United Technologies

Global Antitrust Guide for Employees

The policy of United Technologies Corporation (UTC) and its affiliates and subsidiaries is to comply with the laws of every jurisdiction in which 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. Likewise, it does not address the specific antitrust laws of each jurisdiction in which UTC does business. Rather, it reviews general antitrust principles and 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 your 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, or create or join a joint venture, or acquire or sell a minority stake in an entity, you should consult your Legal Department.

I. Why Antitrust Laws Deserve Our Attention

Noncompliance 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 for individuals and the company, and deep and long-lasting harm to UTC's reputation. Some of the potential jeopardies include:

1. Employees Who Fail To Comply With Antitrust Laws Will Be Subject To Disciplinary Action — Depending on the seriousness of the violation, such action may include termination of employment.
2. Jail — The laws in some countries provide for criminal sanctions for a violation of the antitrust laws. For example, violation of the Sherman Act, the principal federal antitrust statute in the United States, is in many cases a felony. For each offense, an individual may be imprisoned for up to ten years and fined

up to $1 million. The US government vigorously pursues felony prosecutions and insists on substantial jail terms for serious antitrust violations such as price-fixing, bid-rigging, and customer or market allocation. While laws in other countries, including the European Union and China, may not provide for criminal sanctions, violations of these laws can still have severe consequences both for the company and you personally.

3. Large Fines — Financial penalties will vary based on the jurisdiction that finds a violation of law. In the US a corporation may be fined up to the greater of $100 million or an amount that equals twice the monetary gain or loss arising from the offense. In the European Union, fines may total up to 10% of UTC's worldwide revenues. Recent fines in several jurisdictions (including the US, European Union, Mexico, Brazil, India, and Russia) have ranged from the tens to hundreds of millions of dollars.
4. Large Damage Awards — Damage awards in civil antitrust cases can total hundreds of millions of dollars or more. In the US, 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 in the US. A growing number of jurisdictions outside the US have also begun to recognize a right of action by private litigants allegedly harmed by anticompetitive activities.
5. Joint and Several Liability — Each person and corporation that participates in a violation of the antitrust laws is liable for 100% of the resulting damages or over-charges, 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.
6. Injunctions/Consent Agreements — Injunctions, "cease and desist orders," other court judgments, and consent or settlement agreements can contain prohibitions that go beyond the scope of the original violation. Such prohibitions, which can last for decades and may require regular and obtrusive government oversight, can severely hamper future business operations and opportunities.
7. Worldwide Antitrust Laws — Many U.S. states, the European Union, and most countries around the world — including the EU member states, Brazil, Canada, China, India, Japan, Korea,

Mexico, Russia, South Africa, the United Kingdom, and about 100 other countries — have antitrust laws that have similar but separate enforcement mechanisms. A violation of the laws in one jurisdiction could result in an investigation by multiple regulatory agencies or litigation of the same matter in two or more courts at the same time, multiplying the costs associated with defense, lost time, and reputational damage.

8. Government Contractor Debarment — UTC could be barred from contracting with the US government (our largest single customer worldwide) as well as other federal, state, local, and foreign governments because of a criminal or civil violation of the antitrust laws.
9. Disclosure of Confidential Information, Business Inconvenience and Embarrassment — Depositions of company personnel and productions of 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 con-duct at issue is legal.
10. Lost 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, reviewing and producing large numbers of company documents and electronic files, preparing to testify, answering lengthy written interrogatories, enduring depositions by opposing lawyers and testifying at trial.
11. High Costs for Legal Defense — Defending antitrust litigation and government investigations is expensive, requiring specialized antitrust counsel and expert antitrust economists, accountants and other witnesses. In addition, prevailing claimants' are awarded attorneys' fees, even if the actual damages awarded are small. Insurance coverage may be nonexistent, inadequate or inapplicable to pay the costs of this legal defense. The consequence may be heavy charges against UTC's operating budget, even if the company is innocent of any wrongdoing.

II. Government Investigations, Searches and Seizures

Government authorities have broad powers of investigation. Government regulators can visit companies without warning, in what are referred to as "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, compel written responses to questions, and hold hearings involving the concerned companies, competitors, and other third parties to establish the facts of the case.

An on-site inspection is, of course, a 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 a government authority carefully and appropriately.

You must inform the Legal Department immediately when confronted with a request for information or search for documents by a government authority. You should use best efforts to ensure that a lawyer is present before you discuss anything with the inspectors or investigators, but do not obstruct their investigation. You should also keep careful track of which documents the enforcers review and/or copy.

