

ANTITRUST/COMPETITION POLICY AND PROCEDURE OF UNICON

I. INTRODUCTION

UNICON is a global consortium of business-school-based executive education organizations. UNICON's Members are business schools and other educational institutions that provide education and training to leaders in business, non-profits, and other areas through a wide variety learning settings (such members, along with their affiliates, agents, employees, officers, directors, and representatives shall hereinafter be collectively referred to as "Members"). UNICON provides many services to Members including conferences, research, benchmarking, sharing of best practices, recruitment and job-posting services, and networking. These services are provided to help Members gain new knowledge, understanding, perspectives, and capabilities to enhance the effectiveness and efficiencies of their operations and provide better education to their customers. By providing these services, Members are able to stay at the forefront of the executive education industry, constantly innovating to ensure Members are providing superior services to customers.

Antitrust/Competition law describes a variety of laws aimed at preserving fair, honest, and vigorous competition in the marketplace. It is based upon the theory that such competition ultimately leads to lower prices, increased supply, and continued improvements in goods and services, thereby ultimately benefiting the customer. Therefore, antitrust/competition laws, for example, prohibit agreements between competitors to fix prices and also limit monopolies. UNICON believes that vigorous competition is essential for driving innovation, improvements, and efficiencies in all industries, including the executive education industry, and believes the services it provides to Members foster that competition. Because of this position, UNICON hereby adopts this Antitrust/Competition policy ("Antitrust Policy").

The UNICON Board recognizes that it serves members around the globe and yet there is no universal antitrust/completion law but only national and regional laws may apply. As UNICON is incorporated in the United States of America, it is bound to comply with United States antitrust laws. This Antitrust Policy is therefore drafted to ensure compliance with United States antitrust law. Members should be aware that the European Union, and many foreign countries may have antitrust/competition laws which may differ considerably from United States antitrust law. Members should therefore not rely solely on this Antitrust Policy to guide their actions where different antitrust laws might apply.

II. ANTITRUST LAW BACKGROUND

Antitrust laws in the United States are intended to ensure fair, honest, and vigorous competition in the marketplace. These laws prohibit conduct that will reduce or diminish the intensity of the struggle among competitors, on the one hand, or, on the other, increase that struggle by unfair means so that only a single competitor is likely to survive, resulting in a monopoly. Section 1 of the Sherman Act addresses the first type of harm, and prohibits all agreements "in restraint of trade." The most obvious violations of Section 1 of the Sherman Act are agreements between

competitors to fix prices, or to not compete against one another. Section 2 of the Sherman Act addresses the second type of harm to the marketplace, and prohibits certain conduct by monopolists or by someone attempting to become a monopolist. The Sherman Act is written in general terms and has been interpreted by courts over the years, to condemn conduct that is always a violation of antitrust law regardless of the intention or result, a “*per se*” violation (“When a restraint is so plainly anticompetitive that no elaborate study of the industry is needed to establish its illegality, it is illegal *per se*” *Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006)), and conduct that may be determined to violate antitrust laws in situations where the harm to competition outweighs any procompetitive benefits (“Under the rule of reason, a court examines the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed, to determine the effect on competition in the relevant product market” *In re Nat’l Football League’s Study Ticket Antitrust Litig.*, 933 F.3d 1136, 1150 (9th Cir. 2019)).

There are other antitrust laws as well. Section 1 of the Federal Trade Commission Act has established the Federal Trade Commission, which is empowered to prevent “unfair methods of competition” and “unfair or deceptive acts or practices” as prohibited in Section 5 of the Federal Trade Commission Act. Any violation of the Sherman Act also violates the FTC Act, but the FTC Act has been interpreted to cover some additional conduct as well. The Clayton Act addresses some specific practices that the Sherman Act does not clearly prohibit, including mergers and situations where directors serve multiple companies. Finally, many states have antitrust laws that are based upon federal antitrust laws.

Per se violations of the Sherman Act are often pursued aggressively by federal authorities and may lead to fines of up to \$100 million for a corporation and prison sentences for individuals. Other violations of antitrust law may lead to civil enforcement by government authorities which may result in serious fines. Consumers or other competitors harmed by antitrust violations are often able to bring civil lawsuits which may result in treble damages against offending companies.

