

European Union Competition Law Guide for Employees

Dear UTC Colleague:

This Guide has been prepared to help you understand the competition laws of the European Union. As our company grows and its business activities become more global and more complex, all employees must understand and comply with these laws.

Please read these rules and apply them carefully. Competition laws have many nuances, and you should consult with the Legal Department if you have any doubts about the legality of a particular activity. It is also important that we avoid actions or statements that give the appearance of questionable conduct.

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

Refer to this Guide regularly and follow these guidelines, which allow UTC to meet its business objectives and legal obligations.



George David
Chairman and Chief Executive Officer

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Introduction

This Guide has been prepared by United Technologies Corporation (“UTC”) and its subsidiaries to help you understand the laws of the European Union (“EU”) as they relate to fair competition.

The EU consists of 25 Member States:

- Austria
- Belgium
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- The Netherlands
- Poland
- Portugal
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom

The EU was created to enhance economic and political cooperation among its member countries and to better integrate those countries’ markets. To that end, the EU member states have adopted a number of treaties and other initiatives designed to regulate business transactions that affect the EU.

The EU began with three separate treaties dating from the 1950s: the European Coal and Steel Community, the European Atomic Energy Community and the European Economic Community (“EEC”). Collectively, they became known as the European Community. The treaty creating the EEC was extensively revised in the early 1990s and is now known as the “Treaty - European Union” (the “EU Treaty”). Competition rules are contained in Articles 81 to 89 of the EU Treaty. EU competition law applies to agreements between firms and unilateral firm conduct that may affect trade among member states. Both the Commission of the European Communities (“Commission”) and the national

competition authorities (“NCAs”) in each member state administer EU competition laws. In addition, most member states have their own national competition laws that provide a separate but parallel enforcement regime. While this Guide refers only to EU rules, most of the principles are applicable to the national competition rules of the member states.

The Commission or NCAs may act upon their own initiative or based on complaints by member countries, companies or individuals. The Commission’s decisions are subject to review by the EU courts in Luxembourg. NCA decisions are subject to review by the national court of the member state and ultimately by the EU courts.

The Commission or NCAs have broad powers of investigation. Staff can visit companies without warning, in so-called “dawn raids,” search business premises (and private residences in some circumstances) and take copies of all materials that may constitute evidence. They may take oral statements with consent, compel written responses to questions and hold hearings involving the concerned companies, competitors and other third parties to establish the facts of the case. These procedures are complex. When you are confronted with a request for information or a search by the Commission or an NCA, you must inform the Legal Department immediately. (See Investigations, Searches and Seizures.)

While the EU Treaty does not provide for criminal sanctions, violations of EU competition laws can have severe consequences both for the company and for you personally. The Commission may impose substantial fines — up to 10% of UTC’s worldwide revenues. The Commission also may issue cease-and-desist orders and impose structural remedies that significantly affect how the company can conduct its affairs. Some member states can impose criminal sanctions (including prison) against companies and their individual employees if they are found guilty of price-fixing and other serious violations of competition laws.

On the next pages, you will find: (1) a short, simple summary of basic guidelines; (2) a brief summary of EU competition law; and (3) a more detailed discussion of guidelines for dealing with competitors, customers, distributors and suppliers as well as advice on how to handle a surprise inspection. We hope you find this advice useful.

General Guidelines

The following guidelines are based upon general principles of EU competition law and apply to UTC's operations within the EU:

Contacts and other dealings with competitors. You must avoid any kind of anti-competitive agreement or concerted practice, tacit or otherwise, with any of UTC's actual or potential competitors. "Concerted practices" include collusion among rivals and any other form of conduct that involves competitors acting together with the purpose or effect of restricting competition. In the last few years, the Commission has imposed huge fines on competitors who engaged in anti-competitive, concerted practices.

