Cartels;
- Certain vertical restrictions between companies operating at different levels of production (e.g. determination of resale prices, discussed further below);
- Abuse of dominant market position.

### 3.2.2 Prohibited co-operation between competitors (cartels)

Prohibited co-operation (for example price or bidding cartels) between actual or potential competitors is always forbidden regardless of the market position or market shares of the companies involved. This kind of conduct between competitors is prohibited regardless of the means by which it is undertaken, i.e., whether it is carried out by a binding contract or an informal practice for example through verbal agreements and the mere exchange of confidential information.

Prohibited cooperation between competitors does not have to be of a long *duration* in order to be prohibited; *even a single meeting*, during which, for example, pricing is agreed upon or discussed or during which confidential information or trade secrets are exchanged, may be sufficient to render the cooperation illegal.

The competition authority does not have to establish that the cooperation or mutual understanding would have had an actual impact on the businesses of the companies.

In order to be forbidden, it is sufficient that companies have *reduced the uncertainty* that normally prevails between competitors.

The exchange of strategic or confidential information between competitors is also prohibited. Information *that is not in the public domain* and that a company striving for effective competition *has an interest in not disclosing to other companies, is considered as being confidential information*.

#### Note!

Do not agree, or even discuss, the following with competitors or potential competitors:

- Prices or pricing principles (including discounts, delivery terms and payment terms etc.);
- Production costs or output;
- Market areas, customer target groups or customer allocation;
- Offers to customers, trade terms;
- Confidential, strategic information which is not publicly available (e.g. investments, capacity, fixed costs, R&D programs, marketing plans, planned price increases);
- Limits of production;

- Sources of procurement or purchase;
- Boycotts in relation to other competitors, customers or suppliers;
- Mutually agreeing conditions to be applied in relation to other or certain competitors, customers or suppliers;
- Always contact Group legal department in any unclear situations.

Joint offers/consortia in public procurement processes may sometimes be permitted if the joint bidding has objective economic reasons. This generally means a situation *where the performance is technically or economically too demanding to be carried out by an individual company and that the company must, for instance, use a sub-contractor to be able to carry out eventual performance*. In addition to this, any co-operation *must be limited to the joint offer in question* (i.e. be temporary in its nature) and *may not be extended to other co-operation between the parties*.

In order to be a permitted joint offer it is also required that *every company also participates* in fulfilling performance. Joint offers *are not permitted in situations where a partial performance/offer is allowed in the tender process* and the companies are capable of offering and performing that part individually.

### Note!

#### **When considering making or realizing a joint offer/consortia e.g. in public procurement process:**

- Limit your exchange of information with the other party to what is strictly necessary in order to make a joint offer;
- Always determine the price of your part of the performance individually;
- Do not give the other party any information on the factors that affect your own pricing, such as discounts, costs of production or distribution, price changes, payment periods, credit terms or other conditions;
- Do not exchange any confidential information, i.e. any future plans, sales, customers, productions, etc. with the other party;
- Have an agenda and minutes of the meetings when meeting with competitors;
- Do not deviate from the agenda. Protest against any inappropriate discussions or activities; ask for these to be stopped and leave if continued. Have your view and position clearly set out in the meeting minutes in writing;
- Consider using an independent third party (e.g. a trustee or a lawyer) in the negotiations (in particular if some confidential information must be shared for the joint offer to be made or realized);
- Always consult the Group legal department well in advance before contemplating a joint offer/consortia with a competitor or a potential competitor or when receiving such offer from a competitor or a potential competitor. If the consortia is successful and wins the tender in question Group legal department will also provide further instructions on how to realize the project lawfully to completion.

### 3.2.3 Vertical competition restrictions (different production or distribution levels)

Vertical competition restrictions relate to agreements and procedures between companies operating at different production or distribution levels (e.g. manufacturer – wholesaler – retailer). A competition restraint may be involved when the agreement contains restrictions on the supplier, buyer or distributor. Vertical restrictions can be divided basically into four groups: single branding, limited distribution, resale price maintenance and market partitioning.

Vertical agreements are generally considered as being legal (as belonging to the so-called “Block Exemption” regulation), if the *market shares of all parties* operating at different levels of the production/distribution chain *are below 30 %* and the agreements do not contain serious (hard core) restrictions (that can never be used).

#### Note!

The following hard core restrictions ***cannot be used*** in supply or distribution agreements:

- Conditions that restrict the distributor/customer’s right to determine its own retail prices
- ☒ It is however *usually* permitted for a supplier to define a maximum retail price;
- ☒ Recommended retail prices are also *usually* permitted provided that they do not amount to a fixed or minimum sale price;
- Conditions that restrict the area into which (or customers to whom) products may be sold by the distributor;
- ☒ However, the supplier may restrict active sales into an exclusive customer group or an exclusive area reserved for another distributor or the supplier itself. *Passive sales can never be restricted*;
- Restriction agreed between a supplier of components and a buyer who incorporates those components (OEM), of the supplier’s rights to sell the components as spare parts to end-users or to repairers or other service providers *not* entrusted by the buyer (OEM) with the repair or servicing of its goods;

The following conditions cannot be used in distribution agreements ***without previous consultation by the Group legal department***;

- Obligations preventing the buyer/customer from manufacturing, purchasing, selling or reselling goods or services which compete with Eltel’s contract goods or services;
- Obligations on the buyer to purchase more than 80 % of its total purchases of the contract goods or services from Eltel;

- Obligations preventing the buyer from manufacturing, purchasing, selling or reselling goods or services after termination of the agreement with Eltel.