III. GENERAL ANTITRUST POLICIES

It is the policy of UNICON to comply with all antitrust laws, and to ensure that its services provided to Members are not used in furtherance of a violation of antitrust law, and therefore the following general policies apply:

- A.** UNICON and its board members, officers, employees, consultants, counsel, representatives, or agents, shall comply in all respects with applicable antitrust laws, and UNICON will not authorize, permit, condone, or ratify any conduct by any Member that violates antitrust laws or may reasonably give rise to the risk of a violation of antitrust laws.

- B.** UNICON and its board members, officers, employees, consultants, counsel, representatives, or agents, shall comply in all respects with applicable antitrust laws, and UNICON not engage in conduct that encourages or aids any Member in conduct which violates antitrust laws or may reasonably give rise to the risk of a violation of antitrust laws.

- C. Members shall, as a condition of continued membership in UNICON, comply in all respects with applicable antitrust laws.
- D. Members and UNICON shall abide by the applicable specific antitrust policies set forth in Sections IV through Sections IX, below.

IV. AGREEMENTS TO RESTRICT COMPETITION

A. **Types of Agreements to Restrict Competition.**

Agreements among competitors to restrict competition are *per se* violations of antitrust law. As an example, a written contract between two competitors to set a certain price for a product or service is an obvious violation of antitrust law. But even without a written contract, a court may conclude that an “agreement” still exists. An illegal contract, conspiracy, or agreement may be tacit or implied, may exist whenever competitors agree to take actions to restrict competition and can be found to exist without a writing or even without words indicating an agreement. Even casual conversation followed by actions consistent with that conversation may show an agreement exists. However, even if no agreement actually exists, unexplained identical behavior by competitors might result in allegations of an agreement. Conspicuous parallelism evidenced by parallel conduct performed by competitors with cognitive understanding or undertaking of each other’s behavior, conducts, and actions, may constitute sufficient basis for finding illegal contract, combination, or conspiracy in violation of antitrust laws. Also, illegally concerted action occurs when there is a conscious commitment to a common scheme designed to achieve an otherwise unlawful objective or when distinct actors share a unity of purpose or a common design and understanding, or a meeting of minds. Findings of such illegality can be based on the presentation of circumstantial (as compared to direct) evidence, including a showing of parallel conducts among competitors demonstrating that their similar behavior would probably not result from chance, coincidence, independent responses to common stimuli, or mere interdependence unaided by an advance understanding among the parties. Furthermore, offenders need not have identical motives.

On the other hand, not all consistent conduct among competitors is evidence of an agreement to restrict competition. For example, two competitors may charge identical prices for a product simply because it is the prevailing market price or competitors may all raise prices at the same time because input costs have risen for all competitors. Also, geographical division of market among competitors may naturally occur due to the divergence of their respective manufacturing locations, relative costs of transportation, and other legally justifiable causes without illegal agreement.

Therefore, critical distinction between the legality and illegality often lies at the existence or non-existence of the common understanding or sharing of each other’s current or future (as compared to historic) behavior or business plan related to competitively sensitive subject matters, such as (i) pricing or other terms and conditions of sale or supply to consumers, (ii) pricing or other terms and conditions of purchase or procurement from suppliers, vendors, contractors, or employees, (iii) capacity or production size or other

factors indicating or determining output, (iv) costs of production, (v) territories of business, sales, or promotion, or (vi) business strategies or plans. In that regard, information sharing among competitors draw increased antitrust scrutiny if the information being shared falls into one of these competitively sensitive areas.

The following are common examples of agreements made to restrict competition:

1. Price Fixing.

Any agreement by or among competitors to engage in any type of price fixing or bid rigging is a *per se* violation of antitrust law. Price fixing involves an agreement between competitors to tamper with prices, price levels, or the terms and conditions upon which any sale or supply may be made. Price fixing might include, for example, an agreement among Members to charge a specific price for a particular executive marketing course to all customers. But price fixing agreements include less obvious conduct such as agreeing to certain discount policies, or agreeing to the standard terms and conditions that must be included in a sales or service contract. Price fixing agreements include agreements to:

- a. Raise the price of a product or service to or by a specified amount (for example, an agreement to set price at \$5,000.00 per course or to raise price of course by 5%);
- b. Establish or adhere to uniform price discounts, or eliminate discounts (for example, an agreement among Members to eliminate group discounts to executives from small-cap or mid-cap companies);
- c. Adopt a specific formula for setting prices;
- d. Adhere to certain terms of conditions of sale which may affect the ultimate price of the product (for example, an agreement to charge a uniform interest rate for sales on credit); or
- e. To not advertise prices or refuse to sell through a bidding process.

