POLICY GUIDANCE & STANDARDS

COMPETITION

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SCOPE AND PURPOSE

This policy guidance and standard (PG&S) applies to Suncor Energy Inc. and its subsidiaries world-wide (collectively "Suncor" or the "Company"). References in this document to "Suncor Personnel" include members of the board of directors, officers, employees and independent contractors (formerly referred to as contract workers) of Suncor. All Suncor Personnel must comply with this PG&S.

Suncor believes in the benefits of free unhampered competition. Applicable laws respecting the restraint of trade and the preservation and promotion of competition ("Competition Law") are designed to protect the efficiency of the economy and our free enterprise system. Compliance with Competition Law is an essential ingredient of responsible corporate citizenship in all countries where Suncor conducts business. Competition Law should be complied with and supported, not only because it is the law but also because Suncor believes in the competitive principles that it represents.

This PG&S is subject to and forms part of Suncor's Standards of Business Conduct Code and Compliance Program.

STANDARDS

Suncor shall in the conduct of its business (a) avoid all practices and activities that are a violation of any provision of Competition Law in the countries in which it operates, and (b) support and encourage the maintenance of a competitive economy.

Suncor must compete fairly and practices which are not aligned with ethical business practices must be avoided, such as practices characterized by fraud, deception, bad faith or coercion. (See also ***Trade Relations PG&S and Prevention of Improper Payments PG&S***.)

Any indication of conduct involving violations of Competition Law will be promptly and thoroughly investigated. In addition to liability under the applicable Competition Law, an individual who violates this PG&S is subject to disciplinary action, which may include immediate dismissal.

Suncor operates in many jurisdictions. It is important to seek the advice of the Legal Affairs Department of your business unit if you have any questions concerning Competition Law as it may apply to existing or contemplated business situations or courses of action in which you are involved. Suncor Personnel engaging in business activities in Canada are Subject to Appendix A; Suncor Personnel engaging in business activities in the United States are subject to Appendix B; Suncor Personnel engaging in business activities in the European Union are subject to Appendix C. Certain business activities may require compliance with laws in several jurisdictions, such as where a business activity in one country extends into another. For example,

the competition laws of both Canada and the United States will apply to the procurement of goods from a United States manufacturer for use in Canada. In addition, the United States will enforce their competition laws for activities outside of their own country where United States commerce is affected. There are many similarities among the laws in these jurisdictions. While basic principles of Competition Law tend to be similar, there are local differences and specific advice should be sought from the Legal Affairs Department whenever Suncor Personnel have questions or concerns.

Finally, Appendix D sets forth some practical suggestions for all Suncor Personnel engaging in activities which may be impacted by Competition Laws. When you have specific questions or concerns, however, you should consult with the Legal Affairs Department for advice with respect to activity taking place in, or affecting Canada, the United States, Europe, or other areas of the world.

Suncor also participates in a substantial number of joint ventures. These joint ventures with competitors can involve complex and sensitive legal issues. They can also involve issues such as procurement as well as ensuring that activities, including information exchanges with our joint venture partners, do not extend beyond those that are in furtherance of the joint venture. Legal Affairs Department assistance should be sought to ensure Competition Law compliance.

Supervisors and managers are expected to promote a working environment consistent with this PG&S and to assist Suncor Personnel within their supervision to understand and comply with this PG&S and abide by applicable Competition Law. Suncor Personnel are encouraged to contact the Legal Affairs Department with competition concerns over a proposed course of action or past actions. No Suncor Personnel will be disciplined for calling a Competition Law concern to the Legal Affairs Department’s attention. A violation of Competition Law, however, will be grounds for appropriate disciplinary action, up to and including dismissal.

EXCEPTIONS

There are no exceptions to these standards.

REFERENCES TO RELATED DOCUMENTS

Business Conduct Policy Statement
Prevention of Improper Payments PG&S
Trade Relations PG&S
Business Conduct Code and Compliance Program PG&S

APPENDIX “A”

CANADA: THE COMPETITION ACT

The *Competition Act* establishes a set of rules governing competition practices in Canada. This PG&S highlights some of the more important principles of Canadian Competition Law, but it is not a comprehensive analysis of the law.

The general objective of the *Competition Act* is to prohibit certain trade practices and arrangements that may operate to impede a competitive economy. The statutory language has left a wide discretion to the courts in interpreting and applying the provisions of the legislation. As a result, litigation and investigations arising from alleged violations of the *Competition Act* may be protracted, may involve extensive time of Suncor Personnel, and may be costly in terms of legal fees, preparation for trial, fines or penalties and otherwise.

The *Competition Act* addresses a number of practices which may have an adverse effect on competition. These practices are characterized in the *Act* as either being criminal offences or reviewable practices. The remedies available for violation of these provisions vary according to whether the conduct is a criminal offence or a reviewable practice.

THE CRIMINAL OFFENCES

The *Competition Act* creates a number of criminal offences. The more important of these offences are summarized below. The *Competition Act* sets out fines and/or jail terms for those convicted of committing such criminal offences. In addition, injured parties may bring a civil lawsuit for damages for any harm suffered by them as a result of a violation of the criminal provisions of the *Competition Act* or an order of the Competition Tribunal or other court under the *Act*.

