

Antitrust Guide For Employees

A Letter From The Chairman

Compliance with antitrust laws is a matter of the highest priority for United Technologies Corporation (UTC). This Guide is designed to help you comply with these laws, to familiarize you with the general principles of antitrust law and the penalties associated with violations, and to help you recognize issues or questions on which you should seek the advice of the Legal Department.

The antitrust laws are designed to protect and promote competition. These laws reflect the belief that in a vigorously competitive market place, the most innovative and efficient firms will thrive and consumers will have the best products and services available at the lowest prices. UTC is committed to the goals of the antitrust laws and it is the policy of UTC and the responsibility of each employee to ensure that business is conducted in compliance with these laws.

An antitrust violation even in connection with a minor transaction can have severe consequences for individuals, including imprisonment, and can result in major financial penalties and embarrassment for UTC. Employees who fail to comply with the law and UTC's policy are also subject to disciplinary action, including dismissal. I urge you to read this Guide carefully, to follow its advice and to contact the Legal Department if you have any questions.



George David
Chairman and Chief Executive Officer

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United Technologies Corporation's Antitrust Compliance Policy

The policy of United Technologies Corporation (UTC) and its affiliates and subsidiaries is to comply strictly with the laws of the United States and of every jurisdiction where we do business. This includes rigorous compliance with all applicable antitrust laws. Every employee is responsible for ensuring that business is conducted in compliance with these laws and with UTC's Code of Ethics.

This Guide is designed to help you recognize business situations that raise antitrust issues so that you can get needed advice. This Guide is not a summary of applicable antitrust laws, which can be complex and subtle when applied to particular circumstances. Rather, it directs you away from conduct that could create even an appearance of an antitrust concern. All conduct that may raise antitrust questions should be reviewed with the Legal Department in advance.

This Guide does not address antitrust laws as they apply to acquisitions, divestitures, mergers and joint ventures. If you are considering a transaction in which UTC will acquire or relinquish control of a business or its assets, you should consult the Legal Department.

Why The Antitrust Laws Deserve Our Attention

Non-compliance with antitrust laws poses grave risks to the company, its employees and its shareholders. Penalties for violations are severe, including imprisonment for individuals, heavy fines and deep and long-lasting harm to UTC's reputation.

- 1. Employees Who Fail To Comply With The Antitrust Laws Will Be Subject To Disciplinary Action** — Depending on the seriousness of the violation, such action may include termination of employment.
- 2. Criminal Sanctions** — Violation of the Sherman Act, the principal federal antitrust statute in the United States, is a felony. For each offense, an individual may be imprisoned for up to ten years and fined up to \$1 million. A corporation may be fined up to \$100 million or an alternative maximum fine amounting to twice the monetary gain or loss (whichever is greater) arising from the offense. Some recent fines have been in the hundreds of millions of dollars. The government vigorously pursues felony prosecutions and insists on substantial jail terms and huge fines for serious violations like price fixing, bid rigging and customer or market allocation.
- 3. Large Civil Damage Awards** — Damage awards in civil cases can total hundreds of millions of dollars. Successful claimants are automatically awarded three times the actual damages found. Lured by triple damages, distributors, customers and even suppliers often attempt to convert ordinary commercial disputes into antitrust violations.
- 4. Joint and Several Liability** — Each individual and each corporation that participates in a violation of the antitrust laws is liable for 100% of the resulting damages or overcharges, even if the company has only an extremely small share of sales in the affected market. Moreover, the company and its insurer cannot indemnify individuals against this liability.
- 5. Injunctions** — Injunctions and “cease and desist orders” can contain prohibitions that go beyond the scope of the original violation. Such prohibitions, which can last for decades, can severely hamper future business conduct and opportunities.
- 6. Government Contractor Debarment** — UTC could be barred from contracting with the federal government, our largest single customer worldwide, because of a criminal or civil violation of federal or state antitrust laws.