2. Buyer Price Fixing.

In addition to price fixing with respect to the sale of goods or services, price fixing can occur with respect to the purchase of goods or services. For example, an agreement among Members to set maximum wages paid to executive education faculty or an agreement not to provide certain benefits to faculty would constitute an illegal price fixing agreement. In addition, an explicit or tacit agreement among Members to set price or price ranges paid to vendors, suppliers, intermediaries, and other contractors for certain products or services commonly or universally used by Members would constitute an illegal contract, combination, or conspiracy. Such

price fixing agreements or arrangements are also *per se* antitrust violations in a sense that any alleged pro-competitive purpose or effect that can arguably be drawn from such agreement or arrangement will be ignored in the analysis of its antitrust violation.

3. Bid Rigging.

Bid rigging is similar to price fixing and typically involves an agreement between competitors to determine the successful bidder in advance of submitting bids by communicating the price the “winning” party will pay in advance. Competitors may attempt bid rigging to rotate projects among themselves or to allocate geographic areas. Bid rigging agreements are *per se* antitrust violations.

4. Agreements not to Compete.

Agreements among competitors not to compete with one another in particular markets or to allocate market share, geographically or otherwise, are *per se* violations of antitrust law. Those agreements may be found in a trade association’s code of ethics, bylaws, or membership agreements that aim at governing or controlling certain behaviors of its members which would otherwise be unregulated among competitors. Agreements not to compete include agreements to:

- a. Allocate market share by agreeing to serve only certain customers, or to not solicit business from a competitor’s existing customer;
- b. Allocate market share by agreeing to serve only certain geographic territories;
- c. Allocate market share by agreeing not to compete in the market for particular goods or services (e.g., agreements among Members to provide only certain types of courses);
- d. Abstain from entering into certain market for particular goods or services (e.g., online executive education);
- e. Provide goods or services only under certain uniform or harmonized terms and conditions, including, but not limited to, certain pricing, tying, grouping, or other terms and conditions of provision or sale;
- f. Deal with providers or distributors of goods or services only under certain terms and conditions, including, but not limited to, certain pricing, delivery, or other terms and conditions of receipt or purchase;
- g. Refrain from competing on pricing terms, especially discounted fees; or

- h. Reduce the quantity or type of goods and services offered for sale.

5. Group Boycotts and Other Concerted Refusals to Deal.

A group boycott, also known as a concerted refusal to deal, involves a concerted attempt by a group of competitors at one level to protect themselves from competition from non-group members who seek to compete at that level. Agreements or arrangements among competitors to boycott or refuse to deal or do business with targeted individuals or businesses, or to not do business except on certain prearranged or agreed-upon terms, may constitute illegal group boycotts or constitute illegal concerted refusal to deal separate or independent from any price fixing agreements. Such agreements raise serious antitrust risk and may often constitute *per se* violations of antitrust law. The prohibited forms of these agreements may include exclusionary arrangements creating entry barriers for new competition or other collective arrangements aiming at limiting competition by facilitating market exit by existing competitors. A few examples of the illegal boycotts include:

- a. A trade association's distribution of blacklists (i.e., suppliers, wholesalers, etc.) to its members, followed by concerted or parallel actions of those members resulting in refusal to deal with those on the blacklists;
- b. A concerted effort among providers of goods or services to refuse to deal with certain distributor or group of distributors for such goods or services;
- c. A concerted effort among providers of goods or services to refuse to deal with certain supplier or group of suppliers concerning contents, ingredients, materials, and components of such goods or services;
- d. A concerted effort among providers of goods or services to refuse to deal with their distributors or suppliers unless they agree to a standardized uniform contract form;
- e. Bylaws or other membership terms and conditions of a trade association that precludes access to certain critically important facilities (i.e., wire service) owned and operated by such association to non-members;
- f. Bylaws or other membership terms and conditions of a trade association that prohibits its members from engaging in both retail and wholesale operations;

- g. Bylaws or other membership terms and conditions of a trade association that prohibits its members from providing or selling certain goods or services to non-members;
- h. Bylaws or other membership terms and conditions of a trade association that prohibits admission of new members while membership in such trade association provides significant competitive advantages to its members when such economic impact is immediately obvious; or
- i. A concerted effort among providers of goods or services to refuse to supply certain information or data related to such goods or services (i.e., x rays) to third parties who are to determine or influence the compensation for such goods or services (i.e., insurers, auditors, etc.).