Conspiracy To Lessen Competition.

This is the provision of competition law – both in Canada and elsewhere – of greatest importance and concern to Suncor and Suncor Personnel. It creates the greatest risk, both for Suncor and Suncor Personnel.

The *Competition Act* prohibits as a criminal offence certain agreements or conspiracies between competitors or potential competitors. Such a relationship does not have to be recorded in writing and can be inferred from the course of conduct of two or more persons.

The essence of the offence is the conspiracy or agreement itself. The parties do not need to do anything to carry it out. Once an agreement has been reached, the offence has been committed even if the parties change their minds and decide that their market-sharing or price fixing conspiracy is not a good idea.

The *Act* specifically prohibits agreements or arrangements to:

(a) fix prices for the supply of a product;

(b) allocate markets for the supply of a product; or

(c) restrict the production or supply of a product.

A product includes an article and a service.

The conspiracy provisions of the *Competition Act* are among the most vigorously enforced provisions under the statute, and conviction may result in fines of up to $25 million – or more, for multiple charges -- and up to 14 years in prison. In addition to the criminal punishment, any person who suffers loss or damage resulting from a breach of the conspiracy provisions of the *Competition Act* can sue to recover all loss or damages. Accordingly, breaches of the conspiracy provisions can – and usually do – attract class action damages claims.

It is relatively easy to understand that things like fixing prices, allocating markets or agreements to restrain output should not be done on a stand-alone basis. However, these issues can arise, for instance, as aspects of perfectly proper joint ventures. Therefore, careful thought is necessary whenever Suncor is dealing with a competitor, including a joint venture partner, or buying group member, or in any capacity.

Another potential area of danger arises in trade associations. Care must be taken to avoid any inference that illegal actions have been agreed upon between participants of trade associations, technical societies and similar organizations at which competitors are present. While trade associations perform legitimate functions and serve lawful purposes, meeting with competitors can be viewed as affording an opportunity to discuss competitively sensitive information or reach agreement on price, market allocation or output. It is essential to seek legal advice from your business unit Legal Affairs Department for these types of activities.

Clearly, not all agreements between our Company and its competitors would lessen competition. Suncor Personnel must be prudent, and if there is any doubt, you should consult with the Legal Affairs Department of your business unit when contemplating entering into such an arrangement.

In addition to the criminal conspiracy offence, the Commissioner of Competition can also seek orders from the Competition Tribunal prohibiting any agreement between competitors that would have the effect of substantially lessening competition, but there are no fines or penalties associated with this provision. This provision is discussed below.

Bid Rigging.

Bid-rigging is also a criminal offence under the *Competition Act*. The term “bid-rigging” generally describes a practice whereby companies or persons who are invited to tender for a contract secretly agree (that is, without the knowledge of the person calling for or requesting the bids or tenders) to set the terms under which they will tender. There are several variations of this practice; the conspirators may agree on the price to be submitted or arrange that, in consideration of future favours, one or other of them will not tender for the particular job at hand, or may agree to withdraw bids.

There has been considerable enforcement activity and a number of convictions resulting in significant fines under this provision.

Misleading Advertising.

Under the *Competition Act*, materially misleading or false statements in promoting a product or business can be pursued as either a criminal offence or as a non-criminal reviewable trade practice (in which case the available remedies include cease and desist orders and administrative monetary penalties). In addition, there are several other federal statutes which prohibit misleading advertising (for example, those dealing with packaging, labelling, and making representations via e-mail or other electronic communications). In some cases, the provincial consumer protection acts and trade practices acts are also relevant. Provincial laws may contain advertising restrictions and deal with warranties, merchantability and other related matters.

The *Competition Act* contains a general prohibition relating to misleading advertising, and then goes on to list a series of practices, each of which involves a more specific instance of the general offence of misleading advertising. Misleading advertising takes place when a representation or statement is made to promote a product or business interest, and that representation or statement is either misleading or false in a material respect. It is not necessary to demonstrate that the statement was intended to mislead or that in fact anyone was actually misled by the statement. In determining whether this provision has been violated, the court will consider both the literal wording of the statements and also the "general impression" given by them. A low threshold applies to a consumer's "general impression", making it important for statements – including any disclaimers – to be accurate and clear.

Virtually any type of statement or representation comes within the misleading advertising provision, including statements appearing on a product, its wrap or container, and statements online, in-store or in other point-of-purchase displays.

