

Antitrust and Fair Competition Policy

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Background and purpose

This Policy provides our employees with an overview of the key antitrust rules, in the form of practical “Dos and Don’ts”. Separate local rules may be developed if required, to reflect important differences in antitrust laws around the world.

This Policy is valid for MilDef group of companies (“MilDef”) and applies to all our employees and directors, as well as consultants and agency personnel who work at MilDef premises or under the direction of MilDef (all referred to in this policy as “employees”). It shall be noted that MilDef is responsible for third parties acting on behalf of us.

This Policy provides our employees with an overview of MilDef’s commitment to fair competition and focuses on:

- interactions with competitors and other parties in the value chain; and
- risk of abuse of dominance / market power; and
- proper communication in e-mails and other formats.

The rules relating to contacts with competitors will always apply to MilDef, whereas the rules relating to abuse of dominance will apply only where MilDef may have market power (i.e. hold a dominant position) in a particular market. MilDef must always consider whether the dominance rules apply when dealing in products or services.

To avoid creating misleading documents that give even the impression of involvement in antitrust infringements, or in other ways weaken MilDef’s position (e.g. in internal or external e-mails, reports, press releases etc.), please consult the communication guidelines below.

For information on merger control, contact the Legal Department.

Policy Statement

1. Commitment and Expectations

MilDef believes in fair trade and honest competition based on integrity, product quality, price, and customer service. It is MilDef’s policy to ensure that its day-to-day business practices fully comply with the antitrust laws of each and every country it operates in. MilDef is committed to fully adopt these principles in all operations in which MilDef has management control. We will also use our influence to promote the principles in other companies where MilDef has ownership interests.

The consequences of breaching antitrust laws are very serious. Antitrust authorities can impose substantial fines, agreements may be void and unenforceable, public authorities can exclude infringing parties from public procurement processes and damages actions from private parties negatively affected by anti-competitive behavior is both common and costly. In addition, antitrust violations have a negative impact on a company’s reputation, as well as triggering criminal liability for individuals, leading to fines, imprisonment, and director disqualification in some jurisdictions.

2. Managing contacts with competitors

Contacts with competitors (including potential competitors) are very sensitive from an antitrust perspective. Cooperation between independent companies that has as its object or effect the restriction of competition is illegal. Examples include competitors agreeing to fix prices, divide territories, allocate customers, limit production (cartels) or involvement in bid-rigging (cooperating with competitors to manipulate a procurement process).

Under antitrust laws, companies may be considered to “compete” in situations beyond the traditional concept

of competing enterprises. A vertically constructed buyer-seller/supplier-customer or other such relationship does not eliminate the need to examine the competitive relationship. An independent company is treated as a potential competitor if there is evidence that it could be competing for the same business opportunities as MilDef. This may also apply to Distributors, to the extent MilDef could be addressing a specific tender or market directly. The exception to this rule is Exclusive Distributorships for specific product lines or territories, to the extent covered by appropriate commercial policies, valid agreements and not representing an abuse of dominance. The Legal Department must be consulted before establishing exclusive distributor agreements based on territory or products.

Not all interaction between competitors is illegal. Some forms of cooperation are pro-competitive as they create efficiencies that benefit consumers. Such alliances can include agreements on research and development, joint purchasing, or subcontracting. **Always** seek advice from Legal Department **before** proceeding.

When dealing with competitors in any context, MilDef shall act as follows:

DO:
Do proceed very carefully whenever interacting with competitors (in meetings, e-mails, calls, socializing, etc.).
Do react to anti-competitive offers or suggestions to make it very clear that MilDef does not wish to be involved. End the discussion or contact and ensure that your responses are kept on file.
Do monitor participation in trade association meetings and related contact, keep records of membership and events attended. Review agendas in advance; ensure minutes are taken; do not remain in meetings during inappropriate discussions, vocalize your dissent and leave, insist that this is noted in the minutes.
Do seek legal advice before cooperating with a competitor in a strategic alliance, joint tender (consortia bidding) or sub-contracting arrangement. In certain circumstances, this can be pro-competitive but there are strict rules for when and how it is acceptable. For example, if you have the capacity / skills to bid alone (on all or parts of a tender if split into lots), joint bidding will be harder to justify, even if done transparently.
Do seek guidance if you are unclear about your antitrust responsibilities. Contact the Legal Department in the first instance.
DON'T:
Do not discuss pricing or other commercial conditions with competitors. This includes timing, rebates, discounts or any other such strategic parameters. The same rules apply to bidding situations, e.g. who should bid and how.
Do not discuss and agree to share customers, volumes, supplies or divide geographic markets with competitors.
Do not discuss, agree, or exchange information on bidding strategies with competitors. Tender preparation and submission should be an independent process. No sensitive information should be exchanged.
Do not agree bidding schemes with competitors, such as: (i) cover bidding - agreeing to bid to lose; (ii) bid suppression - withdrawing or not bidding at all; (iii) bid rotation - taking turns to win by allocating volumes or contracts; (iv) market allocation - staying away from tendering for certain customers or areas. Do not give or receive payments or other benefits (like a sub-contract) as a reward for bidding cooperation.
Do not share commercially sensitive information with competitors (i.e., that which influences market behavior). For example, individual customer prices, rebates, credit terms, costs, production volumes, capacity, inventories, sales, market shares, bidding and procurement data, design, production, distribution, or marketing plans. This can arise in any context, including involvement in strategic alliances, benchmarking, trade associations and similar networks.
On receipt of this kind of sensitive information from a competitor, respond to object, alert the Legal Department, and do not circulate the material internally i.e., ring-fence.
Do not work with competitors to exclude another technology, competitor, or organization from the market (collective boycott).
Do not discuss limiting production, distribution, or volumes with competitors.

Do not remain present during meetings when inappropriate discussions take place, even if silent. Voice your concerns and leave. Insist that this is recorded if any minutes are prepared. Report the incident to the Legal Department.

3. Managing contacts within the value chain

Contacts with the value chain - such as Exclusive Distributors, Agents and Group Purchasing Organizations (i.e., vertical relationships with non-competitors), must be handled with care according to the below guidelines.

DO:

Do seek prior ethics and compliance advice from an antitrust perspective for all commercial agreement templates used, such as distribution agreements, agency agreements, other sales representative arrangements, e.g., to ensure appropriate scope of non-competes and any territorial or other restrictions imposed on distributors.

DON'T:

Do not restrict an independent buyer's ability, including Distributors, to determine its sale price (or similar commercial conditions, e.g., discounts) without first seeking legal advice. In many countries (e.g. in the EU), it is illegal to impose fixed or minimum resale prices (known as resale price maintenance).

Do not impose a non-compete restriction prohibiting a purchaser from buying from another supplier.

Do not use the supply chain as a way of channeling information to competitors. Likewise, do not operate as a conduit between competing suppliers or buyers.

Do not restrict a distributor from selling products outside a particular geographic territory, customer group or platform / channel (e.g., online, or physical outlet) without first obtaining legal advice. Active sales can sometimes only be restricted when certain conditions are satisfied.

Do not use access to spare parts, maintenance services, software updates or similar to (i) leverage or increase strength in a primary market; or (ii) indirectly restrict sales outside an allocated territory.

Do not put in place a dual distribution model, i.e., where MilDef sells on the same market in competition with its appointed distributor(s), without due regard to safeguards against inappropriate exchange of sensitive information (e.g., see above).

Do not engage in restrictive intellectual property (IP) licensing practices without prior legal review.

Do not seek to restrict a distributor from making passive sales (i.e., where a distributor receives unsolicited orders from outside its exclusive territory or customer group). Using the internet to advertise or sell products is considered to be a form of passive sale, i.e., banning internet sales is generally illegal.

Do not seek to restrict how and to where the customers of MilDef's distributors may sell. Restrictions that may be legitimate between MilDef and its own distributors cannot typically be pushed forward onto the next link in the chain, e.g., territorial restrictions.

4. Companies with market power

A dominant position is not in itself anti-competitive, but if MilDef exploits this position to eliminate competition, it is considered to have abused. A dominant position is present if MilDef has the ability to behave, set up prices and steer the relevant market independently of the power of its competitors, customers, suppliers and, ultimately, the end user. Market shares are commonly used as a method to evaluate the actual dominant position of a company. In general, any market position for a given product or business line above 35% (thirty-five percent) should be taken as a point of attention. The Legal Department must be consulted before decisions are made in relation to this assessment.

The following conduct may constitute an abuse of a dominant position: Loyalty rebates; Exclusive dealings; Refusal to deal; Excessive pricing; Predatory pricing; Discrimination; Tying / bundling.

In segments where MilDef has a strong position, particular care should be taken to comply with the best practices set out below or to seek prior legal advice for any deviations. This is an area that can differ depending

on the country in which you are doing business. Involve the Legal Department when developing sales strategies in stronger segments and concentrated markets.