B. Policies Regarding Agreements to Restrict Competition

1. Required Conduct by Members.

UNICON does not tolerate agreements among Members to restrict competition. To avoid the risk that conduct by Members may give rise to an actual or perceived antitrust violation, Members shall engage in the following conduct:

- a. Members shall exercise independent judgment with respect to their business decisions regarding pricing, costs, target customers, target geographic markets, and similar matters.
- b. Members shall make pricing decisions independently of competitors, in light of costs, general market conditions, and competitive prices.
- c. Members shall document the source of any sensitive information regarding from a competitor to avoid any inference or allegation that such information was obtained improperly.
- d. Members shall reject any offer, whether explicit or implied, from any competitor to enter into any agreement to restrict competition, as described in Part IV.A above.
- e. If a Member reasonably believes that an agreement with a competitor may give rise to an actual or perceived antitrust violation, the Member shall consult with its own antitrust counsel as to the legality of such agreement.

2. Restricted Conduct by Members.

TO avoid the risk that conduct by Members may give rise to an actual or perceived antitrust violation, Members shall not engage in any of the following:

- a. Members shall not enter into, or offer to enter into, any agreement to restrict competition, as described in Part IV.A above, with a competitor, whether or not such competitor is also a Member of UNICON.
- b. Because sharing recent historic, current, or future pricing (or output) data or information with a competitor may imply or evidence an agreement to fix prices (or reduce output), even if no explicit agreement exists, Members shall not engage in any discussions with a competitor concerning recent historic or current prices charged (or output offered) or expected future prices to be charged (or expected output levels) for goods or services, whether or not such competitor is also a Member of UNICON.
- c. Because sharing cost and expense data or information, such as salaries paid or benefits offered to its faculties or other employees, such as pricing and other key terms and conditions of dealings with suppliers, vendors, and other intermediaries relevant to goods or services offered by a Member with a competitor may imply or evidence an agreement to fix prices or otherwise restrict competition, even if no explicit agreement exists, Members shall not engage in any discussions with a competitor concerning current or anticipated cost or expense information, whether or not such competitor is also a Member of UNICON.
- d. Members shall not engage in any discussions with a competitor concerning any of the following: warranties, discounts, costs and margins, bids or intentions to bid, sales territories, customers, or any other matter which may give rise to the appearance of the existence of an agreement to restrict competition.
- e. Members shall avoid adopting, implementing, or engaging in, intentionally or unintentionally, efforts to standardize programs for the higher education industry, which attempt to set terms and conditions of education programs or other products or services being offered by Members, including, but not limited to, pricing, discount terms, curriculum categories, enrollment criteria, enrollment privileges, etc.

V. ANNUAL SURVEYS AND SURVEY REPORTS.

A. Annual Surveys and Survey Reports.

The sharing of business information, even via a third party such as a trade association like UNICON, presents some antitrust risk and possible significant risk, especially, in cases involving collection and sharing of anticompetitively sensitive data or information, such as current or future pricing data, cost and expense related data, information as to employment conditions, geographical distribution of goods or services, personal information concerning customers or classes or categories of customers, new demand or order information, information about members having surplus capacity on goods or services, data about current inventory or capacity level concerning goods or services offered by members, and information about cancellation of orders. In some cases, the courts have found *per se* illegality merely out of exchange of pricing information (including information concerning specific sales to identified customers) among trade association members although there was no evidence of agreement among those members to adhere to a price schedule.

The concern among antitrust regulators is that information provided to and later disseminated by a trade association may result in coordinated activity among competitors, reducing competition. For instance, the courts recognize, without additional proof, that knowledge of a competitor's price usually meant matching that price. Alternatively, information sharing through a trade association may be used as a "cover" for an actual agreement among competitors to restrict competition. For example, if trade association members were required to report all sales activity and the prices at which their goods or services were sold on an immediate basis, that reporting might be used to monitor compliance with an price-fixing agreement.

