

## ANTITRUST COMPLIANCE POLICY AND GUIDELINES

### A. INTRODUCTION

1. The purpose of the antitrust laws is to preserve a competitive economy in which free enterprise can flourish. The Company's insistence upon full compliance with the antitrust laws is based on both our desire to stay within the bounds of the law, and our conviction that the preservation of a free competitive economy is essential.
2. Broadly stated, the antitrust laws prohibit the restraint of free competition by means of collusion, coercion or abuse of economic power. Certain conduct is unlawful "*per se*," meaning that it is prohibited absolutely, regardless of any claimed justification and without proof of any actual effect on competition. Other conduct is judged under the so-called "rule of reason," under which a restraint of trade is determined to be "reasonable" if, overall, it enhances competition to the ultimate benefit of consumers.
3. Antitrust is a complex area of law, and no policy, no matter how comprehensive, can answer every question. All questions arising in the antitrust field should be referred to the Company's Legal Department.
4. The antitrust laws are enforced in the United States by the Department of Justice, the Federal Trade Commission, State Attorneys General and private parties. The federal government can impose severe penalties for violations of the antitrust laws. In recent years, numerous corporate officers and employees have been convicted as felons and sentenced to imprisonment for antitrust violations. In addition, fines of tens or even hundreds of millions of dollars may be imposed on a corporation for a criminal offense, and very substantial fines may be imposed on any individual who participates in an offense. Finally, any private party directly injured in their business or property by an antitrust violation may recover in a civil action up to three times the amount of damages actually suffered.
5. While the standards of conduct contained in this Policy are discussed in the context of compliance with United States antitrust laws, the standards should be followed by all Company employees, both inside and outside the United States. Company employees should engage local attorneys within the Legal Department to obtain review of any planned foreign activity that raises questions under this Policy or appears contrary to it. Company employees who become aware of questionable conduct by Company affiliates outside the United States should bring such conduct to the attention of Legal Department.
6. IT IS COMPANY POLICY TO ENFORCE STRICT COMPLIANCE WITH AND TO AVOID ACTIVITIES THAT MAY RESULT IN LIABILITY UNDER THE ANTITRUST LAWS. THE COMPANY HOLDS EACH AND EVERY EMPLOYEE STRICTLY ACCOUNTABLE FOR TAKING MEASURES NECESSARY TO MAINTAIN STRICT COMPLIANCE WITH THIS POLICY. EMPLOYEES ARE REQUIRED TO REPORT PROMPTLY TO THE LEGAL DEPARTMENT OR A MEMBER OF MANAGEMENT ANY MISCONDUCT WITH ANTITRUST IMPLICATIONS OF WHICH THEY BECOME AWARE. ANYONE WHO INTENTIONALLY VIOLATES THIS POLICY WILL BE SUBJECT TO SEVERE DISCIPLINARY ACTION.