Never discuss any of the following subjects with a competitor:

- prices or discounts
- terms or conditions of sale
- profits
- profit margins
- costs
- distribution practices
- bids or intent to bid
- sales territories
- selection, rejection or termination of customers
- capacity additions or deletions
- research and development initiatives

Keep accurate records of the sources of any information you obtain about competitors (examples: customers, trade publications, published price lists).

Trade associations. Membership in trade associations can be an important aspect of UTC's role as a responsible member of the business community. However, your attendance at any meeting in which a competitively sensitive subject is discussed can make you and the company a party to an illegal arrangement resulting from that meeting, even if you do not participate in the discussion. Accordingly, all trade association memberships must be approved by your business unit and the relevant Legal Department, and your participation must follow the trade association guidelines in this pamphlet and those promulgated by your business unit.

Relations with resale customers. Do not agree with distributors on resale prices for UTC's products. Recommended resale prices are permissible, but you must consult with the Legal Department before making any such recommendation. Do not discuss dealings with a particular customer with any of the company's other customers or with competitors. Do not, without the Legal Department's prior approval, select customers on the understanding that they will resell only in markets or territories or to persons specified by the company or that they will otherwise limit exports.

Requirements contracts. Obtain legal advice before entering into a contract by which you bind a customer to purchase its requirements only or primarily from UTC. The Commission may impose heavy fines on companies in a dominant position that obligate their customers to purchase all their requirements exclusively from them or encourage them to do so by granting "fidelity rebates." (Note that granting quantity rebates generally is a legitimate business practice.)

Tying. UTC's products and services will be sold on their own merit. If UTC is a major supplier of a product or service, you must consult with and receive approval from the Legal Department before you condition a customer's purchase of that product or service on the purchase of a separate product or service.

Discrimination. If a company has a dominant position in a market, it cannot engage in discriminatory practices, i.e., treat some customers better than others. In this context, the term "customers" covers wholesalers and distributors as well as end-use consumers. If you have any questions whether your business' practices may be discriminatory, consult the Legal Department.

Terminations. Termination of our relationship with a customer must be based on legitimate business reasons, which should be fully documented in your files. 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 UTC's 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 UTC to take over the activities of a customer who may also be competing with UTC.

Overview of European Union Competition Laws

Specific prohibitions of EU competition law include:

Restrictive Agreements. The EU prohibits agreements and concerted practices that restrict competition and affect trade in the EU. The EU generally prohibits agreements or concerted practices that:

- directly or indirectly fix prices or any trading conditions;
- limit or control production, markets, technical developments, or investment;
- divide or allocate markets or sources of supply;
- discriminate among customers by applying dissimilar conditions to equivalent transactions, thereby harming competition;
- condition a contract on the acceptance by the other party of additional obligations regarding a separate product or service (“tying”) so as to eliminate competition.

Such agreements are unenforceable and may give rise to heavy fines if they are successfully challenged by the Commission, NCAs or a competitor or customer in a national court.

The Commission has issued regulations that provide limited exemptions for agreements of certain types, such as technology transfer, specialization, research and development agreements and some supply or distribution (vertical) agreements. You should consult the Legal Department before negotiating any agreements of this type.

Abuse of a dominant position. Abuse of a “dominant position” is prohibited. Under EU competition law, a “dominant position” may arise if a company has a substantial share of the relevant product and geographic market. Whether a dominant position exists requires a complex analysis of the facts. The following are examples of abuse when a firm has a dominant position:

- directly or indirectly imposing unfair or predatory purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- discriminating among customers by applying dissimilar conditions to equivalent transactions, thereby harming competition;
- conditioning a contract on the acceptance by the other party of additional obligations regarding a separate product or service (“tying”) so as to eliminate competition.

Relationships with Competitors

UTC generally may set prices, decide on terms and conditions of sale, and select customers without violating EU competition law. However, the company may not make any of these decisions in concert with one or more of its competitors. Such agreements or understandings are known as “horizontal” concerted conduct. Under EU competition law, any horizontal, concerted practice with regard to prices, terms and conditions of sale, production volumes, or allocations of customers or territories is illegal, regardless of its purpose, business justification, or actual effect upon competition. UTC will not engage in any activity that constitutes or appears to constitute such a concerted practice.