UNICON annually conducts surveys of Members to gather data concerning the Members' operations. UNICON compiles that data into annual survey reports (e.g., State of the Industry Summary Report) which are distributed to all Members. This information sharing by and among Members through UNICON is an area of higher antitrust concern.

B. Policies Regarding Annual Surveys and Survey Reports.

To avoid any risk that the annual surveys and annual survey reports may give rise to an actual or perceived antitrust violation, the following policies will be adhered to by UNICON or the Members in the preparation, publication, and use of the annual survey reports.

1. Required Conducts.

- a. Annual survey reports will contain only historical (except recent historic, such as less than three month old) data concerning members and not current data, except where, in UNICON's sole discretion, the publication of current data cannot reasonably be expected to give rise to an actual or perceived antitrust violation or where the provision of current data is necessary for the annual survey reports to be useful to Members.

- b. Annual survey reports will publish data without any identifying information regarding the Member who provided the data. Data published in the annual survey reports will generally be published in the aggregate and will be as general as possible while still permitting the annual survey reports to be useful to Members.
- c. Collection of information from Members for annual survey reports will be conducted and managed by a third-party data collection service provider or by UNICON employees, and no information collected will be disclosed or made available to any Member except through the publication of the annual survey report.
- d. Survey questions requesting any price-related or cost-related data, including without limitation prices charged, discounts offered, salaries paid, and benefits offered, will be limited to data that is more than three months old.
- e. For any statistic disseminated through the publication of the annual survey report, the statistic will be based upon data from five or more Members, no individual Members' data will represent more than 25 percent on a weighted basis of that statistic, and the data comprising such statistic will be sufficiently aggregated such that it will not allow Members to identify the prices charged or costs incurred by any particular Member.
- f. Annual surveys reports are provided by UNICON to Members for informational purposes only in order that Members might increase efficiencies and improve education services offered to customers, and are not intended to influence or require Members to take or avoid any particular course of action, and Members are not bound by any conclusion, opinion, or recommendation contained in any such annual survey report. Members shall independently evaluate all information contained in such annual survey report to determine, what, if any, action to take as a result of such annual survey report.
- g. UNICON will make annual survey reports available to all Members and may make annual survey reports available to nonmembers, but UNICON may require nonmembers to pay a fee equal to the reasonable cost of preparing and delivering such annual survey reports, and any such fee will be established by UNICON in its sole discretion.

2. Restricted Conducts.

- a. Annual survey reports will not include any obligatory requirements or mandates (i.e., reporting of price changes, reporting on sales or

purchases, etc.), recommendations (i.e., pricing range recommendations, suggestions to deal or not to deal with certain vendors, suppliers, or intermediaries, etc.), or enforcements (i.e., any penalty on Members breaching or deviating from any mandates) regarding any action Members should or may take based on the survey report.

- b. Annual survey reports will not include conclusions or predictions regarding future price or cost trends, output levels, or any other anticompetitively sensitive items.
- c. Annual survey will not request information from Members concerning future actions that Members may take with respect to pricing or costs, output levels, or any other anticompetitively sensitive items and annual survey reports will not include such data or information if acquired by UNICON.
- d. Annual survey and annual survey reports will not study or report on pricing, output, or other anticompetitively sensitive information, except in accordance with the antitrust safe-harbor guidelines provided by the United States Department of Justice and the Federal Trade Commission and substantially reproduced in Sections IV.B.1.c through IV.B.1.e, above.
- e. Members shall not rely exclusively on the data, conclusions, or other information provided as part of the annual survey reports in determining future actions regarding pricing, costs, target customers, target geographic markets, and similar matters.

VI. OTHER RESEARCH.

A. Other Research Produced by UNICON

It is axiomatic to say that certain level of sharing information on technology, know-how, or other intellectual property among competitors may be procompetitive and so could reasonably be determined necessary to achieve the procompetitive benefits of certain collaborations. Nonetheless, research and other materials produced by trade associations for distribution to members, especially those containing or concerning information related to a market, pricing, output, costs, or strategic planning, often raises similar antitrust concerns as information sharing, addressed in Part V, above. If research conclusions direct or encourage uniform conduct among competitors, regulators may believe that such research is part of an actual agreement not to compete. For example, a research report regarding prices that suggests members could each raise prices by 10% without any decrease in demand, it might be viewed as part of an implicit price fixing agreement.