Subcontracting is a generally accepted form of vertical agreements.

Subcontracting *may* also ***be allowed between competitors but there are certain issues that need to be taken into account when doing so to ensure that the cooperation does not restrict competition.***

### Note!

When planning a subcontracting agreement with a competitor or potential competitor the following issues must be always taken into account:

- Always consult the Eltel legal department well in advance so that any potential competition risks can be eliminated from such relationship;
- Do not agree on any competition restrictions (as described in section 3.2 of this Instruction) in connection with the subcontracting (e.g. agree on prices in certain product markets where you compete, restrict production etc.);
- Do not discuss questions relating to market information (e.g. exchange information on future prices and bids in certain product markets where you compete), market strategies, future investments, or anything that could be defined as being confidential.

### 3.2.4 Abuse of dominant position

#### What is a dominant market position?

Dominant market position means that a company is able to operate independently of its competitors, customers and consumers and to prevent effective competition. In practice, the market share of the company is the most important factor in the evaluation of whether or not it is in a dominant market position. Competition legislation imposes certain codes of conduct on a company in a dominant market position, not applied to other, non-dominant companies. Activities which do not comply with such codes of conduct are regarded as an abuse of a dominant market position.

It should be noted however that a dominant position is not prohibited, only the abuse of it.

#### How to define relevant markets?

In order to calculate the market share of the company *relevant markets must be defined*. The prohibition on abusing a dominant position applies to companies which have a dominant market position in certain *relevant product* and *geographical markets*. *Product markets* are primarily defined from the viewpoint of the *customer*. Products/services perceived by customers as similar or interchangeable due to their

characteristics, price and purpose of use are considered as forming their own specific product market. Products/services belonging to the same product market can be used as substitutes for each other.

The Finnish Consumer and Competition Authority (FCCA) has assessed in its case law e.g. the following individual product markets related to Eltel's business, even though the final definition of the relevant markets has ultimately been left open by the FCCA:

- *data and telecommunications network services* that comprise a wide range of on-site network services and maintenance services including, inter alia, both fixed and wireless networks construction, installation and maintenance services as well as data and telecommunications network services in customer environment. Data and telecommunications network services consist of preparatory and construction work for both fixed and mobile core networks as well as installing, modifying and maintaining previous telecommunications networks. Network construction includes everything from network planning to constructing. Maintenance services include both preventive and corrective maintenance. Installation services include for example installation of end-user equipment for both consumers and businesses;
- *electricity network services* including electricity transmission and distribution, electrification as well as projects related to outdoor lighting;
- *electricity transmission and electricity distribution services*;
- *district heating network services*;
- *power grid construction market*, which can be further segmented into several subcategories such as 1) construction and maintenance of high-voltage cables, 2) building and maintaining a transmission network and 3) construction of substations.

The definition of relevant markets and the assessment of the position of Eltel in these markets should always be made on a case-by-case basis.

The relevant *geographical market* to be considered as the criteria for establishing the existence of a dominant market position comprises an area where the companies compete with each other and where competitive conditions are *objectively* the same for all companies. The markets are e.g. *regional* if the users of specific products/services are unable to enter into a competitive substituting business relationship with a specific company operating outside the region. Geographical markets where a company may have a dominant market position are *national* provided that no competitive alternatives are available from another country for the domestic use of a specific product/service.

The relevant geographical markets can also be wider, e.g. *EEA wide* or even *global*.

- ➔ Once the relevant product and geographical markets have been identified, the *market share of the company can be calculated*.



In practice a market share of over 40 - 50 percent leads to a presumption of a dominant market position. Even if the market share of a company is relatively low (e.g. 40 per cent) it may nevertheless be in a dominant market position if the market shares of its competitors are considerably lower. A company may also have a dominant market position e.g. in a situation where its market share is not high but where the *barriers to entry* are significant.

## Note!

When in a *dominant market position*:

1. Do not set terms on exclusive sales rights or exclusive purchase rights;
2. Do not discriminate against similar kinds of customers or refuse to supply without a valid reason;
3. Do not bind customers with volume discounts for an excessive period of time (the main rule is that one year is too long, 3 to 6 months is more acceptable); do not give loyalty or target discounts;
4. Do not tie up different products or services in one sales package and sell them only together or give a better discount for the products or services when selling them together, without a valid objective reason;
5. Prepare to justify the reasonableness of the prices (overpricing as well as predatory pricing are forbidden);
6. Define basic price lists which are commonly available.

## Note!

- The Group legal department must always be consulted when in doubt;
- This includes questions regarding Group's potential dominant position in a certain market (the combined market share of the whole Group will be taken into account in this respect) as well as any doubts concerning compliance with the rules prohibiting the abuse of a dominant position.

