

ANTITRUST COMPLIANCE MANUAL



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ANTITRUST AND COMPETITION

Purpose and Enforcement

Mohawk Industries is committed to aggressive competition. The antitrust laws are designed to ensure fair competition by prohibiting certain practices, and it has always been Mohawk's policy to comply strictly with antitrust laws. This manual is intended to help you avoid activity that may create legal liability under the U.S. antitrust laws and recognize those situations where you should consult the Law Department. Rather than merely "getting by" with obeying the letter of the antitrust laws, Mohawk Industries intends to set a higher standard for its employees. If you ever have any question or doubt about a particular activity or practice, you should **STOP** and contact the Law Department before proceeding further.

Mohawk Industries will not tolerate any conduct that is contrary to its policy to comply with the antitrust laws or that violates these guidelines. Company penalties for such violations include sanctions up to and including dismissal. The fact that you may have thought you were acting in Mohawk's best business interests will not be accepted as an excuse for conduct that violates the letter or spirit of the antitrust laws or these guidelines. One of the most important factors in assessing company penalties for any violation of these guidelines is whether the employee(s) involved came forward promptly and voluntarily with information concerning the violation, or knowingly withheld information concerning it.

Background on U.S. Antitrust Laws

The antitrust laws cover the purchase of supplies; the pricing, promotion, distribution and sale of products; the relationship between manufacturers, suppliers, distributors, dealers, retailers, customers, and competitors; and acquisitions and mergers. These laws were designed to promote and preserve competition and to protect competitors (including Mohawk) and the public against unfair, predatory and deceptive business practices. There are several sources of antitrust laws:

Federal. There are several different antitrust statutes at the federal level, including: the Sherman Act, the Clayton Act, the Federal Trade Commission ("FTC") Act and the Robinson-Patman Act.

State. Most states also have antitrust laws that contain similar provisions to federal law. While state antitrust laws may vary, following these guidelines and consulting with the Law Department will promote compliance.

Foreign. More than 100 countries have implemented some form of competition law. While these guidelines concern the U.S. antitrust laws, it is important to be aware that the competition laws of other countries may be implicated due to Mohawk's international presence. This is especially important because the laws of other countries often differ from U.S. antitrust laws. The Law Department can assist you in understanding such laws if they apply to your activities.

Individuals and companies who violate the antitrust laws can face severe penalties, including:

Criminal Penalties. Criminal penalties may be imposed upon a company and its officers and employees for violating antitrust laws. Under federal law, individuals can be fined up to \$1 million and sentenced to prison for up to 10 years. Mohawk may also be subject to significant fines for antitrust law violations (\$100 million or more).

Civil Lawsuits. Private parties may file lawsuits and receive damages of up to three times the amount of their actual damages, attorney's fees and injunctive relief (a court order that may direct or restrict the company's behavior). Government enforcers also can bring lawsuits to recover damages and obtain injunctive relief. However, regardless of whether Mohawk prevails, any lawsuit will be exceptionally expensive for the company. It is not unusual for antitrust suits to last several years and require literally thousands of hours of time.

Company Sanctions. Mohawk has its own internal sanctions available, and they will be applied rigorously against any officer or employee who engages in conduct that violates the antitrust laws or the principles set forth in this policy. Penalties include demotion, reduction in pay and dismissal.

Types of Illegal Behavior

Per Se Cases – Conduct That Is Always Prohibited

Some activities are considered such a threat to competition that they are “per se” unlawful - meaning that the antitrust laws do not permit any explanation or justification for their use. It is absolutely vital to avoid activities that are “per se” illegal. If you ever think that you are being asked to participate in such activities, you should refuse to participate and get the assistance of the Law Department in responding in a manner that will strongly convey Mohawk's antitrust compliance policy. These “per se” violations include, but are not limited to, the following activities:

Any agreement or understanding among competitors that *affects* prices in *any* way (including agreements to raise, lower, fix, or stabilize prices, agreements on price ranges, discounts or allowances, and bid-rigging).

Boycotts (agreements with other competitors not to do business with a particular party).

Agreements or attempts among competitors to allocate geographic markets or customers.

Refusing to sell a product unless the customer also buys another product from you.