In addition to the general misleading advertising offence, other activities which are prohibited under the *Competition Act* include the following:

> **Performance Claims, Warranties, Tests and Testimonials**: A statement about the performance, efficacy or length of life of a product may only be made where they are supported by "an adequate and proper test". In addition, statements concerning warranties or guarantees must not be made if they are materially misleading or there is any reasonable prospect that they will not be carried out. A representation that a test has been made as to the performance, efficacy or length of life of a product must be based on unbiased, controlled testing that is appropriate to the claim, carried out before making the representation. Testimonials with respect to a product or service may be used only if they are authorized, undistorted, and convey typical results a consumer can expect to achieve with the product or service.
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> **Double Ticketing and Sale Above Advertised Price**: Whenever two prices appear on a product, the product must be sold at the lower price. Moreover, subject to certain exceptions, the *Act* prohibits selling any product at a price which is higher than the price advertised for that product.
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> **Price Advertising and Bait and Switch Selling**: The *Competition Act* contains several provisions relating to price advertising. It is prohibited to advertise a product at a bargain price unless a reasonable supply of that product is available at that price having regard to the nature of the market, the nature and size of business carried on by the seller and the nature of the advertisement. This provision does not outlaw advertising products at bargain prices, but our Company must have reasonable quantities of those products which are advertised as being on sale, to avoid allegations of "bait and switch selling".
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> **Promotional Contests**: The *Act* establishes a number of criteria which must be satisfied by all promotional contests. There are also provisions under the *Criminal Code of Canada*, as well as under certain provincial statutes which apply to contests and other types of promotions. Careful legal review of contest rules and associated promotional materials is important, as failure to comply with certain legal requirements can be a criminal offence and may result in significant fines and imprisonment.

CIVIL REVIEWABLE PRACTICES

The *Competition Act* also provides that in specifically defined circumstances, certain types of distribution practices may be challenged. These challenges are inherently less risky than the criminal provisions such as conspiracy, since they do not involve criminal prosecution or penalty, nor are they as likely to result in class action lawsuits. However, Suncor can be ordered to cease the practices or, in some cases, pay

administrative monetary penalties. These types of civil reviewable practices, including refusal to supply, exclusive dealing, tied selling, market resale restriction, price maintenance, and other types of agreements between competitors which are not criminal but which may still injure competition, are subject to review and if it is determined that such practice injures competition then an order prohibiting its continuance can be issued. An order prohibiting the continuance of a practice can be onerous, particularly where Suncor has made a significant investment in such practice. There is also a general reviewable practice of abuse of dominant market position (or monopolization). This can apply to a single dominant firm, or a number of firms who have similar practices and do not compete vigorously or are in some way acting in concert, although no explicit agreement is required between them. By contrast to the other provisions noted above, abuse of dominant market position can give rise to fines (called administrative monetary penalties) of up to $15 million.

While these reviewable practices are not criminal offences, the Competition Tribunal may, after a hearing, judge them sufficiently anti-competitive to issue an order restraining them, and a violation of such order could be prosecuted. The *Competition Act* permits applications by third parties to the Tribunal (with leave) to seek remedial action in respect of some of the reviewable practices (refusal to deal, exclusive dealing, tied selling, market restriction and price maintenance).

The reviewable practices which are of primary concern to Suncor are the following:

Abuse of Dominant Market Position.

Abuse of a dominant market position occurs when a dominant firm in a market, or a dominant group of firms, engages in conduct that is intended to eliminate, exclude, or discipline existing competitors, or to deter future entry by new competitors, with the result that competition is prevented or lessened substantially. While there is no market share that definitively establishes dominance, where the firm's market share for a product is greater than 35%, there is some risk it will be viewed as dominant.

A substantial lessening or prevention of competition results when conduct is likely to create, maintain or enhance the firm's ability to exercise market power (e.g., raise prices or lower the quality of services). Conduct can also prevent competition by hindering the development of future competition.

If the Competition Tribunal finds that a practice of anti-competitive acts is substantially lessening or preventing competition it can order that the conduct cease, it can impose administrative monetary penalties (up to $10 million for a first occurrence or up to $15 million for subsequent occurrences), or, in extreme cases, take other action such as mandating access to scarce resources or networks.

Agreements Among Competitors (section 90.1).

This section of the *Competition Act* permits the Competition Tribunal to issue prohibition orders in respect of existing or proposed agreements between competitors or potential competitors that are likely to substantially lessen or prevent competition in any relevant market.

A substantial lessening or prevention of competition results from agreements that are likely to create, maintain or enhance the ability of the parties to the agreement to exercise market power. For example, an agreement can lessen competition where parties to the agreement are able to sustain higher prices than would exist in the absence of the agreement by diminishing existing competition. An agreement can also prevent competition by hindering the development of future competition.

The civil agreements provision can apply to all forms of agreements and arrangements between competitors, regardless of the degree of formality. Common forms of agreements between competitors that may raise

issues under this section of the *Competition Act* include commercialization agreements, information sharing agreements, research and development agreements, joint production agreements, joint purchasing agreements and non-compete agreements.

Price Maintenance.

Certain actions by a seller seeking to control the price at which his buyer disposes of a product may result in an order under the price maintenance provisions of the *Competition Act*. Under the *Competition Act* it is a reviewable practice to have influenced upward, or discouraged the reduction of, the price at which any other person supplies or offers to supply or advertises a product; or to establish a minimum price on the resale of any product if the conduct results in an adverse effect on competition. The practice can involve the making of agreements or the use of threats or promises or like means.