### 3.3 Agreements

The Group legal department should always be consulted in unclear situations to ensure that the documents are in compliance with competition rules.

#### 3.3.1 Confidential information

When any Eltel Group companies are part of any co-operation, joint operation, outsourcing, or similar process, we have to ensure from the competition law point of view that no confidential information is provided outside the Group that could in the future have an effect on other companies' pricing or market behavior. Confidential information in this respect is any information that is not public and might have influence on other firms' behavior on the markets and in a competitive situation.



Before entering into a business relationship or into negotiations or an R&D-project an NDA (Non-disclosure agreement) or confidentiality agreement must be signed between the parties.

### 3.3.2 Non-compete clauses

On some occasions either we are asked to sign and accept a non-compete clause or we request another company to do so for instance in relation to a NDA, outsourcing case, subcontracting or sales agreement. Company policy in the Group is that any general non-compete clauses are not allowed. Also, non-compete clauses between competitors are normally strictly forbidden by competition rules.

The use of non-compete clause always requires careful consideration in advance together with the Group legal department.

A non-compete clause may sometimes be acceptable when for instance the subcontractor uses know how, patents, technology, research plans or documents, machinery, equipment or tools provided by the buyer company (principal) and such use of technology and/or machinery is necessary for the subcontractor to be able to execute the contract as defined in the agreement. Thus it may be justified and reasonable that a non-compete clause is signed so that the subcontractor cannot independently provide the same services in the same market and take advantage of the technology, know how or equipment provided by the buyer company.

However, the Group policy is that **all** non-compete clauses should be clearly defined and accepted by the Group legal department in advance.

### 3.3.3 M&A

Over the years the Eltel Group has been active in undertaking mergers and acquisitions. In each acquisition the competition aspects are always examined separately. A merger filing is prepared and submitted to the relevant competition authority/authorities when required by applicable merger control rules and the transaction cannot be implemented before the necessary merger clearances have been obtained from the relevant competition authorities.

## 3.4 Inspections by Competition Authorities

The Commission and national competition authorities (and depending on the national competition laws possibly some other authorities as well, e.g. in Finland, the district administration authority), have the right to carry out investigations in order to monitor compliance with applicable competition rules.

The inspection can be carried out in the Group's business premises, storage spaces, land areas, vehicles and also in the private homes of Eltel's directors and employees.

***In the event of an inspection, such as a dawn raid (unannounced inspection), follow the checklist and the instructions attached to this Instruction as an annex 1.***

The authorities carrying out the inspection have the right to investigate, among other things, the company's business correspondence, accounting and other documents which may be of importance when monitoring compliance with applicable competition

rules. They have access to any filing cabinets or files as well as to e-mails. ***Only communication between Group and external lawyers (communication under the so-called “professional legal privilege”, see further below) must and should not be handed out to the investigators.***

The authorities carrying out the inspection can also demand verbal explanations from employees and record the answers. The right to ask for a verbal explanation is bound to specific facts and documents relating to the subject and purpose of the investigation. These questions must be answered.

The authorities may continue the investigation for several days. The representative/representatives of the Group in charge of the inspection must be present during the whole inspection.

### **3.5 Documents and other communication in the Group**

#### **3.5.1 Enquiries by phone**

Apply the following instructions when responding to enquiries:

- If you receive a phone call from the competition authorities, always connect the call to the Group legal department. If you are not able to connect the call, take a message including the name, contact information of the caller, as well as the purpose of the call. Forward the received information to the Group legal department immediately.
- If you receive a phone call from an external lawyer regarding a competition matter, connect the call to the Group legal department. Do not answer any of the questions without first consulting the Group legal department.

#### **3.5.2 Documents and language used**

All documents, including internal documents (diaries, calendars or other personal notes etc.) and other records may be the target of an inspection by the competition authorities. Therefore all such documents must stand up to a close objective examination in the context of competition rules.

Given the above, all employees of the Group must be careful with their wording in all situations; i.e. in e-mails or other written notes as well as in phone calls and meetings.

Always mark down the source of the information clearly in documents, to ensure that there is no false impression created that information has been received from a competitor when in fact the information has been acquired from customers or a public source. One should be particularly careful when dealing with matters concerning contacts with competitors, customers and suppliers, as well as during industry organization meetings.

The choice of words in the documents is not a key factor, but it may give a false impression to the authorities.

#### **Note!**

As far as possible, try to avoid publicly or otherwise:

- Speculating as to the legality of a certain action under competition law;
- Using competition law terms without analyzing the actual meaning of those terms ("Eltel is in a dominant market position"; "Acquisition will place Eltel in a dominant market position", "Certain company is a potential competitor of Eltel" etc.).

### 3.5.3 Public communications

The public relations and communication of the Group consist of press releases etc. Special care should be taken to ensure that the wording of any public relations documents or disclosures do not lead to unintended consequences and careless statements might draw the attention of the competition authorities to specific Group conduct and lead to an investigation as a consequence.