## B. RELATIONS WITH COMPETITORS

1. The most frequent antitrust violations involve relations between competitors. The antitrust laws prohibit agreements between competitors that could have an anti-competitive effect in the United States. For purposes of the antitrust laws, the meaning of “agreement” is a broad one. It extends to all forms of agreements, including written agreements, verbal agreements and even tacit understandings that are reached through a course of conduct or other form of communication. The existence of an agreement may be inferred from a minimal amount of circumstantial evidence, such as a casual discussion between employees of competitors or a few carelessly written words. It is critical that you always keep in mind that your communications with competitors may risk misinterpretation. The most commonly prosecuted offenses are based on agreements with competitors providing for (1) horizontal price-fixing, (2) market allocation, or (3) boycotts.
2. Other offenses can arise when a company acts alone (e.g., monopolization) or acts improperly with or toward its customers (e.g., price discrimination).
3. Horizontal Price-Fixing. “Horizontal price-fixing” is the process of competitors agreeing among themselves, directly or indirectly, about the prices they will charge. The most serious antitrust penalties are reserved for this kind of conduct, including lengthy terms of imprisonment, large monetary fines for the Company and individuals, and large monetary damage awards in private cases. Price-fixing covers a broader range of conduct than agreements to charge a final price to customers. It includes any agreement with a competitor that affects prices, including agreements about components of price, agreements about the process by which prices are set, and agreements not to bid against someone else for business.
4. Market Allocation. Allocation of product markets, product lines, business opportunities, territories or customers among competitors is always unlawful, regardless of competitive effect or alleged justifications. For example, competitors may not agree upon geographic areas in which each will or will not sell, or agree on particular customers or classes of customers that each will or will not serve. Violations in this area are prosecuted vigorously and can result in private liability.
5. Boycotts. A company, acting alone, generally has the right to select the persons with whom it will do business. However, when two or more companies agree not to do business with another third party, that agreement may violate the antitrust laws.
6. THERE MUST NEVER BE ANY AGREEMENT, EXPRESS OR IMPLIED, WITH A COMPETITOR CONCERNING ANY SUBJECT, WITHOUT REVIEW BY LEGAL DEPARTMENT. THIS INCLUDES TACIT UNDERSTANDINGS AND “OFF THE RECORD” CONVERSATIONS. IT IS AGAINST COMPANY POLICY TO COMMUNICATE WITH A COMPETITOR CONCERNING PRESENT OR FUTURE PRICING, BIDS, DISCOUNTS, REBATES, PROMOTIONS, OR ANY OTHER TERMS OR CONDITIONS OF SALE. IT IS AGAINST COMPANY POLICY TO COMMUNICATE WITH A COMPETITOR CONCERNING PRODUCTION, ALLOCATING SALES ACCORDING TO CUSTOMERS, TERRITORIES OR PRODUCTS, OR BOYCOTTING CUSTOMERS OR SUPPLIERS.

7. Legitimate Communications with Competitors. Although any contact or communication with competitors may give the appearance of collusion between the Company and one of its competitors, communication with a competitor in connection with the following activities may be permissible, provided it serves a legitimate purpose and need:

- Trade Associations and Professional Societies.
- Standardization Activities.
- Joint Activities to Influence Government Action.
- Acquisitions and Joint Ventures.
- Teaming Arrangements and Joint Research and Development.

Employees who communicate with competitors in the context of any of these activities must consult with the Legal Department to ensure that business contacts and communications are limited to proper subjects and that appropriate procedures are followed to record the nature and scope of these activities.

### **C. MONOPOLIZATION**

1. The antitrust laws encourage vigorous competition. Having a monopoly position as a consequence of a superior product, business acumen, or historic accident is not unlawful.
2. However, United States law prohibits predatory or exclusionary conduct intended to obtain or preserve a monopoly share of a market. A “monopoly share” can be far less than 100% of a market; it may be as low as 50% of a market.

### **D. RELATIONS WITH CUSTOMERS**

1. Restraints on Customers. Another basis for antitrust violations is relations with customers. While, as a general rule, the Company is free to select its own customers and to impose certain restraints on those customers, the antitrust laws restrict restraints that have an anti-competitive effect in the United States.
  - a. Vertical Price-Fixing. Illegal price fixing may result from efforts by the Company to control the minimum prices at which its customers sell products. Price fixing between persons at different levels of the distribution chain is frequently referred to as “resale price maintenance” or “vertical price fixing”. Minimum vertical price fixing (i.e., setting a price floor) may be deemed illegal, regardless of whether the price is fair or unfair.

There are circumstances in which a supplier and a customer can agree that the customer will not charge *more than* a specific price (that is, a maximum resale price).

While each customer has the right to determine its own resale prices, suppliers like the Company have a legitimate interest in the prices charged by their customers. In fact, customers often look to suppliers for advice and guidance on prices. In its role as a supplier, the Company is permitted to discuss these prices with customers and to make suggestions about these prices. Do not prevent any customer (distributor or someone buying from a

distributor) from lowering prices, if that is what the customer has determined is in its best interest.