It is also a reviewable practice to refuse to supply a product to another person or to discriminate against such person because of the low pricing policy of that person. Any disciplining of a customer by refusal to supply or by otherwise discriminating (such as by charging higher prices) because of the low pricing policy of the customer could be a reviewable practice. It is not necessary to show that the refusal to supply arose from failure of that customer to resell the product at a specified price. To be the subject of an order, the practices under this section must be found to have an adverse effect on competition.

Under the *Act*, the suggestion of a resale price or a minimum resale price is deemed to influence price upward, unless the person making the suggestion clearly indicates that it need not be accepted and that failure to accept it would not bring about any reprisals.

In preparing suggested resale price lists, the following or similar wording should be used:

“The dealer is under no obligation to accept these suggested resale prices and may sell at any price he chooses. If he chooses to sell at prices other than those suggested, he will not suffer in any way in his business relations with Suncor or any other person over whom Suncor has control.”

Refusal to Deal.

Refusal to deal occurs when a person or company is unable to obtain supply because of insufficient competition; a potential customer is willing and able to meet usual trade terms; the product is in ample supply; the customer is materially injured by the refusal to supply; and the refusal to supply results in an adverse effect on competition. In that situation the Competition Tribunal may order one or more suppliers of a product to accept that person as a customer within a specified time and on usual trade terms.

Exclusive Dealing.

Exclusive dealing describes the method of product distribution where, as a condition of supplying product to a customer, a supplier requires or induces a customer to deal only or primarily in the supplier’s products or that the customer not deal in the products of any of the supplier’s competitors. One practice which may, in certain circumstances, amount to exclusive dealing is the use of a “requirements contract” in which the purchaser undertakes to purchase all of his requirements from a certain supplier.

To make an order prohibiting this reviewable practice or containing any other requirement to restore competition, the Competition Tribunal must make the following findings:

(a) that the practice of exclusive dealing is engaged in by a major supplier of a product or is widespread in the market;

(b) that the practice of exclusive dealing is likely to impede entry into or expansion of a firm in the market or to impede introduction of a product into or expansion of sales of a product in the market or to have any other exclusionary effect in the market; and

(c) that as a result thereof, competition is or is likely to be lessened substantially.

Market Restriction.

Market restriction is the distribution practice whereby a supplier: (i) requires that its dealers or distributors sell only to certain types of persons or only in a restricted geographical area, or (ii) penalizes its dealers or distributors for selling outside a certain market. This practice is prohibited if the market restriction is engaged in by a major supplier of a product or is widespread in relation to a product and as a result, it lessens or is likely to lessen competition substantially in relation to that product.

Tied Selling.

Tied selling occurs when a supplier engages in a practice whereby as a condition of supplying one product to a customer, the supplier requires or induces the customer to also buy another product from him, or to refrain from using another brand not obtained from the supplier. As was the case with exclusive dealing, the Competition Tribunal may only make an order with respect to tied selling if that practice is engaged in by a major supplier or is widespread in the marketplace and impedes entry of new firms or products or services into a market or has other exclusionary consequences such that it lessens or is likely to lessen competition substantially.

Delivered Pricing.

The Competition Tribunal may prohibit a supplier from engaging in a practice of refusing to permit customers to buy and take delivery of an article at any locality where the supplier makes deliveries to other customers on the same terms and conditions that are available to the customers whose business are found in the locality. In general, this provision is directed at a supplier’s practice of dividing a market into geographic zones and selling its products on a delivered price basis. It may be that a buyer in one zone could save money by buying in another zone and paying its own transportation costs.

An order may only be made in respect of delivered pricing where it is engaged in by a major supplier or is widespread in a market with the result that the customer is denied an advantage that would otherwise be available to it.

TRADE ASSOCIATIONS AND JOINT VENTURES

Certain activities involving competitors, such as trade associations or joint ventures, provide an opportunity for more frequent communications among competitors. It is important to remember communications in these contexts can also give rise to competition risk and consequences (civil or criminal).

Trade Association Activities.

Trade association activities are particularly sensitive from a competition standpoint because, by definition, trade association business involves contacts and communication among competitors. Most trade associations are advised by lawyers with experience in competition laws. The greatest competition law exposure relating to trade association activities lies not with the formal association projects, but with informal conversations and discussions that take place outside of the agreed upon parameters, including discussions that occur on the golf course, over a beer, or during a coffee break.

As indicated above, no matter when or where discussions might occur, participants in trade association activities should avoid discussing prices, terms and conditions of sale, and other issues relating to competition. It is also important to recognize that standard setting activities may raise competition concerns if standards are used to the competitive disadvantage of another firm. Before you become involved in standard setting activities, please consult with management and your business unit Legal Affairs Department. If a competitor attempts to engage you in a discussion of an improper subject at a trade association meeting or at any other time, you should immediately and unequivocally state that you will not participate in the discussion and terminate the conversation.

Joint Ventures.

Suncor participates with competitors in joint ventures, including joint bids or joint research or development projects. No activities of this type should be undertaken without thorough discussion with management and consultation with your business unit Legal Affairs Department.