As far as possible, try to avoid:

- Giving unnecessary details of the Group's market shares, amount of sales, expenses or similar sensitive matters from the viewpoint of competition law;
- Exaggerating Group's market share or competitive strength in a specific market (e.g. describing the Group as being in a dominant position in the market for a certain product or service);
- Saying anything that may imply weak competition in a market in which the Group operates (such as expressions like "a high threshold to enter into the market", "concentrated markets", "high margins" or "a strong increase in prices");
- Giving public statements regarding the pressure on raising prices due to growing expenses, and in particular, declaring upcoming price increases and the timing of such increases relatively exactly in public.

### 3.5.4 Privilege between employees and external lawyers

Written communication between external legal advisors (lawyers, attorneys who are not bound to the company under any employment relationship) is confidential and the subject of "legal professional privilege", **which means that it must not be handed out to any competition authorities** if it relates to the company's rights of defence in connection with a suspected competition law breach.

Privilege also includes copies of correspondence and internal memos/extracts which refer to the original communication which is the subject of legal privilege. Legal privilege does not cover internal notes concerning meetings or phone calls with external lawyers or communication with the Group's in-house lawyer. The privilege covers communication with lawyers competent in the European Economic Area but does not cover communication with non-lawyers, such as tax consultants or accountants.

All documents sent to or received from external lawyers should be marked e.g. with the following text in order to identify the communication as falling under legal professional privilege:

"Confidential – Client privileged Information" or

"Privileged pursuant to the judgement of the European Court of Justice in *Akzo Nobel Chemicals and Akcros Chemicals v. Commission etc.* (C-550/07)."

### 3.6 Finally

This Instruction cannot provide answers to all questions related to competition rules. The application of the competition rules is not always clear-cut so in uncertain cases finding the right answer and the right way of applying the rules calls for a careful case-by-case analysis in advance.

A check list is attached to these instructions to support the case-specific consideration and evaluation process.

#### And always remember:

- Employees cannot be obliged or ordered to breach competition rules;
- In practice, there is always a way of complying with competition rules and at the same time running a successful business;
- Breaching competition rules is never permitted and the sanctions for non-compliance are severe;
- Risk of detection is extremely high!;
- When in doubt, always consult the Group legal department well in advance.

## 4 RESPONSIBILITIES

The responsibilities for this policy follows the general rules set in the 'Policy over Policies'.

## 5 EXCEPTIONS

There are no exceptions to this policy.

## 6 REFERENCES TO ASSOCIATED INSTRUCTIONS

Appendix 1 – The Antitrust Checklist

Appendix 2 – Detailed Dawn Raid Guide

**APPENDIX 1****THE ANTITRUST CHECK LIST**

This check list has been prepared to support the evaluation process in antitrust matters related to Group's business operations. The check list can be used individually or by the Group to analyze each case from an antitrust perspective.

As a general rule, if you answer "YES" to any of the following questions, there is a great risk that competition restrictions may be involved in the contemplated conduct. In such a case, and also more generally in case of any uncertainty, you must contact the Group legal department before any actions are contemplated or implemented.

**1. Confidential information**

In relation to the specific business operation under evaluation have we given or received any confidential information that might have any effect e.g. on future pricing or market behavior on our side or the other party/parties involved?

YES \_\_\_\_\_ NO \_\_\_\_\_

**2. Horizontal competition**

a) Has there been any contact with the actual or potential competitors (acting on the same production or distribution level) in which there have been discussions e.g. about price levels, pricing, limiting sales/production capacities or technical development and/or dividing up markets or consumers?

YES \_\_\_\_\_ NO \_\_\_\_\_

b) Has there been any agreement, co-operation or mutual understanding with any company acting on the same competition level to us?

YES \_\_\_\_\_ NO \_\_\_\_\_

c) If such understanding exists, does it include any possible horizontal restraints of competition (price-fixing, market or customer sharing or co-ordination in offers, limiting production, technical development or investments etc.)?

YES \_\_\_\_\_ NO \_\_\_\_\_

**3. Vertical competition**

a) Has there been any agreement, co-operation or mutual understanding with any company acting on a different production or distribution level to us i.e. our subcontractor or any of the Group companies acting as a subcontractor to another company?

YES \_\_\_\_\_ NO \_\_\_\_\_

b) If such an understanding exists, does it include any possible vertical restrictions (limiting business to one brand only, limiting distribution, fixing the level of the retail price or sharing markets)?

YES \_\_\_\_\_ NO \_\_\_\_\_

#### 4. Abuse of dominant position

a) To evaluate whether a company has a dominant position one must first define the exact market by product/service wise and also geographically. Please discuss the following matters:

- Which are the exact services & products that compete with our services & products?
- Are our services & products easily replaceable i.e. is a customer able to change the producer of the services or products without major difficulties (for example technical hindrances)?
- Geographically does the customer have a realistic alternative to change the provider of the services & products?

b) When estimating whether the company's position on the market is dominant or not, one must then judge the market power of the company. Several factors have to be considered:

- Market shares and the degree of concentration. The wider the difference in market shares e.g. between the two biggest companies and the more dispersed the market shares of other competitors, the more likely it is that the one having the higher market share possesses significant market power.
- What is the bargaining power of customers?
- Are there lots of fluctuations in market shares?
- The amount of existing competition and potential competition? Potential competition may also be considered in the assessment of market power i.e. the possibilities of other undertakings to start competing with the potentially dominant company within a relatively short time, for example, by adjusting production or expanding the geographical operating area.