III. Business Practices Subject To Scrutiny: Joint and Unilateral Conduct

Antitrust laws rest on the premise that vigorous competition will yield the best allocation of economic resources, resulting in the availability of 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 (also referred to as "abuse of dominance"). Other aspects of antitrust law prohibit certain types of discrimination in pricing and other unfair trade practices.

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

A. Dealing With Competitors

Contacts and agreements with competitors raise the most significant issues under the antitrust laws and, therefore, invite the most scrutiny from government regulators and private plain-tiffs. UTC's policy is 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. You should never involve a competitor in making decisions about when and how to offer products or services to customers, unless cleared in advance by the Legal Department.

A competitor is any rival that seeks to win business against the company. The company does business with firms that are customers, suppliers, or partners in some contexts, but competitors in others. If you have any question about the application of the company's policies regarding dealings with competitors in such situations, you should immediately contact the Legal Department.

The antitrust laws generally prohibit agreements among competitors that restrain competition. The notion of "agreements" is interpreted broadly, and therefore 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 geographic territories, to boycott any customer or supplier, or to suppress technological developments.

To avoid even the appearance of collusion, employees that have joined UTC from a competitor should not discuss, share, or use competitively sensitive information or proprietary information from their former employers. This includes bidding information, customer lists, pricing or financial data, technical manuals, designs, or strategic or business plans. If you have any questions regarding whether information from a former employer would be considered competitively sensitive or proprietary, consult the Legal Department before using or sharing the information.

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 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, juries 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 or details of the alleged agreement, or the means by which they would carry it out. 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 information regarding prices, proposed bids, particular customers or territories or any information related to the pricing, costs, margins, 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 in a noticeable manner or otherwise terminate the discussion and contact the Legal Department promptly. 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 to evaluate them. 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 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 advisable to monitor public information about a competitor's prices, and to react to price changes by others to remain competitive. Nothing prevents us from making our own independent decisions on pricing, to raise prices in response to marketplace conditions or to lower them to meet the prices offered by competitors.

Thus, unless otherwise prohibited by law, employees may obtain competitors' pricing or cost information from legitimate sources such as customers, suppliers, and industry publications. Employees should always clearly document where they obtained information about competitors' prices, costs or other competitively sensitive information. UTC's policy, however, does not permit exchanging price lists, costs, 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 not to compete for certain 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 or to allocate, divide, or share a customer's business. You should also never engage in conduct in which an agreement to allocate customers can be inferred. Exceptions in the context of distribution channels should be cleared by the Legal Department in advance.

Group Boycotts And Collective Refusals To Deal. Agreements among competitors to refuse to deal with another competitor (or a customer or supplier) can be per se illegal in certain circumstances, especially where the agreeing competitors have market power, or where they deny the excluded party access to some facility, supply or market it needs to compete effectively. To avoid even the appearance of impropriety, do not discuss third party disputes or complaints with competitors or suggest collaborating to punish, harm, or boycott a supplier, customer, or competitor without consulting with the Legal Department in advance.

Trade Association Activities. Some employees participate from time to time in various trade associations and professional organizations. Trade associations perform legitimate functions like monitoring government regulations, proposing 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 at trade association meetings or other joint industry activities contain only that information necessary for the legitimate functioning of the group. Avoid discussions that in retrospect could result in allegations or support an inference 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 an illegal agreement, 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 provide 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 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 in-formal, 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 dis-closed to competitors is aggregated and made 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.

Many antitrust problems arising from trade association activities occur in informal or social settings in conjunction with trade association meetings. All of the rules set forth in this section with regard to trade associations apply to both formal and informal activities and settings.

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.

B. 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 antitrust issues. Many of these practices are particularly susceptible to antitrust scrutiny where the UTC operating unit 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 by a dominant firm 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 complex because the antitrust laws seek to assure vigorous competition and the Legal Department should be contacted whenever any of our prices could be regarded as being below cost.

Tying and Bundling. 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 customer's desired product and refuses to sell that product absent the customer's agreement to buy the other product(s) or service(s), 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.

Similarly, "bundling" occurs when a seller offers a discount to a customer that purchases multiple products (or services). If the seller has a dominant market position in one of the products in the "bundle" and offers the customer a discount for purchasing the "bundle" of products, the seller risks a claim that the arrangement constitutes an illegal bundling arrangement. On the other hand, bundling arrangements are often pro-competitive and legal because they allow customers to purchase products at lower prices than would ordinarily be the case. Accordingly, the Legal Department should be consulted prior to proposing what might be termed a bundling arrangement to a customer.