Rule of Reason Cases – Conduct That *May* Be Permissible

Other activities that are not per se illegal are subject to the rule of reason analysis. This means that a court will balance the procompetitive and anticompetitive effects of a given agreement or practice by carefully examining the facts surrounding a company's actions, including its intent, the size of the product and its geographic markets, the size and number of competitors, and the effect or probable effect of the action on competition. Before a Mohawk employee engages in conduct that may fall within this category, the facts surrounding that conduct should be reviewed by the Law Department. Such conduct includes, but is not limited to, the following:

Price discrimination (selling the same product to two competing buyers at different prices).

Geographic market or customer limitations imposed on distributors, vendors, or other re-sellers.

Exclusive dealing arrangements (*i.e.*, "I'll buy from you only if you don't sell to others").

Setting or attempting to set the price which a customer will charge for a specific product (including terminating or disadvantaging a customer because of its pricing practices).

Terminating or threatening to terminate distributors, vendors or other re-sellers in order to coerce them into a particular course of conduct.

The above listed activities are merely guidelines and do not cover every area in which antitrust issues may arise. For example, it does not cover the Law of Unfair Competition, which pertains to how Mohawk advertises its products. It also does not discuss the antitrust laws that govern acquisitions and dispositions. However, Mohawk employees involved in any of these activities should also consult the Law Department before conducting business.

The focus of this manual is on antitrust compliance as it relates to the purchase and sale of products. Thus, guidelines are provided for conduct with competitors, distributors, retailers, re-sellers and suppliers.

CONDUCT GUIDES - COMPETITORS

Generally, the antitrust laws provide that companies may not agree with their competitors to take actions that threaten to or actually harm competition. While there are some activities involving competitors that may not violate antitrust laws, the following guidelines present situations that Mohawk employees should avoid. If you have any question regarding the legality or appropriateness of contact with a competitor, discuss the matter with the Law Department prior to such contact.

DO NOT discuss prices, bids, terms of sale, customers or territories with any competitor.

DO NOT place yourself in a position of communicating or meeting with any competitor unless the circumstances make it absolutely clear that such meeting or conversation is for an entirely appropriate business purpose. This determination should be made in consultation with the Law Department. If after making such a determination you then meet with a competitor, limit the contact to a business setting and make sure that at least two Mohawk employees are present at the meeting. Make sure that the discussion does not stray to an inappropriate topic.

REPORT immediately to the Law Department any attempts by any competitor to discuss, or to supply Mohawk with information regarding prices, bids, customers or territories. Also, you should terminate such discussions with competitors as soon as the improper purpose becomes apparent.

DO NOT agree with any competitor to not deal with any potential or actual customer or supplier.

DO NOT provide competitively sensitive information to a competitor (such as future production plans, product content or market analysis). Relaying such information may be regarded by a court as part of a direct or indirect agreement to lessen competition.

AVOID the appearance of using distributors or brokers as a means for inappropriately gathering information from a competitor. Although it is generally lawful to obtain competitors' pricing information from independent entities unaffiliated with the competitor, you should avoid any situation that could create the appearance that the distributor or broker is acting as a conduit for pricing information between competitors.

BE AWARE of who qualifies as a competitor. Generally, Mohawk's competitors will be its actual rivals; however, potential rivals (*i.e.*, companies that may enter into the market in the future) may also qualify as Mohawk's competitors. Also keep in mind that some companies may be competitors of Mohawk in one or more areas of Mohawk's operations, but not others. Mohawk officers and employees must be alert to identify such firms as "competitors" and exercise special care in

dealing with them. For example, if a competitor is also a supplier, it is likely appropriate to discuss prices of the products that Mohawk purchases from the competitor, but you should avoid discussing pricing for other products.

UNDERSTAND that “agreement” is a very broad concept. An “agreement” does not have to be formal or written. Under some circumstances, a course of conduct or unspoken understanding, with no words spoken, may be found to constitute an illegal agreement.

KNOW WHAT TO DO if a competitor seeks to engage in prohibited activity. If you find yourself inadvertently in a situation where one or more competitors wish to discuss potentially improper subjects, you should: (1) immediately and clearly decline to discuss them; (2) if such discussion continues, leave the room; and (3) report the incident promptly to the Law Department.