After careful consideration, is our market power presumably dominant?

YES \_\_\_\_\_ NO \_\_\_\_\_

c) As a rule, a company in a dominant position is obliged to deliver products to its customers on non-discriminatory terms. When estimating whether the dominant position has been abused or not, one must consider whether an Eltel group company has used:

- Predatory pricing (foreclosure of competitors from the market by means of pricing below costs)

- Price-squeeze (by using price-squeezing the company active on more than one production level weakens the position of its competitors by favouring its own business unit)
- Unfair pricing (unfair pricing requires considerable market power, otherwise the customers would not pay the overprice)
- Price discrimination (treating of similar customers in a different manner without a cost-based or other legally acceptable reason)
- Discount systems (only acceptable when volume discounts are based on purchasing volumes or if discounts are based on other cost-savings to the seller)
- Refusal to deal (companies are free to choose their contracting partners, but in the case of a dominant company, refusal to deal is forbidden, if the reason behind it is abusive, i.e., not objective like manifest credit loss risk, lack of capacity etc.).
- Tying (e.g. company requires a buyer to also purchase another, distinct product as a condition of sale)
- Exclusive sales or purchasing agreements (companies in a dominant position may conclude exclusive agreements only in very exceptional circumstances).

After careful consideration, is there a chance that the dominant position has been used in an abusive way?

YES \_\_\_\_\_

NO \_\_\_\_\_



**APPENDIX 2****DETAILED DAWN RAID GUIDE****FOR THE ELTEL GROUP REPRESENTATIVES IN CHARGE OF THE INSPECTION**

In the European Union, officials of the European Commission and/or national competition authorities have the power to conduct unannounced inspections at company's business premises but also in the private homes of employees and directors – sometimes in several countries at the same time – to investigate possible infringements of the competition laws. Those inspections are commonly referred to as “dawn raids” (although they can take place at any time during the day). These guidelines set out the procedures to be followed in the event of a dawn raid to ensure that Eltel's interests are protected, while ensuring compliance with the law.

Dawn raids are most often carried out when competition authorities suspect that a company may have violated competition laws, possibly based on information provided by a third party. However, it is also possible that the real target of the competition authorities is a competitor, a trading partner, or even an entire economic sector (and thus the company being visited is not the specific focus of the investigation). Remember at this stage that Eltel is not necessarily charged with any wrongdoings.

While the main purpose of a surprise inspection is to collect documentary evidence, inspectors may ask questions related to the subject matter of the investigation or to clarify the meaning of certain documents. This guide assists you in addressing these situations adequately.

**FIVE GOLDEN RULES**

1. There must be no attempt to conceal, tamper with or destroy documents or electronic messages;
2. Be courteous and co-operative with the inspectors but never leave them on their own;
3. Drop everything and make this your priority;
4. If an inspector asks you a question and you are in doubt as to how best to respond, don't volunteer an answer - seek legal advice;
5. Do not obstruct an investigation. Companies may be heavily fined for not complying with the inspectors' instructions, for refusing to answer or for providing inaccurate information.

**1. At the beginning of the dawn raid**

Contact the General Counsel and the external competition lawyer to inform them of the dawn raid and the arrival of the inspectors:

|           |                                   |
|-----------|-----------------------------------|
| Name      | General Counsel Päivi Hautamäki   |
| Telephone | +358-40-3113211                   |
| E-mail    | paivi.hautamaki@eltelnetworks.com |

External competition lawyer for Eltel Group Oy

|           |                                 |
|-----------|---------------------------------|
| Name      | Partner Tuomas Saraste, HPP Law |
| Telephone | Tel. +358 9 474 2200            |
| Gsm       | Mobile +358 40 7435 234         |

E-mail tuomas.saraste@hpplaw.fi

If the above-mentioned persons are not available, contact the Head of the unit / a Group director to let her/him know about the dawn raid.

Always ensure that the above-mentioned persons can attend the inspection. If you cannot reach them by phone, find out where they are and let them know about the dawn raid even if it means that you have to interrupt a meeting or other significant event.

Inform the inspectors that you are the Group's representative in charge of the inspection.

Ask the inspectors to show the inspection order / authorization and their identity cards (the officers of the European Commission have Commission's identification cards) and make sure to take copies of them. Find out what the inspection concerns. Make sure that the names of the inspectors correspond with the ones in the inspection order / authorization.

Take the inspectors to a room in which there are no documents or any archives and make sure someone stays with them throughout the whole period of the inspection.

Ask the inspectors to wait until the Group's lawyer or the external lawyer mentioned in this Guide arrives.

While waiting for the lawyer, go through this guide. Do not show this guide or the Competition Instruction to the inspectors. If they ask to see these documents, tell them that these are covered by the legal privilege between Eltel and an external lawyer (Client Privilege Information).

When the lawyer arrives, he/she will then be in charge of the inspection.