7. **Payment of Plaintiff's Attorneys' Fees** — Prevailing claimants' are awarded attorneys' fees, even if the actual damages awarded are small.
8. **High Costs for Legal Defense** — Antitrust litigation is very expensive, requiring specialized antitrust counsel and expert antitrust economists, accountants and other witnesses. Insurance coverage may be nonexistent, inadequate or inapplicable to pay these costs. The consequence may be heavy charges against UTC's operating budget, even if the company is innocent of any wrongdoing.
9. **Loss of Time** — In addition to damage awards and expenses, antitrust litigation places a major strain on the time and energy of company employees and executives who must assist in the defense of the case. Typical activities include finding, producing and reviewing large numbers of company documents and electronic files, preparing to testify, answering lengthy written interrogatories, enduring depositions by opposing lawyers and testifying at trial.
10. **Disclosure of Confidential Information, Business Inconvenience and Embarrassment** —Depositions of company personnel and corporate documents, including electronic mail and personal diaries provided in pretrial discovery could be made public in court, some other public forum or through the press. Such disclosure can damage our reputation, even if the conduct at issue is legal.
11. **State and International Antitrust Laws** — Our states and most other countries have antitrust laws (known in some countries as competition laws) that usually provide a separate but parallel enforcement mechanism to the federal antitrust laws. A violation of those laws could result in an investigation by multiple regulatory agencies or litigation of the same matter in two or more courts at the same time.

Business Practices Subject To Scrutiny: Joint and Single Firm Conduct

The antitrust laws are designed to protect our free market system and rest on the premise that vigorous competition will yield the best allocation of economic resources, with products and services at the lowest prices and the highest quality. In support of this goal, antitrust laws generally prohibit two forms of behavior: (1) joint action that unreasonably restrains competition and (2) improper unilateral action that either maintains a company's monopoly power or propels a company into a monopoly position or seriously threatens to do so. Other aspects of antitrust law prohibit certain types of discrimination in pricing and unfair trade practices.

The following discussion summarizes and provides guidance concerning the antitrust issues that can arise in our dealings with competitors, customers and suppliers:

Dealings With Competitors

Contacts and agreements with competitors are very dangerous and are the most frequent subject of criminal enforcement activity by antitrust prosecutors, as well as treble damage actions by private claimants. It is UTC's policy to make its own independent decisions concerning what products and services to offer, where and how to offer them and how much to charge for them.

The antitrust laws generally prohibit agreements among competitors that unreasonably restrain competition. Employees should be extremely sensitive about any contact with a competitor. Absent a valid, lawful purpose, there must be no agreement (or attempt to reach an agreement) with any representative of a competitor concerning prices, pricing policies, discounts, allowances or other terms of sale. There are similar prohibitions against agreements (or attempts to reach agreements) with a competitor to limit production, to allocate customers, markets or territories, to boycott any customer or supplier or to suppress technological developments.

What Is An Agreement?

An agreement is an exchange of assurances that the parties to the agreement will act or not act in a certain way. The concept of “agreement” in antitrust law is very broad, going beyond merely an express or written agreement between competitors to, for example, raise or stabilize prices. A claimant may prove an “agreement” among competitors without any evidence of an express or written agreement. Rather, the jury can infer an agreement or “understanding” from all the facts and circumstances. Some courts and juries find an agreement even when the participants did not communicate directly with one another about the purpose, details or the means by which they would carry out the alleged arrangement. Juries can infer an agreement by conduct alone or from market events, e.g., a price increase that supposedly resulted from a competitor contact.

Accordingly, employees must avoid any situation from which others could infer an agreement among competitors. The safest course is to decline to participate in any meeting or communication with a competitor unless you can easily prove that there is a valid, lawful purpose. An employee should never discuss with a competitor proposed bids, particular customers or territories or any other information related to the competitive pricing or marketing of goods or services. If a competitor begins to discuss any of these issues, you should immediately refuse to participate, leave the meeting or otherwise terminate the discussion and contact the Legal Department as soon as practicable. Exceptions to these guidelines, such as legitimate intercompany supply transactions or joint ventures, should be cleared in advance with the Legal Department. Furthermore, you should not use third parties, including consultants and suppliers, to convey information to a competitor, which would be improper if said directly to the competitor.

What Types of Agreements Are Illegal?

Courts have determined that certain types of agreements are so likely to injure competition that no detailed inquiry is required. These types of agreements are treated as *per se* illegal because the courts presume that they adversely affect competition, without considering their purpose or effect. Even an attempt to enter into such an agreement can be illegal and contrary to UTC policy.