For example, the following conduct could subject us to heavy fines and do enormous harm to the company’s reputation worldwide:

Agreements and concerted practices. All of the examples discussed below are unlawful if they are based on an “agreement” or a “concerted practice” between two or more competitors. The term “agreement” is broadly construed under EU competition law. An agreement need not be formal or written, and virtually any communication with competitors that involves an exchange of competitively sensitive information can be used as evidence of an agreement.

The activities discussed below are unlawful even if there is no agreement but only a “concerted practice.” A concerted practice may arise from an informal understanding reached at a seemingly innocent occasion such as a trade association meeting or a round of golf. Actions by which companies knowingly substitute back room or covert cooperation for the risk of competition are considered illegal, concerted practices.

Often there is no written evidence to prove an unlawful agreement or concerted practice, but enforcers and courts may infer an agreement or concerted practice from cryptic telephone communications, poorly worded phrases in memoranda and electronic mail, remarks made by the company’s employees to customers or competitors, or simply the absence of any other plausible explanation.

Example: You complain to a major competitor’s sales representative about the products of a minor competitor — “I suspect that we will have to take some measures to straighten this thing out.” The competitor’s sales representative writes a memo to his company stating, “I understand that another major company in our sector plans to take steps to counteract the problem in the market created by minor competitor X.” Two

weeks later, your company begins an aggressive price reduction program directed at X’s product, and soon thereafter, your competitor begins a similar program.

Even if the individuals involved in the communications did not make the pricing decisions, the memo may well be used as evidence of an unlawful agreement or concerted practice to attack X.

Price-fixing. Price-fixing can occur even if there is no agreement on specific prices or price ranges.

Example: During a trade association meeting you chat informally with representatives of competing manufacturers. One person says “I don’t know about the rest of you, but our profit margins aren’t as good as they used to be.” A representative of another competitor then says, “I wish we could do something about all those deep discounts.” You nod your head affirmatively. Over the next few months all of the companies whose representatives were present during the conversation raise their prices.

On these facts, an enforcer or court might conclude that all representatives present during the conversation engaged in price-fixing.

Any time you find yourself with competitors and a discussion about a competitively sensitive issue develops, you should immediately object, leave the room and promptly consult with the Legal Department about the conversation.

Agreements affecting terms and conditions of sale. The prohibition on agreements between competitors applies not only to prices but also to other terms and conditions of sale, including credit terms, promotion programs, discounts, service charges and delivery terms. Any agreement or concerted practice to limit production can also be illegal even if there was no understanding as to the prices any competitor would charge.

Agreements by rivals regarding customers. Agreements among competitors regarding customers to whom they will or will not sell their products are illegal. Illegal agreements or concerted practices include not only understandings involving allocations of customers and territories but also concerted practices by competitors not to sell to certain customers or categories of customers. For example, a concerted refusal to sell to price-cutters, bad credit risks or even unethical merchants constitutes an illegal boycott, even though such action would be legal if done independently. Likewise, an agreement among several companies to refuse to sell to a customer unless it discontinues doing business with another supplier is illegal, even though that supplier may be engaging in unfair trade

practices. In short, regardless of the business justification, EU competition law does not permit competitors to act in concert to determine with whom they will or will not deal.

Trade associations and professional organizations. Some UTC 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 sponsored activities contain only that information needed for the legitimate functioning of the group and special care should be taken to avoid discussions that in retrospect could result in allegations that there had been an unlawful agreement or concerted practice. 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 do 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 competition law issues. Any deviation from this policy requires clearance from your relevant 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 your relevant 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, where appropriate, 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 employee 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, e.g., general market statistics, provided that any 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.
- Any membership in a trade association must be approved in advance by the relevant business unit and Legal Department and must be conducted in accordance with these guidelines and any trade association guidelines issued by the business unit.