Note that the inspectors are not obliged to wait for the lawyer to show up. If the inspectors are unwilling to wait, you should remain in charge and act according to this Guide. If this happens, try to contact the lawyers by phone to get legal guidance. *Never try to delay the beginning of the inspection by more than is absolutely necessary.*

## **2. Name the recording secretary(/ies) and the escort(s)**


Arrange someone to act as secretary to keep a record of everything that happens during the inspection (for example writing down the questions the inspectors ask, the requests they make and documents that are provided to them and reviewed by them).

Every inspector must have an escort. The escort can be the external lawyer, Eltel's own lawyer or some other Group employee. This person must write down what documents the inspector are provided to and reviewed by the inspector and/or takes copies of such documents and any notes the inspector makes.

## **3. Find out what is the object of the inspection**

If the dawn raid is an inspection by the European Commission, the inspectors must have an inspection order / authorization which includes the aim and the purpose of the inspection.

Here is an example of an Inspection authorization of the Commission:

 COMMISSION OF THE EUROPEAN COMMUNITIES  
Competition DG

Brussels,

**AUTHORISATION TO CONDUCT AN INSPECTION**

Mr / Mrs [NAME]  
holder of internal service card N° [NUMBER]  
is hereby authorised to conduct an inspection at  
[NAME OF THE UNDERTAKING/ASSOCIATION OF UNDERTAKINGS]  
together with  
[its respective subsidiaries/all undertakings directly or indirectly controlled by it]

for the purpose of executing the Decision of the Commission dated [DD MONTH  
YYYY] ordering an inspection to be conducted under Article 20(4) of Council  
Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on  
competition laid down in Article 81 and 82 of the Treaty<sup>1</sup>.

To this end, [he/she] has been invested with the powers set out in Article 20(2) of  
Council Regulation No 1/2003.

For the Commission,  
[NAME]  
Deputy Director General

<sup>1</sup> OJ L 1, 4.1.2003, p. 1.

Commission européenne, DG COMP GREFFE ANTITRUST (J70 - 4/136), B-1049 Bruxelles, Belgique  
Europäische Kommission, DG COMP GREFFE ANTITRUST (J70 - 4/136), B-1049 Brüssel, Belgien  
Tel: (32-2) 295 11 11, Fax: (32-2) 295 01 26, e-mail: COMP-GREFFE-ANTITRUST@ec.europa.eu  
<http://ec.europa.eu/comm/competition/antitrust/legislation/legislation.html> March 2006

When the inspection takes place outside the company's business premises, for example at an employee's home, the inspectors must have the actual inspection order or authorization from the court since the inspection authorization is not sufficient enough for premises other than the company's business premises.

Inspectors from national competition authorities must have an inspection decision or court authorization with them. The decision must have specific information regarding the purpose of the inspection, so it must effectively contain the following: the target, the extent and the essential purpose.

If the Group lawyer or the external lawyer is unable to arrive at the inspection quickly enough, read the authorization or the order/decision to them over the telephone or send it by email or telefax so that they can confirm that the inspectors have the appropriate authority to carry out the inspection.

#### 4. Find out the purpose/extent of the inspection

Ask the inspectors the following questions and write the answers down:

- What is the alleged infringement to which the inspection relates?
- What products does the inspection relate to?
- Are there any particular clients that the inspection relates to?
- Are there any particular suppliers that the inspection relates to?

- Are there any particular competitors that the inspection relates to?
- What is the time period in which the inspectors are interested?
- Which countries does the inspection relate to?
- Which documents are the inspectors hoping to review?

## DO NOT OBSTRUCT THE INVESTIGATION

Obstructing the investigation in a way or another (such as concealing / destroying / tampering / falsifying documents or electronic messages, providing false or misleading information, breaking a seal etc.) *is an offence that can lead to significant fines.* For example:

- The European Commission increased the fine of Sony by 30 % in 2007 since an employee of Sony refused to answer questions during the inspection, and also shredded documents.
- The European Commission imposed a fine of 38 million euros on E.ON in 2008 for breach of a seal which the Commission had attached to an office used to store documents which it had gathered for safekeeping overnight. E.ON had claimed that the seal had been breached because of vibrations from setting up a neighboring conference room, a powerful cleaning product, the age and condition of the seal, the degree of humidity etc.
- The Spanish Competition Commission imposed a fine of over 2 million on ferry operator in 2011 for obstructing an investigation and launched formal proceeding against them because the company could not locate and make available the managing director and other personnel during the dawn raid.

Therefore, always assist the inspectors and co-operate with them as much as possible. Do not try to obstruct the investigation in any way. When in doubt, ask advice from Eltel's lawyer / external competition law counsel if possible.

## 5. Documents provided to the inspectors

The inspectors have the right to inspect written documents and other records which can be read, listened to or understood with the help of technical devices (for example discs).

It is preferable that the inspectors agree to have documents brought to them in one predetermined room, perhaps following a tour of the offices. In case they insist on inspecting files in the offices and rooms where they are kept, the inspectors should be brought to the appropriate files and not be left searching through files on their own.