- **Price Fixing**

Most prominent among the *per se* illegal agreements are those relating to the fixing of prices. The concept of price fixing is very broad and includes efforts collectively to determine bids, to fix or stabilize prices, to establish a formula or method for calculating prices, to agree on standard discounts or rebate levels, to set standard credit terms or warranties or to agree on the timing of the announcement of price changes. This conduct is likely to be prosecuted criminally as illegal price fixing.

In the highly competitive environments in which UTC conducts business, it may be necessary to monitor a competitor’s prices and to react to price changes by others. Nothing prevents us from independent, unilateral and legitimate efforts to meet the prices offered by competitors.

Thus, employees may obtain competitors’ pricing information from legitimate sources such as customers and industry publications. Employees should always clearly identify in writing where they obtained competitors’ pricing information.

However, UTC’s policy does not permit exchanging price lists, bids or quotes with competitors. Such conduct may contribute to an appearance of conspiracy, even if in fact there was no price-related agreement among the competitors.

- **Allocating Customers Or Territories**

Agreements among competitors to allocate customers or territories likewise can be deemed *per se* illegal. Therefore, do not agree or attempt to agree with a competitor to sell or refrain from selling to any customer or class of customers. Do not agree or attempt to agree with a competitor to sell or refrain from selling in any geographic area and do not agree or attempt to agree to divide or share a customer’s business.

- **Group Boycotts And Collective Refusals To Deal**

Agreements among competitors to refuse to deal with another competitor can be *per se* illegal in certain circumstances, especially where the agreeing competitors have market power, or where they deny the excluded competitor access to some facility, supply or market it needs to compete effectively. Do not propose, consider or agree to terms that have this effect without prior review and clearance by the Legal Department.

- **Trade Association Activities**

Some employees participate from time to time in various trade associations and professional organizations. Trade associations may perform legitimate functions like monitoring government regulations, proposed legislation or health and safety codes affecting the industry or improving product safety. However, these organizations, if used improperly, can provide an opportunity for competitors to discuss matters that might be considered competitively sensitive. Therefore, it is important that any communications with actual or potential competitors at trade association meetings or other joint industry activities contain only that information needed for the legitimate functioning of the group. Avoid discussions that in retrospect could result in allegations that an unlawful agreement took place. Mere presence at any meeting in which competitively sensitive subjects are discussed can be used as evidence that you and UTC are parties to a restrictive arrangement, even if you did not participate in those discussions.

First, it is the policy of UTC that any trade association to which UTC or an employee belongs shall have legal counsel advising the association on antitrust law issues. Any deviation from this policy requires clearance from the Legal Department.

Second, the following procedures must be observed with respect to all meetings among trade association members concerning subjects of common industry interest:

- An agenda should be circulated in advance of each meeting and, if feasible, reviewed by the Legal Department to determine whether it includes competitively sensitive subjects. Do not attend the meeting if inappropriate topics are included on the agenda. If it is not practical to circulate an agenda in advance of a meeting, you should aim to forward the agenda to the Legal Department after the meeting to allow the Legal Department to keep a record of the association's activities. The trade association should also maintain meeting minutes and the company representative should forward these minutes to the Legal Department, where feasible, upon receipt.
- In the event any competitively sensitive issue is raised at a meeting, the company representative shall immediately and publicly distance himself or herself and the company from that discussion, ask that this be noted in the minutes of the meeting, leave the meeting immediately thereafter and promptly inform the Legal Department.

- Most importantly, no company representative shall enter into any agreement or understanding, formal or informal, concerning prices, margins, terms and conditions of sale, production volumes, research and development projects, customers or markets. In addition, no information may be exchanged relating to an individual company's prices or costs, marketing, production, or research plans or any recent sales or shipment statistics. It may be permissible to provide certain historical data to the trade association in order to assemble general industry statistics, provided that any such data that is disclosed to competitors is aggregated and anonymous. Before any data is shared with a trade association, you should obtain Legal Department review and approval of the data sharing.
- Any membership in a trade association must be approved in advance by the relevant business unit and Legal Department and must comply with these guidelines and any trade association guidelines issued by the business unit.