The Company may from time to time make recommendations to customers with information that supports the recommendations and is consistent with good business judgment. Except for permitted maximum price agreements, discussed below, the Company cannot agree with customers as to what prices the customer will charge. These agreements can be entered into in appropriate circumstances, without violating antitrust principles, but only after clearance from the Legal Department.

- b. Non-Price Restraints. It is generally permissible to place non-price restraints on customers who sell Company products, such as restricting the customer's sales to a particular territory, or requiring the customer to carry only Company products. However, in order to impose such restrictions, two requirements must be met. First, there must be a legitimate business reason for the restriction, for example, to encourage distributors to engage in aggressive sales efforts. Second, the restriction must be the result of an independent decision of the Company; the restriction cannot be imposed as a result of an agreement with a competitor or other distributors. Never meet or communicate with two or more distributors at one time to discuss: (a) the selection, number or designation of distributors; (b) the territorial restrictions placed on distributors; (c) the pricing practices of any distributor; or (d) suggested distributor pricing policies. Such a meeting or communication may be interpreted as an agreement among a group of distributors and the Company.
- c. Tying. Under certain circumstances, the antitrust laws prohibit tying the sale of one product to the sale of another, that is, allowing a customer to purchase one product (the "tying product") only if the customer purchases a second product (the "tied product"). In these cases, the concern of the antitrust laws is that the seller will use "leverage" from selling a very desirable product (the tying product) in order to force a less desirable product (the tied product) on the customer. Not only may the customer be disadvantaged, but competitors who sell the tied product may be harmed as well. This prohibition applies only if: (1) there are actually two separate products; and (2) the seller has a substantial market share in one of the products and, therefore, has "leverage" to force the purchase of the second product. Products that are economically impractical to sell separately, such as items normally sold in the same package, are not subject to this prohibition. It is also generally permissible to offer promotions in which one product or a group of products is offered at a discounted price in combination with other products, as long as the Company does not use the leverage of a substantial market share in the primary product to force the customer to purchase the second product.
- d. Boycotts. While a company generally has the right to select the persons with whom it does business, when two or more companies agree not to do business with another third party, that agreement may violate the antitrust laws.
- e. Reciprocity. It is illegal for the Company to condition the Company's purchases from the customer on the customer making purchases from the Company. However, it is not illegal for the Company to independently decide to place purchase orders with a present or potential

customer for the purpose of inducing that customer to make further purchases from the Company.

- f. IT IS AGAINST COMPANY POLICY TO DICTATE OR CONTROL A CUSTOMER'S RESALE PRICES OR OTHERWISE RESTRICT A CUSTOMER'S RESALE ACTIVITIES WITHOUT CONSULTING THE LEGAL DEPARTMENT. IT IS AGAINST COMPANY POLICY TO REQUIRE A CUSTOMER TO PURCHASE ONE PRODUCT AS A CONDITION TO SELLING ANOTHER PRODUCT. IT IS AGAINST COMPANY POLICY TO CONDITION COMPANY PURCHASES FROM A CUSTOMER ON RECIPROCAL PURCHASES FROM THAT CUSTOMER. IT IS AGAINST COMPANY POLICY TO AGREE WITH A CUSTOMER TO REFUSE TO DEAL WITH A THIRD PARTY.