- *The inspectors have a right to access all business premises, and it can include company vehicles.* The inspectors may also ask to see briefcases, diaries, mobile phones, smartphones, lap-tops and computers. The search may also extend to private homes of managers or other company staff if the inspectors have the necessary court order or decision. Inspectors may seal any *business premises* and records for the period and to the extent necessary for the inspections. *Eltel must ensure that the seals are not broken/tampered with as this could result in fines for obstructing the investigation.*
- *The inspectors will usually follow a standard procedure when copying paper or electronic documents. For paper documents, the inspectors will make copies of*

*the originals and draw up charts bearing their initials and detailing what they have copied (i.e. type of document, number of pages, etc.). Make sure that in addition to their copy, two additional sets of copies are made and taken by Eltel (i.e. three sets of copies in total – one for the inspectors, one for Eltel and one for outside counsel).*

- *The inspectors may also search for electronically stored data and use key words to conduct that search. Make sure an Eltel's IT system specialist is available to assist with (i) giving the inspectors access to Eltel's network and (ii) with the electronic searches. Careful notes of how these electronic searches are conducted, including e.g., noting all search terms used must be made.*
- *It is up to the inspectors to decide whether the document is relevant but remember that inspectors cannot undertake a "fishing expedition" and seek unlimited access to all company files. For instance, they cannot copy entire folders or disks on a computer. Therefore try to oppose them taking documents relating to matters clearly not covered by their authority or mandate. In case of doubt, seek legal advice. If they insist, and because Eltel would not obstruct the investigation, insist that your opposition is noted in the minutes of the inspection and ask the inspectors to put the documents in a sealed envelope. Bear in mind that inspectors tend to show an interest in background information about a company's products, market structure, etc. It is well established that this is relevant material.*
- *Do not hand over "legally privileged" documents. These are written communications between the company and external legal advisers that relate to the subject matter of the investigation.*
- *In order to convince inspectors that a document is privileged, show them the letter head, author/addressee of the note, and/or subject matter (holding your hand over the body of the text). If investigators insist to see a document that is privileged, there is no obligation to produce the document. However you should check with legal counsel before refusing to comply with a request in order to minimize the likelihood of being obstructive. If there is any disagreement, put the document aside in a separate file until a lawyer can review it.*

Keep a photocopying/electronic searching/copying log

Name of person completing the log:

Name of inspector:

Date:

Reference No:

Name of document searched:

If electronic document – key search words used to locate the document:

Action taken: (hard copy or electronic copy searched or copied):

Location found: (XX's PC etc.).

## 6. Verbal/Written explanations

The questions that the inspectors ask must directly relate to the purpose and the object of the inspection. The inspectors are not allowed to “fish” for information about other circumstances or situations (for example other alleged infringements of competition law regarding other product or geographical markets or a timeline that the inspection order does not concern).

The inspectors have the right to ask questions that relate to the identification of documents (for example who has sent a document and to whom) or in order to understand other facts (for example who attended the meeting and when the meeting was held). This covers all employees of the Group.

Answer only the questions that are asked. The answers must be short and based on facts. If you cannot answer the question or you are uncertain, ask for the question in written form, so that it can be answered later.

Do not try to guess the answer or tell the inspectors your own interpretation of a specific matter. Inform the inspectors clearly if you do not understand the question or do not know the answer – no matter what the inspector says. Do not discuss with the inspector about “the legal situation” or “the seriousness of the matter”.

If you suspect that the question is not appropriate, ask the inspector to explain how the question relates to the purpose/target of the inspection.

The company/you have the right to refuse to answer any questions which would lead to an admission of the competition law infringement which the Commission / national competition authority is trying to prove by the inspection.

### Examples of questions that **should be answered**:

- Was there a meeting?
- What does this handwriting say?
- What does this abbreviation mean?
- Where this file can be found?
- Did you attend the meeting on September 17?
- Do you have agenda, minutes or notes from the September 17 meeting?

### Examples of questions that **do not need to be answered**:

- Did you discuss price fixing or market sharing?
- What was the purpose of the September 17 meeting?
- Did you agree at the September 17 meeting that the Company would not make an offer to that project?

If the inspector makes a request that you think is insufficient and outside his/her authorization you must (after consulting the Group’s lawyer or the external lawyer when possible)

- refuse to co-operate and explain why;
- make a note of the refusal and the reason for it; and

- if possible, try to get the inspector to agree with your opinion on the content of your note.

If the inspector makes notes, try to make sure that the notes are made accurately and correct any potential mistakes or clarify unclear sections. If the inspector does not agree with your corrections and refuses to correct the mistakes in any notes, make a note of the refusal in your own notes. If possible, copy the inspector's notes.

Make a written record including every detail or issue on which you have disagreed with the inspectors.

Keep also a question log for questions and answers provided:

Name of the person interviewed:

Name of the inspector:

Date:

Time:

Question:

Answer:

## 7. Before the inspectors leave

Ask to see the list of the documents which have been reviewed and copied as well as a record of the interviews. Copy the list and the record. Compare the documents with the record made by the Group and identify any differences in them immediately.

If the national competition authority, local administration or the Commission does not compile a list of the copied documents, you must make a list of your own and demand that one of the inspectors confirms its contents by signing it.

Remind the inspectors that all the documents include business secrets and are therefore fully confidential.