Competitor contact is the most serious and sensitive antitrust concern, and great care must be taken whenever the occasion for such contact exists. Any question regarding appropriate communications with competitors or participation in a trade association should be referred to the Legal Department.

Dealings With Customers

Certain activities with respect to customers, such as pricing below cost, price discrimination, disparaging a competitor's products or services, tying one product or service to another, exclusive dealing, restricting the terms on which customers may resell or terminating a customer without a legitimate purpose, can raise serious antitrust issues. Many of these practices are particularly vulnerable to antitrust scrutiny where the company has a significant or dominant market position. This section describes these practices generally and identifies those situations where it is important to consult with the Legal Department before taking any action.

Pricing Below Cost

In certain circumstances, the antitrust laws require that companies price their products and services at levels above an appropriate measure of cost, such as average variable cost. This issue arises where below-cost pricing could drive out smaller rivals and allow the firm then to raise prices and recoup its uncovered costs and lost profits. Antitrust rules in this area are very complex and the Legal Department should be contacted whenever any of our prices could be regarded as being below cost.

Price Discrimination

Another pricing practice that may raise antitrust or regulatory concerns is discriminating in price, promotional allowances or services between different purchasers when that affects competition. In some circumstances, a court may look to the “net” price of a product sold to different purchasers after deducting the value of incentives, allowances and other services. On the other hand, the law provides defenses if different prices are needed to meet competition or reflect different costs of doing business. Here again, discriminatory pricing law is very complex and you should contact the Legal Department whenever any of our prices could be regarded as discriminatory and may harm competition from rivals or among purchasers.

Disparagement

Although we can compare our products and services to those of our competitors, we must be careful in our day-to-day marketing contacts with our customers not to make untrue comments or comparisons about our rivals’ products or services. It is legally permissible to explain to customers the negative aspects of a competitor’s products and services as long as the description is not misleading and is relevant to the particular sales situation.

Tying

Tying arrangements occur when a seller requires a buyer who desires one product (or service) to purchase a second product (or service) that the buyer may not desire as a condition of purchasing the first product. If the seller has a dominant market position in the product and could cause an adverse competitive impact on the market for the other product, the seller risks a claim that the arrangement constitutes an illegal tying arrangement. The Legal Department should be consulted prior to proposing such an arrangement to a customer.

Exclusive Dealing Arrangements

Exclusive dealing arrangements include contracts in which a buyer agrees to purchase all of its requirements for a particular product or service from one supplier. Such arrangements can be pro-competitive — for example, when the agreement is for a reasonable duration and the buyer benefits by stabilizing the price it pays or by assuring availability. Such arrangements should be cleared with the Legal Department in advance, because they may in certain circumstances unreasonably reduce the opportunities of rivals.

Relations With Resale Customers

Do not agree with distributors on resale prices for our products. Recommended resale prices are permissible, but you must consult with the Legal Department before making any such recommendation. Do not, without the Legal Department’s prior approval, select customers on the understanding that they will resell only in markets and territories or to persons specified by us.

The distribution of our products through both independent and company-owned distribution channels can raise antitrust concerns because the company is, at the same time, both supplier and competitor. The law does not require that company-owned and independent distributors be accorded equal treatment with respect to prices, allocation of product or merchandising services, but independent distributors often complain if they perceive they are not receiving equal terms and conditions. Dual distribution arrangements are complicated and you should consult the Legal Department before setting up such an arrangement. Also, since company-owned distributors do compete with independent distributors, there can be no price agreements between them.

Terminations

Termination of our relationship with a customer must be based on legitimate business reasons, which you should fully document. The Legal Department should be consulted in advance. Fines can result if you terminate a customer that has decided to offer services or products that compete with our services or products. Under certain circumstances, it can be unlawful to “shut off” a customer whose survival depends on these supplies, or where the termination is designed to enable us to take over the activities of a customer who may also be competing with one of our businesses.

Dealings With Suppliers

Many of the antitrust principles that apply to our dealings with customers also apply to our relations with suppliers, especially where the company has a significant or dominant market position. These include tying arrangements, price discrimination, terminations and exclusive dealing. You should consult the Legal Department before engaging in this conduct with suppliers.