## 2. Customer Termination.

- a. The antitrust laws generally permit a person to decide not to do business with another person, and this generally includes the right to terminate an existing customer (including distributors, sales representatives and end users).
- b. However, terminated customers frequently institute lawsuits against former suppliers seeking damages for alleged antitrust violations. Even when there is little basis for the suit, it can be difficult and expensive to defend. Therefore, prior to terminating a customer, you should consult with the Legal Department to be sure there is a lawful basis for the termination and to minimize the risk of suit. If there is a legitimate basis to terminate a distributor, make sure that you document the reasons for the termination.
- c. A customer termination resulting from an agreement with a competitor or another customer generally will constitute an antitrust violation. Because agreements can be inferred from circumstantial evidence, you should avoid communications with other parties concerning our relationships with our customers. Respond to complaints about a customer by indicating that it is Company policy to decide independently whether and upon what terms to do business with each of our customers.
- d. IT IS AGAINST COMPANY POLICY TO ALLOW ONE CUSTOMER TO INFLUENCE THE COMPANY'S DEALINGS WITH ANOTHER CUSTOMER. DO NOT TERMINATE OR REFUSE TO SELL TO AN EXISTING CUSTOMER WITHOUT CONSULTING THE LEGAL DEPARTMENT.

## 3. Price Discrimination That Lessens Competition

- a. The Robinson-Patman Act prohibits discrimination in price between different purchasers of commodities of like grade and quality sold for use, consumption or resale in the United States, where the effect of the discrimination may be to lessen competition or to tend to create a monopoly in any line of commerce. Price differences may be permissible, however, if the two customers do not compete with one another; or if it is necessary to lower the price to one customer in order to meet competition.

- b. In establishing that a price is lowered to “meet competition,” the employee responsible for setting prices should ensure that (a) the lower price “meets”, and does not beat the price charged by a competitor; (b) the lower price is limited to customers to whom the competitor made the lower price available; (c) the lower price is set in good faith, that is, in an honest effort to meet competition, based on facts known to the employees responsible for setting prices; and (d) the lower price is offered only so long as it is necessary in order to meet competition. The employee responsible for setting prices should document as fully as possible, the basis for offering the lower price.
- c. COMPANY EMPLOYEES AND AGENTS ARE PROHIBITED FROM OFFERING A CUSTOMER PRICES OR TERMS MORE FAVORABLE THAN THOSE OFFERED TO COMPETING CUSTOMERS WITHOUT FIRST CONSULTING WITH THE LEGAL DEPARTMENT TO ENSURE THAT SUCH DISCRIMINATORY PRICING IS LEGAL.

## **E. COMMUNICATION**

1. Careful language will not avoid antitrust liability when the conduct involved is illegal. But careful language can avoid the situation where perfectly lawful conduct becomes suspect because of a poor choice of words. Careless and inappropriate language in Company communications can have an extremely adverse effect on the Company’s position in an antitrust investigation or lawsuit. It is not enough for the Company’s public statements to be true; they cannot be misleading or readily susceptible to misinterpretation.
2. If the Company is investigated by a governmental agency or sued by a third party, no Company document is absolutely exempt from disclosure. To minimize the risk of damage to the Company as a result of poor communication or misinterpretation, always use common sense, always think before you speak or commit something to paper, and try to adhere to the following guidelines:
  - Do not use words that suggest “guilt” (“Destroy after reading”).
  - Be careful of the exaggerated use of powerful words (“This sales program will DESTROY the competition”).
  - Do not speculate as to the legality or legal consequences of conduct or attempt to paraphrase legal advice.
  - Use particular care when discussing competition and prices. Avoid giving the false impression that the Company is not competing vigorously, that its prices are based on anything other than its own business judgment, or that its public statements are “signals” to competitors.
  - When discussing the prices or plans of competitors, clearly identify the source of your information so that there will be no implication that the information was obtained under a collusive arrangement with a competitor.
  - Do not disparage the products of competitors.
  - Keep in mind that our distributors are independent and that their obligations to us are limited to those set out in our distribution and sales representative agreements.
  - Avoid any misimpression that special treatment is being accorded to a particular customer or class of customers.

## **F. CONCLUSION**

This Policy contains general guidelines for employee conduct, not an exhaustive analysis of the law. It is not possible to anticipate all of the questions that may arise under the antitrust laws, or to address the issues that may arise in each aspect of the Company's businesses. Each employee is encouraged to seek the advice of the Legal Department as the need arises.