## 8. Internal meetings after the inspection

An internal meeting must be held as soon as possible after the inspection. Everyone who participated in the inspection as well as the managing director, lawyer and financial director of Eltel and the management of the relevant units must attend the meeting.

In the meeting all relevant issues should be discussed and resolved, including by way of example, what was discussed with the inspectors, what documents, emails etc. were reviewed and what documents have been provided to the inspectors (auditing). The purpose of the meeting is also to make sure that the inspectors have received correct information. If false or insufficient information has been given, the falsities and insufficiencies must be corrected as soon as possible in writing to the inspectors.

Follow-up measures must be considered concerning the documents given to the inspectors. If there are signs of infringements of competition law, such follow-up measures must be considered carefully. In particular the possibility of making a leniency application or contributing in some meaningful way to the inspections of the competition authorities for obtaining total immunity or benefit from a reduction of fines must be considered, together with the Group's legal department and/or external competition law counsel.



**9. Communication regarding the inspection**

Make sure that the people that the inspection might concern or from whom the inspectors may request documents are aware of the inspection and the extent of it.

Do not mention the inspection or the contents of it to any external third parties. Remember that before any press release is made public, all information about the inspection is secret and confidential inside the company. If necessary, ask for detailed guidance from the lawyer, financial director or managing director of Eltel Group.

**DAWN RAIDS: QUICK REFERENCE GUIDE****Upon arrival of the officials:**

- ☐ Check identity of officials
- ☐ Check form of authority offered
- ☐ Alert relevant people – including IT staff of Eltel
- ☐ Will officials wait until outside lawyers arrive? – If possible move them away from reception and put them in a separate room if they agree on that

**Find out about the reasons triggering the dawn raid:**

- ☐ Check content of decision or authorization
- ☐ What is the subject-matter and purpose of the inspection?
- ☐ What are the reasons for the inspection?
- ☐ Try to find out information about the inspection:
  - What documents are required?
  - How long will the inspection take?
  - What is the background to the inspection?

**Organize the Eltel's response:**

- ☐ Agree a strategy for the inspection:
- ☐ Which officials will deal with what?
- ☐ Where will the officials look at the documents?
- ☐ Do the officials want a tour of offices?
  - How will electronic documents be dealt with?
- ☐ Appoint some employees to keep records

**Assess the outcome of the dawn raid:**

- ☐ List all documents shown to officials
- ☐ List the questions asked and answers (logs)
- ☐ Copy x3 all documents requested (1 for officials, 1 for Eltel, 1 for outside counsel)
- ☐ Note information not immediately available
- ☐ Check files for privileged documents and provide list of documents withheld

**DO's and DON'Ts**

**DO contact internal and outside counsel immediately**

**DO co-operate with the officials**

**DON'T hide or destroy any documents**

**DON'T allow the officials to search files unsupervised**

**DON'T provide access to legally privileged documents or those clearly outside the scope of the inspection**

**DO keep a record (log) of all documents copied and questions asked by the officials and the answers given**

### DAWN RAID GUIDE FOR ELTEL'S RECEPTION

#### In case of national competition authority and/or EU Commission investigation

If one or several of the following authorities arrive at Eltel's premises without prior notice:

- Any National Competition Authority;
- Regional State Administrative Agencies;
- EU Commission.

**do NOT refuse entry.** There is a risk of fines for a company that does not co-operate.

Take the following action:

**1)** Ask for the inspectors' identity cards and an inspection order/authorization

- Ask the inspectors to show the inspection order/authorization and their identity cards (the officers of the European Commission have Commission identification cards) and ensure copies of the identity cards are taken. Find out what the inspection concerns. Make sure that the names of the inspectors correspond with the ones in the inspection order/authorization.

In case of any inconsistency in the documents, make notes about it and inform the Eltel Group legal department.

**2)** Ask the inspectors to wait

- Tell the inspectors that you are required to call in the company representative.
- The company is obliged to co-operate with these raids. Be polite and courteous at all times to the inspectors. However, you should **NOT** talk to the inspectors about any aspect of Eltel's business, other than explaining who you are and what your job title is.
- Ask the inspectors if they agree to wait until the company representative (see contact details below) arrives and tell them that you are not allowed to let anyone into the premises, instead you are always required to wait for a company representative. If they refuse to wait do **NOT** obstruct them.
- The inspectors are **NOT** obliged to wait. Do **NOT** prevent the inspectors from beginning their inspection in any way or entering the company's premises.
- In case you give some documents to the inspectors inform always Eltel's lawyer about this. Provide documents **ONLY** upon an inspectors' request.

**3)** Contact the following people (in the order below) as soon as possible and let them know that the inspectors have arrived. If you cannot contact them, ask their assistants to immediately contact them.

In the local company:

## Competition Instruction

CLO

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- In-house legal counsel
- Head of BU/CEO
- CFO

**AND**

In the Group:

- General Counsel of the Group
- Group CFO
- Group CEO

Let them know inspectors have arrived, from which authority and how many inspectors are present.

If the above-mentioned people are not available, inform **ANY** of the company directors in-house to let him/her know that the inspectors have arrived.