Exclusive Dealing Arrangements. Exclusive dealing arrangements include contracts in which a buyer agrees to purchase all (or nearly 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 limited duration and the buyer benefits by stabilizing the price it pays or by assuring availability. However, in some cases such arrangements may raise antitrust issues when entered into by a company with significant market share (referred to as a "dominant" firm or a firm with "market power") to the extent they unreasonably reduce the opportunities of a rival. For

these reasons, such arrangements should be cleared with the Legal Department in advance.

Most Favored Nation Provisions. "Most favored nation" or "MFN" provisions usually obligate a supplier to sell products or services to a customer at the seller's lowest price or most favorable terms. Such provisions can raise antitrust concerns if they harm competition (e.g., through lowering a supplier's incentive to discount or facilitating coordinated pricing). Whether a particular contractual commitment is an MFN that may harm competition is a fact specific inquiry. Therefore, you should consult with the Legal Department regarding whether a promise to a counterparty to a contract constitutes an MFN obligation that may harm competition, which will require additional legal analysis.

Relationships With Resale Customers. Do not agree with distributors on resale prices (minimum or maximum) for our products. Recommended resale prices are often 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 the company.

The distribution of our products through both independent and company-owned distribution channels (dual distribution arrangements) can raise antitrust concerns because the company can be, at the same time, both a supplier to our customers and a competitor of those customers. 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 or a distributor must be based on legitimate business reasons, which you should fully document and discuss with the Legal Department before termination.

Unilateral Refusals to Deal. Companies may generally freely decide unilaterally not to deal with a customer, competitor, or supplier. However, a unilateral refusal to deal by a company with a significant market share ("market power") may raise antitrust concerns in some situations. For example, if a company has market power in a particular product and it refuses to deal with distributors who carry its competitors' products, its competitors may be denied access to the distributors they need to compete. Similarly, if a company has market power and it refuses to deal with a competitor against the company's own short-term economic interests, it may violate the antitrust laws under certain circumstances. If you are contemplating a refusal to deal, consult with the Legal Department before proceeding.

Price Discrimination. Another pricing practice that may raise antitrust or regulatory concerns is discriminating between different purchasers in price, promotional allowances or services for a product. 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 complex and you should contact the Legal Department whenever any of our prices could be regarded as discriminatory.

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 unfair or untrue comments or comparisons about our rivals' products or services. It is generally 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, but the Legal Department should be consulted in advance.

C. 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 and bundling arrangements, price discrimination, MFNs, terminations and exclusive dealing. You should consult the Legal Department before engaging in this conduct with suppliers.

Reciprocity. 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 has been viewed as an antitrust issue in certain circumstances. A company with market power in a particular market should avoid using that buying power to coerce its suppliers to buy its products and services. In most cases it may be possible to structure lawful agreements to purchase each other's products. Any such arrangements should 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 to the buyer's competitor(s). Because of the complexity of discriminatory pricing issues, they should all be referred to the Legal Department for re-view.

Dual Roles of Suppliers. Generally you should be aware that a company might function in one transaction with us as a supplier (or customer) and as a competitor in another situation. Where any supplier (or customer) 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.

IV. Beware of Ambiguous Statements That Could Be Misconstrued.

Antitrust cases often involve subjective questions of intent and motive, and juries can infer agreements or the existence of market power from what is said in company documents. Some examples of phrases subject to misinterpretation are set forth below:

Regarding Market Position:

"Our Company's plan is to achieve dominance in the widget market."

Concern: A regulator or plaintiff could misinterpret "plan is to achieve dominance" as evidence of an illegal attempt to monopolize a market. In addition, the word "market" or "market share" has a specific meaning in antitrust law. Using "market" in characterizing sales, a product offering, a region, or

a competitive landscape may result in regulator or litigants using that description as the market for antitrust analysis regardless of the intended purpose of the writer.

Regarding Your Competitors:

"We ought to cut off their air supply."

Concern: A regulator or plaintiff could misinterpret "cut off," "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 discussed and 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 may be required to be produced in a government investigation or lawsuit, including outdated drafts of letters and memoranda (including electronically stored drafts), handwritten notes, phone messages, e-mail, text or instant messages, personal diaries, date books and calendars, and statements made in social media platforms. 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.

V. 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.

VI. Reporting

All employees have an obligation to report any suspected antitrust violations immediately. Among the reasons this is so essential is that if the company were to identify an issue, several countries (including the U.S.) have leniency programs that allow corporations to avoid criminal liability if they are the first to report participation in a criminal antitrust violation.

A report may be made to any of the following:

- Your supervisor, unless you suspect that your supervisor has participated in or condoned the violation;
- The Legal Department;
- Your Ethics & Compliance Officer or Global Ethics & Compliance representative; or
- UTC's Ombudsman/DIALOG Program.

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