Since the purpose of the antitrust laws is to protect competition, these laws deal most harshly with unlawful activities among competitors. When two or more competitors meet to discuss any aspect of their business there is always a high risk of illegal behavior. The most flagrant and often prosecuted activities among competitors include agreements to set prices (or rig bids) for products, agreements to boycott particular suppliers or customers, and agreements to divide up the business by bids, customers, or geographic areas. All of these agreements are “per se” illegal and can result in large fines for the company and actually prison sentences for the individuals involved.

Not all contacts between competitors are illegal. However, all contacts must be handled very carefully. You must realize that even if the intent is completely innocent, third parties or the government may assume that the contacts are for improper purposes. Thus, it is important to avoid not only actual violations of the law, but also innocent conduct that could appear improper. Either could result in lawsuits or prosecutions that are expensive to defend and very damaging to the reputations of the Company and the individuals involved.

EXAMPLE:

You attend a conference on technical issues that are related to the manufacturing of one of the Mohawk products your plant produces. During the conference, an employee of a competitor begins to ask the attendees generally about the costs involved in the operation of certain equipment used in the production of the product, and the effect of those costs on the product price. Should you tell him? Should you listen to other attendees’ answers?

Release of information by Mohawk to a competitor that bears on future prices, even orally in an informal situation, may be construed as price-fixing. If a competitor asks about such matters, you should decline to answer and ask the person to drop the subject. If he/she persists, leave the meeting or terminate the phone call. You should always report any such incident to the Law Department to avoid charges that you conspired to set prices with the individual or others in attendance at the conference.

CONDUCT GUIDES - DISTRIBUTORS, VENDORS AND RE-SELLERS

It is impossible to list all of the activities that may be in violation of the antitrust laws. The following are merely guidelines that should be followed when dealing with distributors, vendors and re-sellers:

DO NOT set or attempt to set the price at which any independent distributor, vendor, warehouse, wholesaler, private label seller, retailer or other re-seller, sells any product. Attempts to establish or “fix” the price at which those entities resell to their customers is known as “resale price maintenance,” and may be illegal. You may, however, provide a suggested price for items sold by Mohawk to such entities. Be aware that any complaints, coercion or other attempt to enforce that price may violate the law.

DO NOT require a distributor, retailer or other purchaser to accept one product in order to receive another, without first consulting the Law Department. This type of arrangement may constitute illegal “tying.”

DO NOT require or attempt to require any re-seller to stock a full line of Mohawk products, without first consulting the Law Department.

DO NOT prohibit or attempt to prohibit any re-seller from dealing in any non-Mohawk product. You may require a distributor to exercise its best efforts to promote Mohawk products, but you should consult the Law Department before concluding that dealing in a non-Mohawk product is proof that such efforts are not being exerted.

DO ensure that price discount programs are practically available to all competing customers. The antitrust laws prohibit price discrimination and certain unfairly low price reductions that result in injury or elimination of competitors. You may offer a customer a lower price to meet a competitive offer after taking reasonable steps (which does not include contacting the competitor) to verify that the offer exists.

DO NOT require or attempt to require that any re-seller pass on to its customers any price reductions arising from Mohawk incentive programs or discounts. You can recommend that passing on price reductions may improve sales, but any attempts to enforce that recommendation may be illegal.

DO NOT tell customers they cannot purchase goods or services from particular suppliers, or that they must buy goods and services only from specified suppliers.

BEFORE restricting a vendor or distributor to specified territories or customers, consult the Law Department.

BEFORE terminating a distributor, consult that Law Department. Such termination should not be preceded by threats regarding the distributor’s prices, sales of competitive products, etc.

DO NOT require a distributor to purchase specified equipment or make payments to Mohawk as a condition to becoming a distributor without first consulting the Law Department.

EXAMPLE:

Mohawk sells Product X to independent distributors for \$4.99 per yard. Mohawk's suggested retail price is \$6.00 per yard and most independent distributors are reselling Product X to retailers for about \$6.00 per yard. Distributor Y lowers its price to \$5.75 per yard and its retailers complain to Mohawk, asking it to do something. What can you do?

If you respond by urging Distributor Y to raise its price, you run the risk of a claim by Distributor Y that you engaged in resale price maintenance. Under this scenario, you also run the further risk that the complaining distributor and Mohawk may be deemed as having jointly acted to restrain competition or prevent another distributor from engaging in lawful activity. Thus, you should never discuss with one distributor the pricing policies of its competitors.