Applicable when at risk of being in a position of market power (> 35%):

DO:
Do consider the extra limitations imposed on a dominant company’s freedom to set its pricing policy (as set out in ‘DON’T’ below) when quoting, tendering, developing pricing strategies, discount and bundling schemes, and tackling competitive threats, e.g., from new entrants.
Do, where possible and practical, document any cost savings that underpin and justify differential pricing or rebate schemes.
Do seek legal advice before taking any commercial action that creates difficulties for other companies to enter or operate in a market, for example imposing trading conditions not recognized by local custom.
DON’T:
Do not apply different prices (or other commercial conditions) to similar customers or the same prices to different types of customer without objective justification for such differences in treatment (“discriminatory pricing”).
Do not charge prices which are excessively high to the point that they bear no reasonable relation to the economic value of what is supplied (“excessive pricing”).
Do not engage in “margin squeeze”. This can occur when a company is vertically integrated in some way, selling upstream inputs to downstream competitors. It is important not to leverage market power in an upstream market by overcharging downstream competitors for the upstream input, using those gains to then lower your own downstream prices and squeeze out even efficient competitors.
Do not price below cost for a sustained period without seeking legal advice (“predatory pricing”).
Do not make pricing or the availability of discounts dependent on a customer’s loyalty e.g., in order to obtain all or a greater share of that customer’s business (“fidelity rebates”).
Do not impose exclusive purchasing obligations on customers.
Do not refuse to supply products or services unless there is a clear objective justification (such as genuine lack of creditworthiness, insufficient capacity, etc.). This includes constructive refusal via imposing unreasonable terms.
Do not refuse to give a competitor access to an essential facility without objective justification, e.g., a key input, resource or facility that cannot be sourced elsewhere. For example, refusing to supply essential spare parts to an independent maintenance firm.
Do not link the purchase of distinct products (either through contract or pricing incentives) to oblige a buyer to buy both in order to get access to the one in which MilDef may have market power. For example, do not oblige buyers to commit to a distinct aftercare / servicing arrangement by bundling it with access to the main upstream product (thereby restricting product-only purchases).

5. Communication Guidelines

In an antitrust context, the way MilDef employees communicate in writing is very important as, in the event of an investigation, this material can be used as evidence against MilDef and / or its employees. Similar discipline should be applied in oral communications externally as MilDef cannot control how other parties may choose to document or report on contacts with our employees. The following communication guidelines should be kept in mind, in addition to MilDef’s Communications Policy:

DO:
Do ask yourself before sending any internal or external report, memo, e-mail or similar – “could this be misinterpreted by an antitrust authority?” – and clarify text where required.
Do keep a record of the legitimate reasons for any meetings with competitors and keep a note / minutes of such meetings.
Do clearly mark communications to lawyers (or documents prepared with a view to seeking advice) as “Legally

Privileged & Confidential". Circulation of such documents should be reduced as much as practicable.

Do consider, before creating a paper-trail, whether it is necessary to do so, e.g., would a call to seek advice from a member of the Legal Department on an antitrust issue be as effective as an e-mail in the first instance?

Do stick to the facts when producing documents – clarity is key! Avoid ambiguous statements and use positive language when describing the competitive landscape. E.g., rather than “the competition can’t touch us”, consider: “our products consistently out-perform those of our competitors”.

DON'T:

Do not speculate about whether an activity or proposal is illegal. Don't use emotionally loaded vocabulary which suggests illegal or secretive behavior (even in informal e-mails), e.g., “*Please destroy after reading*”.

Do not write anything which implies that MilDef is conducting its business based on anything other than competition on the merits and its own independent business judgment. Even humorous / sarcastic statements can be misconstrued, especially when read years later. Avoid words like monopoly, dominate, unbeatable, high barriers to entry, exclude, etc.

Do not circulate legal advice beyond those who need to know it.

Audience

The policy applies to all entities within the Group.

Roles and responsibilities

The General Counsel is the owner of this policy.

Every manager is responsible for communicating this policy to their employees.

Every employee is responsible for acting in accordance with this governing document

Exceptions

There are no exceptions to this policy. Any need of exceptions to this policy must be clearly defined and documented. All exceptions shall be approved by the Board of Directors.

Monitoring of compliance

The policy is approved by the Board of Directors. The policy is reviewed annually and revised if needed.

All employees are required to understand and comply with this Policy, violations may result in disciplinary actions including termination of employment.

References

Code of Conduct

Communication Policy

Supplier Code of Conduct

HR Policy