KAMAN ANTITRUST COMPLIANCE GUIDE

TABLE OF CONTENTS

INTRODUCTION

Kaman Corporation believes without reservation in the free competitive economic system of our country to deal fairly, equally and openly with customers and suppliers, and to compete aggressively but independently – these are principles designed not only to build a successful corporation but also to ensure free enterprise.

Primary responsibility for compliance with antitrust and trade regulation laws rests with each individual employee whose duties and responsibilities relate to these laws. This guide is designed to assist employees of the company in recognizing antitrust and trade regulation problem areas. The discussions are not intended to be all-inclusive but rather to cover those principles of the antitrust laws that apply to the day-to-day relations between our company and its customers, suppliers and competitors in order to enable you to identify problem areas. When you identify a problem area, you should consult with the law department as soon as possible.

Neal J. Keating
Chairman of the Board,
President and
Chief Executive Officer
Kaman Corporation

I. GENERAL LEGAL RESPONSIBILITIES AND LIABILITY

Corporate policy requires strict compliance with antitrust and trade regulation laws. No officer, employee or agent has any authority to engage in any conduct inconsistent with the antitrust laws, nor to authorize, direct or condone such conduct by any other person. Any violation of the company's policy shall be subject to severe disciplinary action, including discharge, depending upon the gravity of the offense. There is no area in which negligent or willful disregard of Corporate policy and applicable law could be more harmful to the reputation and future of the company. The observance of these laws is important, not only to Kaman Corporation, but also to individual employees since they cannot be sheltered by the corporation or escape the consequences of their acts. *Failure to be informed in this area may affect the employee's personal economic security, standing in the community and, in extreme cases, personal freedom.*

Currently, individual offenders can be imprisoned for up to ten years and can be fined the greater of $1 million or twice the gross pecuniary loss caused (or gain derived) from the crime, for each offense. Individuals convicted of antitrust offenses, whether U.S. citizens or foreign defendants, routinely receive prison sentences. Where in the past, judges often placed persons convicted of antitrust crimes on probation given their status in the community, now such defendants must routinely serve, at a minimum, between 4 and 10 months in jail.

A corporation can be fined the greater of $100 million or twice the gross pecuniary loss caused (or gain derived) from the crime, for each offense. In addition, private parties (such as customers) and state attorneys general can bring civil suits and recover <u>three times</u> their actual damages, plus attorney's fees and court costs. Treble damage judgments in civil suits can amount to tens or even hundreds of millions of dollars.

A violation of the antitrust laws can result in prosecution of a corporation and its employees under other criminal and civil laws, as well. Today, federal prosecutors routinely add wire and mail fraud counts to antitrust charges, which may result in an additional prison sentence of up to 20 years and/or fines. These prosecutors may also add "racketeering" counts, which for each such count may result in a prison sentence of up to 20 years and/or fines plus forfeiture of all ill-gotten gains.

For certain antitrust violations involving contracts or bids with the U.S. Government or its agencies, prosecutors have an option to bring a civil action under the False Claims Act for treble damages and civil penalties between $5,000 and $10,000. Federal Government prosecutors also vigorously prosecute cases of perjury and false declarations, which are punishable by monetary fines and/or imprisonment for up to five years. Under recent legislation, the destruction or concealment of any document for the purpose of impeding, obstructing or influencing the investigation of a federal antitrust agency can also be prosecuted, and such conduct may subject the individual(s) responsible to criminal penalties, including 20 years imprisonment and/or criminal fines.

Companies found guilty of certain antitrust violations, such as price fixing, may be debarred for a period of years from future government business, including competitive bids for major government purchases of goods and services. Moreover, even meritless antitrust suits are expensive and time consuming to defend and are disruptive of normal business operations.

The U.S. antitrust statutes do not apply solely to conduct that takes place within the territorial boundaries of the United States. To the contrary, U.S. antitrust laws police every activity that affects commerce in the United States (including import and export activity), regardless of where the activity occurs. The Department of Justice has demonstrated a willingness to prosecute vigorously any antitrust violations wherever conduct occurs, if the conduct has a direct, substantial and reasonably foreseeable effect on U.S. commerce or persons.