Government advisory committees and presentations to governmental bodies. From time to time employees may be called upon to participate with trade or professional association members in consultation with governmental bodies on tax, health or safety matters or adoption of uniform industry standards for a product. Such activities are lawful if conducted in a proper manner. Because of the risks inherent in such activities, however, proposals to participate in any joint action with competitors in conjunction with governmental hearings or proceedings should be discussed in advance with the Legal Department.

Monitoring competitors' activities. UTC will compete vigorously in all markets it serves. Competition naturally involves being aware of the activities of our competitors. Under no circumstances, however, should the company gather information on competitors' prices, promotions or similar activities, directly from competing companies. You may obtain competitive information from third parties, such as independent marketing research organizations. You also may legitimately obtain information from other sources such as customers, but these sources must not be used as conduits for reciprocal exchanges of data among competitors. Refer to UTC's Circular entitled *Gathering Competitive Information*.

Relationships with Customers

Competition laws limit the ways in which UTC conducts its relationships with customers. The company, acting alone, is generally free to select its customers and set prices, provided the company does not abuse a potentially dominant position. Likewise, the company's customers are generally free to select the customers to whom they will resell UTC's products, to determine their own resale prices for UTC's products, and to select the suppliers from whom they will buy products. Efforts by UTC to restrain these choices are likely to create competition law problems.

Selection of customers. UTC may choose the customers with whom it wishes to deal. It may also exclusively supply customers in certain situations. But it is generally unlawful to reach an understanding with a customer that UTC will refuse to deal with one or more of the customer's competitors. For this reason, you should exercise care to not discuss with your customers your dealings or future intentions with respect to any other actual or potential customer. If such an issue arises, you should consult the Legal Department. You must consult the Legal Department if you wish to terminate selling products to an existing customer whose survival might depend on these supplies, or if the customer is an actual or potential competitor of the company.

Restraints affecting customers and territories. Under certain circumstances, EU competition law permits UTC to restrict (a) the territory in which a customer or distributor may actively resell or market goods and (b) the particular type of buyers to whom a customer or distributor may actively resell or market. While restrictions on customers or distributors for "active" marketing in particular territories or to particular buyers may be lawful, you may not prohibit "passive sales" that are requested by customers outside of the territory. Because the rules for territorial and buyer restrictions are complex, you must consult the Legal Department before imposing any such restrictions on customers.

Resale price maintenance and discriminatory conduct. UTC may not agree or reach an understanding with its customers on the prices or any other terms and conditions at which customers resell the company's products. All decisions regarding terms and conditions of resale must be left to our customers. Company representatives may suggest a resale price but should do so in a way that makes it clear that the customer is free to ignore the suggestion. No threats or coercion may be used to force customers to follow the company's pricing suggestions.

In any market in which a company is dominant, complex rules apply to the imposition of "discriminatory prices" or rebates, "predatory prices" meant to drive competitors out of a particular market, and "excessive" prices that bear no relation to the economic value of the service or product offered. These concepts are subjective and in certain cases the Commission or an NCA may challenge pricing practices that you do not believe are discriminatory, predatory or excessive. Accordingly, if the company may be a dominant supplier with respect to certain products, you must consult the Legal Department in advance with respect to pricing practices, especially changes in pricing practices in response to actual or potential competition.

Agreements restraining a customer's sales to or purchases from others. Agreements between UTC and its customers may contain a variety of restraints on both or either party relating to the supply or purchase of goods or services from third parties. The most common restraints are the following:

- Provisions obligating a customer to purchase products or services exclusively from UTC and not to use or deal in products of UTC's competitors. Such agreements can take the form of "requirements contracts," under which the buyer is committed to take all or most of its requirements for a particular product from UTC; and
- Tying provisions obligating a buyer simultaneously to purchase two separate goods and/or services from UTC.

In markets in which UTC may be the dominant competitor, these types of restraints may subject the company to heavy fines. Because this area of the law is complex, you should consult the Legal Department if you are considering an agreement imposing such restraints on UTC's customers..