APPENDIX "B"

UNITED STATES FEDERAL AND STATE ANTITRUST LAWS

The American federal and state antitrust laws establish a set of rules governing competition practices in the United States. This PG&S highlights some of the more important principles of federal and state anti-trust laws, but it is not a comprehensive analysis of the law.

The general objective of the anti-trust laws is to prohibit certain trade practices and arrangements that may operate to impede a competitive economy. The statutory language leaves wide discretion to the courts and enforcement agencies in interpreting and applying the provisions of the legislation. As a result, litigation and investigations arising from alleged violations of federal and state antitrust laws may be protracted, may involve extensive time of Suncor Personnel, and may be costly in terms of legal fees, preparation for trial, fines and penalties and otherwise.

A. THE UNITED STATES FEDERAL AND STATE ANTITRUST STATUTES

Federal Statutes.

There are four main United States federal antitrust statutes.

The *Sherman Act* prohibits (1) concerted action in the form of agreements or conspiracies that unreasonably restrain trade, and (2) unilateral conduct where a company engages in anti-competitive conduct which creates or perpetuates a monopoly over a particular product or service, or threatens to do so, as described in section D (Monopolies) below.

The *Clayton Act* prohibits "exclusive dealing" or "tying" arrangements that substantially lessen competition. Section 7 of the *Clayton Act* prohibits mergers or acquisitions that may substantially lessen competition in a market.

The *Robinson-Patman Act* generally prohibits the seller from charging similarly situated customers different prices, or favoring one customer over another with respect to promotional services or allowances.

The *Federal Trade Commission Act* prohibits unfair methods of competition and unfair or deceptive acts or practices. This statute is enforced by the Federal Trade Commission.

State Statutes.

Colorado also has a state antitrust statute that is patterned after the *Sherman Act* (*The Colorado Antitrust Act of 1992*).

Colorado also has an unfair practices statute that has two important sections (*Unfair Practices Act*). The first generally makes it unlawful to injure a competitor or destroy competition by discriminating in the price charged to buyers in different sections of a city or other geographic area unless the price difference is justified by cost or competitive factors. A second provision specifically prohibits pricing below average total cost to injure a competitor or destroy competition.

Finally, Colorado has a consumer protection statute that prohibits a wide variety of unfair or deceptive trade practices (*Colorado Consumer Protection Act*).

Most other states in which the Company conducts business have similar legislation.

Criminal Sanctions.

Violation of the *Sherman Act* is a felony for which an individual may be imprisoned for up to 10 years (the average period of incarceration for price fixing in the United States is now in excess of 30 months) and fined up to US$1 million; a corporation may be fined up to US$100 million (or even more in certain circumstances). Felony prosecutions typically are reserved for hard-core violations such as price fixing and bid rigging schemes. The United States Department of Justice is also authorized to bring actions for fines and injunctions.

Violations of the Colorado statute are Class 5 felonies punishable by fines and imprisonment.

Private Damage Actions.

Private parties can sue under federal and state law for injunctive relief and triple damages; attorney's fees are also available under federal law. Class actions are very common.

Government Contracting Prohibitions.

A company that violates state or federal antitrust law may be prohibited from contracting with the government if the violation involves the submission of bids to the government.

<u>**RELATIONS WITH COMPETITORS**</u>

Perhaps the most significant antitrust laws are the state and federal statutes that make it unlawful to enter into a contract or conspiracy in restraint of trade. The statutes require concerted action: some form of agreement or understanding among companies. However, this does not mean there must be evidence of an express contract or explicit agreement. It is sufficient to show a tacit understanding. For example, if at a trade association meeting the members discuss subjects like prices and products to be offered, the court or jury may infer a conspiracy from the communications among the competitors and their subsequent actions.

For these reasons, Suncor Personnel should avoid any contact with competitors unless it is clear from the circumstances that the contact has a lawful purpose. In no event should there be any discussion of prices, terms and conditions of sale (including credit), cost information, or any other subject relating to the marketing and sale of competing products. Suncor Personnel should consult with their business unit Legal Affairs Department for guidance if they are involved in trade or industry associations that include competitors.

That is not to say that all contact with competitors is inappropriate. Certain trade association activities are fully proper, as are transactions with competitors who also are customers or suppliers. In these instances, discussion should be limited to the terms of the transaction or, in the case of a trade association, a proper subject of trade association business as noted below.

Price Fixing and Bid Rigging.

Price fixing includes any agreement between two or more competitors that directly or indirectly affects the price of their product or service. Price fixing is unlawful – and a criminal violation –whether or not the companies have agreed on a specific price, price increase, or range of prices.

Agreements on the following subjects affecting price are considered price fixing:

- Agreements to use a formula to calculate prices;

- Agreements to use a common starting point for negotiation;
- Bid rigging, including agreements to submit complementary bids or share jobs among bidders;
- Agreements to eliminate discounts or establish the same discount level;
- Agreements to establish standard credit terms;
- Agreements on the purchase price of raw materials;
- Agreements on delivery terms or charges; and
- Agreements on the effective date of price changes.