For actions occurring outside the United States, antitrust laws of other countries may also apply. For example, in the EU and in Canada, individual offenders can be criminally prosecuted and are exposed to criminal fines and/or imprisonment in Canada and in several of the EU Member States, such as the UK and Ireland. The European Commission can also impose fines of up to 10% of a company's worldwide sales, and third parties can claim damages in national courts in the EU for the losses caused by an anticompetitive practice. Similar civil rights of action are available to third parties in Canada, and in Mexico a Federal Commission on Competition has been established to impose penalties. Moreover, under EU law, an anticompetitive agreement is deemed null and void. As a general matter, you should assume that all conduct which is illegal under U.S. law is also illegal under Canadian, Mexican and EU Law, unless an exception is noted in this guide.

In certain respects, the policy set forth in this guide goes beyond the letter of the law because the company believes it is prudent to avoid even the appearance of improper behavior in its operations. Always consult with the law department whenever you have questions about the legality of a given transaction or course of conduct. ***Ignorance of the law is no defense to noncompliance.***

II. ARRANGEMENTS WITH COMPETITORS

A. Price Fixing

ANY AGREEMENT WITH A COMPETITOR OR COMPETITORS RELATING TO PRICES, TERMS OR CONDITIONS OF SALE IS ILLEGAL ***PER SE***. ***Per se*** means that it is automatically unlawful regardless of the circumstances. Thus there can be no justification for the agreement, such as the fact that the price, term or condition of sale is reasonable.

The agreement does not have to be formal but may be ***inferred*** from a course of conduct such as: exchanging information with competitors on prices, terms and conditions of sale, or otherwise verifying prices or terms and conditions directly with a competitor when published price lists are not generally available.

There are many cases in which companies and their managers have been held guilty of unlawful conspiracies where there was ***no agreement*** but where they followed changes in pricing and discount schedules described to them by other competing companies in the industry. The mere fact that they ***met, received*** information (even if indirectly) from a competitor and then ***acted*** was enough to create the ***inference*** of an illegal arrangement with competitors.

Although there may be ***no agreement*** between competitors, courts have found illegality in even occasional contacts or chance meetings involving the subject of pricing or the exchange of price information where such contacts can have the effect of creating conformity in pricing.

If a competitor asks you what your price is or inquires as to any terms and conditions which may affect price, you should simply refuse to answer the question and terminate further discussion.

It is especially important to remember that your personal contacts as well as your written words could be subject to misinterpretation. Choose your words carefully and be ***factual*** in your letters, memos and notes. Because of the potential for electronic communications (e.g., email) to be stored indefinitely, all electronic communications should be thoughtfully written and treated as formal documents. Careless wording in email that could be subject to misinterpretation should be strictly avoided.

Do not speculate about what a competitor is going to do or what you think he is going to do with his prices or other terms and conditions of sale. Do not refer to competitors' prices or any pattern of prices in the marketplace (discounts, markups or other terms of sale), unless there is a legitimate source for the information (such as a customer threatening to switch to a competitor's lower prices absent discounts from the company or publicly available materials from a competitor's website) that is referenced as a source. Years later your memo or letter or note could be read by a prosecuting attorney or congressional investigator who could draw

incorrect inferences from what was innocently stated. ***Your pricing must be arrived at independently.***

It is of utmost importance to conduct your relationships with competitors (whether or not in writing) at all times as if they were in public view and to avoid any action which would tend to imply collusion or which would ***create the impression*** that the action which you take is not completely unilateral and independent.

Extreme care must be taken by employees involved in the preparation and submission of competitive bids. Communications with competitors that result in bid suppression or limitation, complementary bidding (competitors agree to submit token bids that are too high yet appear genuine) or bid rotations (competitors agree to take turns being the low bidder) subject both the individual and the Company to criminal antitrust prosecution.