Relationships with Distributors

Distributors of UTC's products are independent businesses. No attempt should be made to coerce or control the business decisions made by any distributor. UTC will deal fairly with all distributors. However, UTC may insist that its distributors comply with the terms of any existing or future contracts, policy statements, volume objectives or the like.

EU and national competition law limit UTC's right to prevent its distributors from handling competing products. In discussing UTC's policies with a distributor that handles or is considering handling a competitor's products, you should focus on UTC's expectations of the distributor's performance and the distributor's ability to meet these performance objectives, and not upon the fact that the distributor may carry a competitor's product. While exclusive distribution or requirements arrangements may be permitted under certain circumstances, because this area of the law is complex, you should consult the Legal Department if you are considering an agreement imposing such restraints on UTC's distributors. Please refer to the prior discussion on "Restraints Affecting Customers and Territories" for additional limits on UTC's contractual relationship with distributors.

UTC, acting alone and in good faith, may terminate its sales to any customer, provided that UTC is not abusing a potentially dominant position. Except in emergency situations justifying a termination for cause, such as those involving serious quality problems affecting UTC's products, any termination has to comply with the terms and conditions of the distribution agreement and local law. The termination of a distributor — especially one that depends heavily on UTC's products — may give rise to competition law or other legal issues and should, therefore, be reviewed in advance with the Legal Department.

Relationships with Suppliers

Agreements and concerted practices affecting prices and conditions. It can be unlawful under EU competition law for competing purchasers to discuss and agree on the prices and conditions at which they purchase goods and services, e.g., where the purchasers have market power in the affected market(s). At no time should you discuss with other purchasers the prices that you will pay for a product from a supplier or group of suppliers. Before beginning discussions about creating a joint purchasing group, please seek advice and approval from the relevant Legal Department.

Boycotts. As a general rule, any agreement between two companies to refrain from purchasing a product from a third company constitutes a violation of EU competition law. For example, if you participate in discussions among purchasers to put a certain supplier on a "black list," the Commission or an NCA may infer that there has been an agreement or concerted practice to boycott this supplier, even though you may have independently and unilaterally decided not to do business with the supplier.

Industry forums and trade association meetings can be a source of boycotts. If you are present at a session, formal or informal, and there is a discussion that you think could lead to a boycott, you must disassociate yourself from the discussion and consult promptly with the Legal Department.

Exclusive Supply Agreements. Exclusive distribution clauses obligating a supplier to sell products or services exclusively to UTC rather than to UTC's competitors may be illegal in certain situations. You should consult the Legal Department if you are considering entering into such an agreement.

Investigations, Searches and Seizures

The Commission or an NCA may send members of their staff (sometimes unannounced) to inspect any UTC offices located within the EU. An on-site inspection is, of course, a very serious matter but should not be cause for undue alarm. It does not mean that the company 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 by the Commission or an NCA carefully and appropriately. You must inform the Legal Department immediately when confronted with a request for information or a search for documents by the Commission or an NCA. You should use 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 enforcers review and/or copy.

Document Creation

Keep in mind that all documents created by UTC employees in connection with their employment by the company — even if created at home or not intended to be shown to others — can become available to competition law authorities. Accordingly, employees should use care in drafting all documents and in creating electronic files, including e-mail, even if intended for internal or individual use only. Employees should also be familiar with and adhere to the document retention policies that apply to their business unit.

The Commission and NCAs have the power to obtain the company's documents — including formal correspondence, reports and memoranda, e-mail, drafts and informal handwritten notes of individual employees, telephone logs, documents kept at home, and other seemingly private items. Regardless of the innocent intent of such documents or the fact that they represent only the internal thought process of a particular individual rather than company policy, competition law authorities may use them against UTC.

Conclusion

Whenever you become aware of a possible competition law issue, it is your responsibility to consult the Legal Department. The Legal Department can advise you on how to achieve your global business objectives while remaining in full compliance with EU competition law.

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