Reciprocity

Reciprocity means agreeing to buy the products or services of a supplier on the condition that the supplier also agrees to buy products and services from us. A company with substantial buying power in a particular market should be particularly careful to avoid using that buying power to coerce its suppliers to buy its products and services. While in some cases we may not have such market power, and it may be possible to structure a lawful agreement to purchase reciprocally, our general policy is not to do so. Any exception to this policy must be cleared in advance with the Legal Department.

Receiving Discriminatory Price

Under certain conditions, the antitrust laws prohibit a buyer from knowingly inducing a seller to offer a discriminatory price. Because of the complexity of discriminatory pricing issues, they should all be referred to the Legal Department for review.

Dual Roles of Suppliers

Generally you should be aware that a company might function in one transaction with us as a supplier and as a competitor in another transaction. Where any supplier is or could be a potential competitor to us, you should take care not to transfer information that is inappropriate to share with a competitor or come to any agreements regarding price or terms of sale for the competitive product. Please consult with the Legal Department to develop safeguards designed to prevent the transfer of competitive information to a supplier who is also a competitor.

Beware of Ambiguous Statements That Could be Misconstrued

Antitrust cases often involve subjective questions of intent and motive. Plaintiffs' lawyers frequently search for inflammatory or ambiguous phrases that can be quoted out of context or mischaracterized as indicative of anticompetitive intent or conduct. Some examples of phrases subject to misinterpretation are set forth below:

Regarding Market Position:

"Our Company's plan is to achieve dominance of the marketplace."

Concern: A regulator or plaintiff could misinterpret "plan is to achieve dominance" as evidence of an illegal attempt to monopolize a market.

Regarding Your Competitors:

"We ought to crush these guys like a grape."

Concern: A regulator or plaintiff could misinterpret "crush", "block", "destroy" and other similar terms as admitting to a predatory or exclusionary scheme, as distinct from aggressive, legitimate competition on the merits.

Regarding Price Fixing:

"There appears to be an industry consensus that prices will rise."

Concern: A regulator or plaintiff could mischaracterize a legitimate interpretation of market events and market forces as an admission that competitors have agreed to raise prices.

Regarding Areas of Respective Competition:

"Let them stay in their market; this is our territory."

Concern: A regulator or plaintiff could misinterpret the phrase "their market," and "our territory" as indicating that rivals colluded to allocate markets.

Regarding Your Documents:

“Please destroy after reading.”

Concern: A regulator or plaintiff could mischaracterize this phrase or similar phrases to show that the document contained improper information or to suggest illegal conduct.

In Summary:

Use care in your writing and speech to avoid any statement — even if made in jest — that could be misconstrued. All documents are potentially discoverable in a lawsuit, including outdated drafts of letters and memoranda (including electronically stored drafts), handwritten notes, phone messages, e-mail, personal diaries, date books and calendars. In addition, documents may need to be submitted to the government in connection with antitrust review of a proposed acquisition or joint venture. It is extremely important to keep antitrust principles in mind when writing and speaking and make sure that you write and speak accurately all the time. In addition, where we ask a third party to prepare a document on our behalf or for our benefit, it is important that these third party documents be prepared with these antitrust principles in mind since these documents may be subpoenaed in an antitrust proceeding as well.

Investigations, Searches and Seizure

It is possible that as part of a government investigation (sometimes unannounced), government officials may inspect our offices to retrieve documents. An on-site inspection is, of course, a very serious matter but should not be cause for undue alarm. It does not mean that UTC has violated any law. If the proper guidelines are followed, the inspection should cause only minimal disruption. It is nevertheless imperative to handle an on-site inspection carefully and appropriately. You must inform the Legal Department immediately when confronted with a request for information or a search by a government authority. You should use your best efforts to ensure that a lawyer is present before you discuss anything with the inspectors. You should also keep careful track of which documents the government representatives review and/or copy.

The Role of The Legal Department

In carrying out your job responsibilities, you will from time to time encounter conduct or situations that raise antitrust issues. If you are faced with a situation that may involve antitrust issues — or if you are uncertain whether a situation involves antitrust issues — do not continue the conduct or conversation until you have consulted with your supervisor and contacted the Legal Department.

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