Of course, the normal forces of competition require companies to monitor their competitors' prices. But to avoid even the appearance of collusion, it is unwise for competitors to exchange price data or other information that is sensitive from a competitive standpoint - except, of course, when the competitors are buying and selling to each other.

Bid-rigging is a form of price fixing and is illegal. The term bid-rigging generally describes a practice in which companies or persons who are invited to bid on a contract agree to set the terms under which they will bid. There are several variations of this practice: the conspirators may agree on the price to be submitted or arrange that, in consideration of future favors, one or the other of them will not bid on the particular job at hand.

However, the *Act* does not prohibit "joint-venture bidding" that serves procompetitive purposes, such as making possible a bid that neither venturer can offer alone. Likewise, with the consent of the seller, joint bids for volume purchasing can benefit competition by lowering costs. Because of the antitrust risks, however, be certain that you consult your business unit Legal Affairs Department before discussing joint bidding or any other joint venture arrangement with a competitor.

Finally, it should be noted that it is perfectly appropriate and lawful for the Company unilaterally to meet a competitor's price or any other term or condition of sale.

Dividing Territories, Allocating Customers or Limiting Production.

Any agreement among competitors to divide markets or limit production is illegal. It would not be proper for two competitors to agree that one would sell only in the southern part of a metropolitan area, and the other the northern, or that one would refrain from submitting bids to one contractor if the other refuses to sell to a different contractor.

Group Boycotts or Concerted Refusals to Deal.

It generally is unlawful for competitors to agree not to do business with another firm. Examples of potentially unlawful group boycotts are agreements not to sell to price cutting dealers and agreements not to purchase from a supplier unless prices are reduced.

Trade Association Activities.

Trade association activities are particularly sensitive from an antitrust standpoint because, by definition, trade association business involves contacts and communication among competitors. Most trade associations are

advised by lawyers with experience in the antitrust laws. The greatest antitrust exposure relating to trade association activities lies not with the formal association projects, but with informal conversations and discussions that take place outside of the agreed upon parameters, including discussions that occur on the golf course, over a beer, or during a coffee break.

As indicated above, no matter when or where discussions might occur, participants in trade association activities should avoid discussing prices, terms and conditions of sale, and other issues relating to competition. It is also important to recognize that standard setting activities may raise antitrust concerns if standards are used to the competitive disadvantage of another firm. Before you become involved in standard setting activities, please consult with management and your business unit Legal Affairs Department. If a competitor attempts to engage you in a discussion of an improper subject at a trade association meeting or at any other time, you should immediately and unequivocally state that you will not participate in the discussion and terminate the conversation.

Joint Ventures.

Suncor participates with competitors in joint ventures, including joint bids or joint research or development projects. No activities of this type should be undertaken without thorough discussion with management and consultation with your business unit Legal Affairs Department.

RELATIONS WITH CUSTOMERS

Resale Price Restrictions.

It may be unlawful for a supplier to dictate the resale price charged by its customer. Resale price maintenance or vertical price fixing occurs when the supplier and customer agree upon the price at which the customer will resell the product. The law in this area is complex. No effort should be made to set the price charged on resale by customers without a thorough discussion with management and your business unit Legal Affairs Department.

Territory and Customer Restrictions.

Antitrust issues may also be raised if we attempt to restrict our customers to reselling our product in a particular geographic territory or to specific customers or classes of customers. The legality of these arrangements depends upon a variety of complicated issues. Once again, before imposing territory or customer restrictions, these arrangements should be discussed with management and your business unit Legal Affairs Department.

Customer Termination.

While Suncor is free to select its own customers and suppliers, it must do so independently. An understanding or agreement to do or refrain from doing business with a third party may be an illegal conspiracy to lessen competition. For example, if, after discussing the matter with other distributors, Suncor decides not to sell product to a distributor who has the reputation of price-cutting, it might be alleged that our decision to terminate sales to the distributor was the product of a conspiracy or agreement with other distributors. Similarly, we should not discuss such matters with our competitors. Defending lawsuits is expensive, even when our defence has merit. It is important to make independent decisions regarding our relationship with our customers, particularly when we decide not to sell to them, to minimize the possibility of litigation.

Exclusive Dealing and Tying Arrangements.

Exclusive dealing can raise antitrust problems when our decision to deal exclusively with a particular customer also requires that customer to refrain from selling competitive products. Tying arrangements occur when a company sells one product only on the condition that the buyer also purchases another product or service.

Any proposed exclusive dealing or tying arrangement must be discussed with management and your business unit Legal Affairs Department before it is adopted.

Price Discrimination and Pricing Below Cost.

The state and federal antitrust laws prohibit charging competing buyers different prices unless certain conditions are met. Most significantly, price differentials may be justified to meet competitive conditions. If the Company has the good faith belief that the lower price is necessary to respond to a price quoted by a competitor, then the differential generally would be lawful. Similarly, when a demonstrable cost savings in sales to the favored customer justifies the price differential, the lower price is lawful.