The proper response to distributors' complaints about discounting is to advise them simply that distributors are free to charge whatever they want for the products they sell. Other concerns noted by distributors that are not related to pricing should be relayed to the Law Department, which will help formulate appropriate actions to take in response to those concerns.

EXAMPLE:

Distributor X is more than 60 days behind in making payments and has ignored Mohawk's demands that the accounts be paid to date. Is it okay to terminate the distributor?

There is a large body of law which varies from state to state which pertains to independent distributors. These may include franchise laws, state laws governing the termination of distributors and antitrust laws. In general, no charges should be assessed to new distributors without prior consultation with the Law Department. Moreover, the termination of a distributor should also be discussed with the Law Department prior to termination.

Based on these facts, termination is probably permissible. However, it is necessary to first ascertain whether there have been complaints from other distributors that might be the basis for a conspiracy charge. Has the distributor asserted any claims against Mohawk? If these and similar questions can be answered in the negative, termination is probably appropriate, but must be done in a manner that will comply with applicable laws. The Law Department should be consulted and relevant facts discussed.

CONDUCT GUIDES - SUPPLIERS

Observe the following guidelines when you deal with suppliers in order to avoid violating antitrust laws:

DO NOT tell or agree with a supplier to refuse to deal with another customer.

DO NOT ask a supplier to raise its prices to another customer. You can, however, insist on receiving the lowest price charged to a supplier's other customers.

DO NOT demand lower prices or more favorable discounts or rebates than available to your competitors if you have reason to believe that such prices, discounts or rebates will violate the laws prohibiting price discrimination.

DO NOT insist that a supplier buy goods or services from Mohawk in order for it to sell goods or services to Mohawk.

A great deal of care must be exercised in dealing with suppliers in order to avoid antitrust violations. The company cannot use its size or purchasing power to exact unlawful advantages from its suppliers or to force them not to deal with Mohawk's competitors.

Exclusive Dealing

The legality of exclusive dealing contracts, under which a supplier agrees to sell its products only to Mohawk, depends upon the circumstances of the particular case. The larger the supplier's market share, the more likely its exclusive dealing with Mohawk will be held illegal. However, there are circumstances where it may not be illegal to buy a supplier's entire output, provided that the duration of the agreement is reasonable. Furthermore, Mohawk legally may prohibit suppliers from using the Mohawk trademark on products other than those produced for Mohawk. Mohawk's suppliers also can be restricted from producing and selling to others those products whose specifications have been developed exclusively for Mohawk.

Reciprocal Dealing

Reciprocal dealing contracts, that is, those which in essence state, "I'll buy from you only if you buy from me," also may be held illegal. In this area, the antitrust laws try to keep markets open to other competitors. If you think you are faced with a reciprocal dealing situation, consult the Law Department.

REQUESTS FOR DOCUMENTS OR OTHER INFORMATION, OR THREATS OF LITIGATION

When antitrust allegations do arise, government agencies and private parties may seek documents or other information from Mohawk in connection with an investigation or lawsuit. The requests may be formal or informal, written or oral. In every instance, the material sought could have potentially serious legal consequences to the Company.

REMEMBER:

Whenever you receive a request for documents or information from a government employee or an outside attorney, or under circumstances beyond your normal business operations or which you consider suspicious, advise the person you do not have authority to reply, and immediately refer the request to the Law Department. If you receive accusations or threatened legal action or a request for information or documents from any person outside the Company, before responding, immediately contact the Law Department. Any formal request, such as a subpoena or demand letter, should be sent immediately to the Law Department. Failure to take such precautions could result in Mohawk's failure to respond timely and correctly to such requests or could cause the unnecessary or premature release of sensitive material that could adversely affect Mohawk.

CONCLUSION

Please remember that the examples and lists of prohibited activities presented in this manual are merely guidelines and are not intended to be all-inclusive. You are not expected to know with certainty whether a specific act will have antitrust consequences. However, you are expected to use common sense and to consult the Law Department when you realize that legal advice is needed.

Familiarize yourself with this manual and review it on a regular basis. By consulting the Law Department and following the provided conduct guides, you can avoid exposing Mohawk and yourself to severe antitrust penalties.