Among the services UNICON provides to Members is research and related reports. This research provided by UNICON to Members presents an antitrust concern.

B. Policies Regarding Other Research Produced by UNICON

To avoid any risk that research undertaken by UNICON and provided to Members may give rise to an actual or perceived antitrust violation, the following policies will be adhered to by UNICON or the Members in the preparation, publication, and use of the researched.

1. Required Conducts.

- a. The goal of all research undertaken by UNICON will be to improve the delivery of executive education service by Members to their customers by increasing efficiencies, improving content, or otherwise increasing the type and quantity of services available to Members.
- b. Research is provided by UNICON to Members for informational purposes only in order that Members might increase efficiencies and improve education services offered to customers, and is not intended to influence or require Members to take or avoid any particular course of action, and Members are not bound by any conclusion, opinion, or recommendation contained in any such research. Members shall independently evaluate all information contained in such research to determine, what, if any, action to take as a result of such research.
- c. UNICON will make research available to all Members and may make research available to nonmembers, but UNICON may require nonmembers to pay a fee equal to the reasonable cost of preparing and delivering such research, and any such fee will be established by UNICON in its sole discretion.

2. Restricted Conducts.

- a. UNICON will not conduct research regarding prices to be set or expenses to be paid by Members.
- b. Research produced by UNICON will not include any recommendations regarding any action Members should take based on the survey report.
- c. In other research produced by UNICON and made available to Members or the general public, UNICON will not include recommendations, predictions, or conclusions that may, in UNICON's sole judgment, appear to violate antitrust laws or

promote or encourage actions, that, if undertaken by Members, would be a violation of antitrust laws.

- d. Members shall not rely exclusively on the data, conclusions, or other information provided as part of research produced by UNICON in determining future actions regarding pricing, costs, target customers, target geographic markets, and similar matters.

VII. Annual Conferences and Other UNICON Meetings.

A. Annual Conferences and Other UNICON Meetings.

Conferences and meetings hosted, organized, or sponsored by or in conjunction with UNICON and attended by Members (“UNICON Conferences”) may raise particular antitrust concern, because UNICON Conferences allow for close interaction among competitors and may appear to present an opportunity to influence competitors and coordinate activity among competitors. Trade association conferences and meetings in general allow for competitors to interact in unstructured settings, where little concern might be paid to the antitrust risk that an attendee’s conduct poses. For example, trade association meetings may allow an opportunity for executives at two competing organizations to meet and speak freely; if one executive conveyed to his prime competitor that his organization intended on raising prices in the next month, his competitor may do so as well, leading to an inference of an agreement to fix prices among them.

Alternatively, the presenters or hosts of such a conference may, intentionally or unintentionally, encourage uniform conduct among competitors, which may lead to accusations of a conspiracy to restrict competition among attendees. For example, if an annual conference presenter suggested that reducing the number of class openings may result in higher prices, this suggestion might be construed to be part of an agreement to restrain competition.

B. Policies Regarding Annual Conferences and Other UNICON Meetings.

To avoid the risk that UNICON Conferences may give rise to an actual or perceived antitrust violation, UNICON Conferences shall be governed by the following policies:

1. Required Conducts.
 - a. Prior to any UNICON Conference, an agenda shall be prepared providing, in reasonable detail, the presentations, speeches, panels, question and answer sessions, forums, roundtables, breakout sessions, or similar events to occur (“UNICON Conference Events”), topics or areas of discussion to be included in the UNICON Conference Events, and all speakers or presenters that will be attending the UNICON Conference (the “Agenda”). UNICON shall review the Agenda provided to ensure compliance with this

Antitrust Policy and may require changes or amendments to the Agenda prior to the UNICON Conference. After Approval by UNICON and prior to the commencement of the UNICON Conference in question, the Agenda shall be distributed to all attendees.