The price discrimination statutes also apply to promotional allowances or services that must be made available to competing customers on proportionately equal terms. Price discrimination statutes are complex and management and your business unit Legal Affairs Department should be consulted whenever a price differential is not clearly justified by competitive conditions.

In addition, the Colorado unfair practices statute makes it unlawful to sell below cost “for the purpose of injuring competitors and destroying competition.” Under the Colorado statute, “cost” is defined to include the cost of raw materials, labor and all overhead expenses – which basically means average **total** cost. The state statute is potentially more restrictive than the federal antitrust law. As described below, the federal statute generally prohibits below cost pricing only when the seller prices below average variable cost and, due to its dominant position in the market, the seller has the ability to recoup losses by raising prices in the future.

Other states also frequently have similar price discrimination and unfair practices statutes.

<u>MONOPOLIES</u>

As indicated above, the federal and state antitrust laws also apply to companies acting alone but which have a dominant position in the marketplace. In a nutshell, there are some kinds of competitive conduct that might be perfectly legal for a company with a small market share, but which create significant antitrust risks for a dominant firm.

Suncor is fortunate to have a strong market position in certain areas of its business. In those markets, we must avoid competitive tactics that might be viewed as designed to exclude or injure present or potential competitors. Examples of this kind of conduct include predatory pricing, which, is usually defined as pricing below average variable cost. Nonetheless, in light of potentially more restrictive state antitrust statutes, our products should never be sold below average total cost without first obtaining the approval of management. Refusals to deal with competitors solely to deny them access to a critical service or raw material can create monopolization issues.

In fact, a good rule of thumb is that Suncor should avoid competitive actions that cannot be justified by sound business considerations, including, fundamentally, competition on the basis of price, service and quality. In

other words, if the conduct only makes sense because of the harm to or exclusion of a competitor, as opposed to the benefits it brings to Suncor and its customers, it may be problematic.

UNFAIR COMPETITION

State and federal statutes prohibit “unfair methods of competition” or deceptive practices. Of course, what is unfair or deceptive often rests with the eye of the beholder. Nonetheless, the following practices raise questions and should be avoided:

- Commercial bribery;
- Coercion of customers, competitors or suppliers;
- Offering special benefits to customers who agree not to purchase competing product lines;
- Acquiring trade secrets by unfair means;
- Making false or deceptive comparisons of competitors or their products;
- Misrepresenting the price or quality of a competing product; and
- Passing off one company’s products as those of another by copying advertising or trademarks.

APPENDIX "C"

EUROPEAN UNION ANTITRUST LAWS

The European Union (EU) competition laws establish a set of rules governing competition practices in the European Union. This PG&S highlights some of the more important principles of European Union competition laws, but it is not a comprehensive analysis of the law.

The general objective of the competition laws is to prohibit certain trade practices and arrangements that may operate to impede a competitive economy. The statutory language leaves wide discretion to the courts and enforcement agencies in interpreting and applying the provisions of the legislation. As a result, litigation and investigations arising from alleged violations of European Union competition laws may be protracted, may involve extensive time of Suncor Personnel, and may be costly in terms of legal fees, preparation for trial, fines and penalties and otherwise.

A. <u>THE RULES</u>

1. Overview.

EU competition rules concern everyone who does business in the EU, as they apply directly to all companies which are active within the EU as well as Iceland, Lichtenstein and Norway.

EU competition rules are set out in Articles 101 and 102 of the Treaty on the Functioning of the EU (the "EC Treaty").

Article 101 of the EC Treaty prohibits anticompetitive agreements and arrangements between companies that affect trade between EU member states and that have as their object or effect the prevention, restriction or distortion of competition within the EU. Generally, any arrangement prohibited under Article 101 is automatically void under European law.

Article 102 of the EC Treaty forbids prohibits abuses of a dominant market position within the common market by one or more companies. Apart from various actions specifically listed in Article 82(2), abuses may take the form of any conduct by a dominant undertaking that appreciably distorts competition or exploits customers in the market in question.

2. Enforcement.

The European Commissioner responsible for Competition, together with the national competition authorities, directly enforces EU competition rules, being Articles 101-109 of the EC Treaty. Within the EC, the Directorate-General (DG) for Competition is primarily responsible for these direct enforcement powers.

3. Penalties.

Companies whose market behavior fails to comply with EU competition rules run the risk of incurring extremely high fines (up to 10 percent of worldwide sales) and facing other negative consequences. In addition to damaging the Company's reputation, the penalties for violating European competition rules can be severe, and may include fines, prohibition orders, and imprisonment. Fines may be imposed even where the illegal purpose of an infringement was not actually achieved.

In addition to imposing fines on companies, a number of member states provide for sanctions on individuals. The laws of some countries even allow jail sentences for individuals involved in general competition law infringements and/or in certain pre-defined types of infringements (e.g., bid-rigging). Such sanctions can be separate or cumulatively applied on top of pecuniary sanctions. Suncor Personnel who behave in an unlawful way therefore run the risk of jail in certain member states.

B. ARTICLE 101

Anticompetitive contacts between companies which, irrespective of their form, may distort the normal play of competitive forces are prohibited. Such contacts can take many forms and do not require the formal acceptance by the companies involved through an agreement. Even informal arrangements among business representatives can be considered illegal.

The most striking examples of anticompetitive contacts between companies include price fixing, sharing markets or customer allocation, production or output limitation. Bid-rigging, although not expressly highlighted by Article 101, has also been found to fall within its scope. Each of these practices are considered ‘hardcore’ restrictions of competition as they are by their very nature most likely to restrict competition.

Private exchanges between competing companies of individualized information concerning their intended future prices or quantities can also amount to a hardcore infringement.

More generally all exchanges of confidential, strategic information between competitors can give rise to competition concerns. This concerns all types of information that reduces strategic uncertainty in the market, for example relating to production costs, customer lists, turnover, sales, capacities, qualities, marketing plans, etc. Furthermore, even the unilateral disclosure of strategic information by one company via mail, email, phone calls or meetings to its competitor(s) can be considered problematic.

Agreements between different distribution levels – so called “vertical” agreements – such as market restriction, tied selling, exclusive dealing and price maintenance, to name the most common of the vertical agreements, are generally treated more strictly in Europe than in North America. The advice of your business unit Legal Affairs Department should be sought when entering into such agreements applicable in Europe.

C. ARTICLE 102

If companies have a large proportion of the business in a particular market, they are likely to hold a dominant position in that market. Suncor is fortunate to have a strong position in certain areas of the European market and accordingly has a special responsibility not to engage in behavior which is considered abusive. The Company must not act in a way that prevents competitors from competing effectively or drives them out of the market.

Examples of abusive conduct on the part of dominant companies are: charging unreasonably high prices which may exploit customers; charging unrealistically low prices which may be used to drive competitors out of the market; unjustified discrimination between customers; and forcing unjustified trading conditions (exclusivity or logistical constraints) if exerted on trading partners.

APPENDIX “D”

PRACTICAL SUGGESTIONS

Competitive Considerations.

Are you doing or thinking about any of the following activities? If so, you should understand the implications under antitrust and unfair competition laws. **THESE SUGGESTIONS ARE NOT INTENDED AS SPECIFIC LEGAL ADVICE. YOU SHOULD CONSULT YOUR BUSINESS UNIT LEGAL AFFAIRS DEPARTMENT BEFORE YOU ENGAGE IN THEM.**

- Competitors: are you planning to meet with any of your competitors? Do you work with them in a joint venture? Do you visit with them over the telephone? E-mail them? Talk with them at trade association meetings? Mail catalogues, price lists, or other items to them?

- Customers: do you attempt to influence your customers about the prices that are charged when they resell your product or the customers to whom or areas in which they resell? Do you assign customers exclusive areas in which to resell your product?

- Two products: do you require or expect your customers who wish to buy one product from you to also buy another product or service? Do you package different products together and sell those products only in packaged form?

- Exclusive dealing: do you require or expect that your customers will deal only with you?

- Reciprocal dealing: do you expect or urge your suppliers also to buy from you the products you offer?

- Market power: do you possess a substantial market share or have substantial purchasing power in the market? Do you ever sell below cost?

- Comparative advertising: does your advertising comment on the quality, reliability, viability or pricing of your competitors or their products?

- Product claims: can you substantiate the claims used in the advertising for your products?

- Joint ventures: Have you ever engaged with competitors on joint purchasing activities? These can have complicated legal implications and you should consult your business unit Legal Affairs Department for advice.

Documentation.

Careful documentation of the proper justification for Suncor’s competitive activities is extremely helpful. While documentation will not make unlawful conduct legal, it will document an activity and avoid inappropriate mischaracterization or inferences.

By the same token, however, careless language can give the wrong impression and be extremely harmful. Keep in mind the following list of practical suggestions:

- Make a note of the source of the information when a customer gives you competitive pricing information.

- When competitive forces require you to give a discount to obtain or retain business, put a note in the file along the lines of:

  > On [date] I offered [customer] the discounted price of [$], I offered this price based upon my belief that this price is necessary to [obtain or keep] the [customer's] business. It is my understanding from [the customer] that [competitor] has offered them a price of [$], and unless we meet that price we will not make the sale.

- Avoid using words or phrases that suggest you feel guilty about what you are doing or writing, such as "please destroy after reading."

- Avoid exaggeration -- "this program will destroy the competition".

- Don't speculate about whether certain conduct is lawful or not.

- Don't describe competition as undesirable or unethical. Avoid denigrating price-cutting and don't refer to lost customers as "stolen".

- When discussing competition prices, avoid giving the false impression that Suncor is not competing vigorously or that the Company's prices are based upon anything other than our own business judgment.

- Do not suggest that special treatment is being given to a particular customer or class of customers – "for you alone."

- Do not disparage your competitors or their products.

- Don't use language that suggests that Suncor is acting pursuant to "industry agreement" or "industry policy" rather than as a matter of our own self-interest.