- b. The Agenda shall be strictly followed throughout the UNICON Conference in question, and UNICON may take any action, up to and including cancelling or terminating the UNICON Conference in order to correct any deviations from the Agenda.
- c. UNICON shall designate a recorder to keep detailed minutes of the UNICON Conference and all activity associated therewith.
- d. UNICON may require that speakers and presenters at UNICON Conferences agree to this Antitrust Policy.
- e. UNICON may provide Members or other attendees of UNICON Conferences a copy of this Antitrust Policy or an abbreviated or summarized antitrust policy in such form as UNICON may adopt.
- f. Regardless of whether UNICON provides Members or other attendees with any antitrust policy, Members and other attendees shall strictly adhere to this Antitrust Policy at all times during the UNICON Conference., including during UNICON Conference Events, during “breakout sessions” or similar UNICON Conference Events, between UNICON Conference Events, during lunch or meal breaks, or during informal gatherings before, during, or after the UNICON Conference, whether or not such informal gatherings occur in a separate location than the UNICON Conference.

2. Restricted Conducts.

The follow topics or areas of discussion shall be prohibited in all UNICON Conference Events: prices charged, discounts offered, pricing trends, anticipated prices, terms and conditions of sale, salaries paid, benefits offered, cost margins, markups, or any other topic or area of discussion which may give rise to an actual or perceived antitrust violation, including, without limitation, any recommendation than Members should engage in any of the prohibited conduct identified in Section 1 of this Antitrust Policy.

VIII. Internet, Social Media, and Other Communications.

A. Internet, Social Media, and Other Communications.

Communication by UNICON or among Members may raise antitrust concerns where the communications themselves constitute or evidence an antitrust violation. For example, any communication tending to show an agreement between competitors to raise prices or allocate markets will be evidence of a *per se* violation of antitrust law. Involvement of all or significant portion of UNICON Members is not necessary to find such communications to be anticompetitive. Certain clusters of conspiracies among a few Members (i.e., pricing or other anticompetitively sensitive discussions through online chat rooms available on social media or other commonly used software platforms) could be sufficient evidence to find violation of antitrust law not only on the part of those participating Members but also, possibly, on the part of UNICON if such clusters may not have existed or continued to exist but for UNICON. In addition, UNICON communicates to Members and to the general public through press releases, newsletters, email bulletins, and social media (such as Facebook, Twitter, or LinkedIn), websites, and traditional paper media (“UNICON Communications.”). Moreover, Members have access to resources provided by to communicate to UNICON and/or other Members. Such communications must comply with all parts of this Antitrust Policy, including the specific policies set forth below:

B. Policies Regarding Internet, Social Media, and Other Communications

To avoid the risk that any communications by UNICON or among Members may give rise to an actual or perceived antitrust violation, such communications shall be governed by the following policies:

1. Required Activities.
 - a. UNICON Communications will be reviewed prior to dissemination to ensure such communications do not, in UNICON’s sole discretion, appear to violate antitrust laws or promote or encourage actions, which, if undertaken by Members, would be a violation of antitrust laws.
 - b. UNICON may monitor social media posts or communications on any UNICON-associated social media pages or websites and remove any post which, in UNICON’s sole discretion, appears to violate this Antitrust Policy, violates antitrust laws, or promotes or encourages actions, which, if undertaken by Members, would be a violation of antitrust laws.
2. Restricted Activities.
 - a. Resources provided by or associated with UNICON such as membership lists, Member contact information, email lists, or UNICON-associated social media pages or accounts (such as Facebook, Twitter, or Linkin) shall not be used or utilized by Members to take or attempt to take any action which violates this Antitrust Policy.

- b. Members shall not post any content or communication on UNICON's websites (including, without limitation, sites under the www.uniconexed.org domain name) which violates this Antitrust Policy, otherwise violates antitrust laws, or promotes or encourages actions, which, if undertaken by Members, would be a violation of antitrust laws.
- c. Members shall refrain from any communication with other Members via any and all methods, including, without limitation, online chat rooms, social media, or other commonly used software platforms, concerning or involving any competitively sensitive subject matters, such as (i) pricing or other terms and conditions of sale or supply to consumers, (ii) pricing or other terms and conditions of purchase or procurement from suppliers, vendors, contractors, or employees, (iii) capacity or production size or other factors indicating or determining output, (iv) costs of production, (v) territories of business, sales, or promotion, or (vi) business strategies or plans.

IX. ANTITRUST PROCEDURES

The following procedures should be followed to ensure compliance with this Antitrust Policy and to avoid conduct that may give rise to an actual or perceived antitrust violation.

A. Written Communications.

Members shall keep this Antitrust Policy in mind when communicating with Members or other competitors. Because written communications which may be unobjectionable at the time may be later misconstrued as part of an antitrust investigation, Members should carefully consider the content of all written communications, both internal and external, and consider whether a verbal conversation may be appropriate in lieu of written communications.

B. Consultation with Counsel.

Any time a Member considers engaging in action which reasonably appears to violate this Antitrust Policy or any antitrust law, or if there is a reasonable question as to whether such action may violate this Antitrust Policy or any antitrust law, the Member should seek legal advice from its own experienced antitrust counsel before engaging in such action.

C. Report of Investigations.

Members shall immediately seek guidance from or notify UNICON if the Member receives any inquiry from any governmental agency or from any private lawyer regarding any alleged antitrust violation.

D. Violation of Antitrust Policy.

In addition to any and all other rights and remedies that UNICON is entitled to under any applicable law or in equity, upon any Member's violation of this Antitrust Policy, as determined by UNICON in its sole discretion, UNICON may take any or all of the following actions: provide a warning or notice of breach to said member, publicly disavow the actions of said Member, or terminate the membership of said Member,

X. ANTITRUST POLICY TERMS AND CONDITIONS

The following terms and conditions are part of and govern this Antitrust Policy.

A. Incorporation.

This Antitrust Policy shall become a part of the membership agreement to which each Member is bound and is made a part thereof. As a condition of membership in UNICON, and by agreeing to be bound by the membership agreement, each Member agrees to the terms and conditions of this Antitrust Policy.

B. Indemnity.

Each Member agrees to defend, indemnify, and hold harmless UNICON and any other non-breaching Member from and against any and all claims, demands, causes of action, liabilities, obligations, losses, damages, penalties, fines, governmental investigations, costs, expenses (including, without limitation, reasonable attorneys' fees), or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against UNICON or any non-breaching Member arising out of or in any way connected to such indemnifying Member's material breach of any term or condition of this Antitrust Policy.

C. Member Communication and Actions.

Members shall not engage in any communication with any other Member or engage in any action or conduct, by whatever means or manner, that is designed to cause (or may have reasonable possibility of causing) any material violation of the Antitrust Policy by such Member. Before taking any action involving UNICON or another Member that may be questionable or as to which a Member shall have a reasonable inquiry as to its possible violation of the terms and conditions of this Antitrust Policy, the Member contemplating such action shall first consult its own experienced antitrust law counsel.

D. Authority to Censor and Amend.

Members hereby authorize UNICON to and UNICON shall have the power and authority to change, amend, revise, edit, delete, reject, or otherwise censor any content or communication by any Member posted on any UNICON-associated social media pages or accounts or UNICON's websites (including, without limitation, sites under the www.uniconexed.org domain name). UNICON shall have the power and authority to change, amend, revise, edit, delete, reject or retract any content produced by UNICON at any time including UNICON Communications, annual survey reports, or other research.

E. Waiver of Liability.

In no event, whether by way of adopting this Antitrust Policy, by exercising or failing to exercise any of the rights provided to UNICON under this Antitrust Policy, or otherwise, shall UNICON or any of its board members, officers, employees, consultants, counsel, representatives, agents, or assigns, be held liable to any Member for any causes of action, claims, damages, costs, or expenses arising out of any other Members' material breach of any term or condition of this antitrust policy or any other action.

F. Disclaimer.

Each Member understands, acknowledges, and agrees that the Antitrust Policy does not and cannot address every situation in which or all conduct by which a Member may violate or be alleged to violate antitrust law and that even strict compliance with this Antitrust Policy does not guaranty that such Member will not violate or be alleged to violate any antitrust law. Each member further understands, acknowledges, and agrees that UNICON or any of its board members, officers, employees, consultants, counsel, representatives, agents, or assigns, is not, nor shall be deemed to be, an advisor, counsel, counselor, expert, or fiduciary for any Member concerning any antitrust matter of such Member, any such Member's action or activities concerning UNICON, or any such Member's business affairs.

G. Amendment.

This Antitrust Policy may be amended, revised, changed, modified, restated, or replaced in its entirety or otherwise by UNICON. Immediately upon adoption by UNICON of such amendment, it shall be binding on and enforceable against all Members.

H. Enforcement.

In addition to any and all other rights and remedies that UNICON is entitled to under any applicable law or in equity, UNICON shall be entitled to specific remedies and may enforce this Antitrust Policy in the form of injunctive relief in case of any breach hereof by a Member.