B. Allocating Markets, Territories or Customers

GENERALLY ***YOU CANNOT AGREE NOT TO COMPETE*** WITH A COMPETITOR (for agreements between parties who are usually not competitors – i.e., suppliers and distributors/dealers – see Section IV in general and specifically IV(f)). Agreements among competitors which effect a division of markets, territories or customers are illegal ***per se***. Typically such conduct occurs where two competitors agree not to sell in the same geographic market or to the same customers. Similarly an agreement among competitors that one competitor will be low bidder on a particular procurement is also illegal ***per se***.

In addition, exchanges of customer information among competitors have been the basis for ***inferring*** illegal allocations of customers and markets. For example, the exchange with competitors of names of existing or potential customers or the quality or type of sales to such customers can lead to an inference that the competitors have agreed not to compete for each other's customers or have otherwise illegally allocated the customers among themselves.

Canadian and EU law is also particularly sensitive about agreements among competitors that would protect, separate or allocate national markets in the EU. For example, it would be illegal for a company to agree with a competitor to license the manufacture of its product only in France so long as the competitor licensed the manufacture of its product only in Germany.

C. Trade Association Membership and Meetings with Competitors

WHILE TRADE ASSOCIATIONS USUALLY SERVE LEGITIMATE BUSINESS PURPOSES THEY INHERENTLY RAISE THE POSSIBILITY OF ANTITRUST PROBLEMS SIMPLY BECAUSE THEY ARE MEETINGS OF COMPETITORS. For this reason they provide the opportunity for competitors to reach agreement on subjects that are

prohibited by the antitrust laws, such as, prices, terms and conditions of sale, customers and territories.

It is widely known that most antitrust lawyers are very suspicious of trade association meetings and other meetings of competitors. At the slightest hint of any kind of collusion among competitors about prices, the government will subpoena the records of all those people who might have attended relevant trade association meetings. Remember the antitrust laws hold you personally responsible even for actions taken solely for your company.

Attend only those trade association meetings that are absolutely necessary; and do not talk about pricing or customer-specific data, either directly or indirectly, whether at formal meetings or informally. Indeed, at any informal gathering before or after a trade association meeting you should avoid all conversations that relate in any way to business.

If you find yourself present when representatives of your competitors begin discussing prices, terms or conditions of sale ***leave the meeting immediately and conspicuously***. Do not take the chance that your refusal to participate may be overlooked. It is ***not*** enough to refuse to participate, you must also take steps to avoid any conduct (such as appearing to sit by quietly) which makes it appear that you have participated or acquiesced. When you return to your office contact the law department and inform it of the events immediately so that the proper steps can be taken to protect yourself and the company should questions ever arise as to the meeting.

D. Output Restrictions

It is also prohibited to agree with a competitor to (a) limit the quantity or quality of a product licensed, produced or sold; (b) refrain from introducing new products or eliminating old ones; (c) accelerate or postpone the introduction or withdrawal of a product; or (d) reduce the variety, content, distribution or characteristics of a product.

III. CUSTOMER SELECTION AND REFUSALS TO DEAL

GENERALLY SPEAKING A COMPANY, ***ACTING ALONE*** AND IN GOOD FAITH, HAS THE RIGHT TO SELECT THOSE WITH WHOM IT WISHES TO DEAL AND TO REFUSE TO DEAL WITH ANYONE FOR ANY REASON OR FOR NO REASON PROVIDED IT HAS NOT PREVIOUSLY ESTABLISHED A DEALING RELATIONSHIP WITH THAT PERSON. However, agreeing with or even conferring with another company regarding a refusal to deal can constitute an illegal conspiracy or combination with the other company. This is true regardless of whether the other company is a competitor, a supplier or a customer. (Exchanges of credit data, for example, if done at all, should not involve opinions or subjective statements but should be limited to facts.)

Such agreements among competitors or suppliers or customers not to deal with others are generally illegal ***per se***. Such agreements are referred to as "concerted refusals to deal" or as "group boycotts." An example would be an agreement between competitors that neither will sell to Company X or that neither will buy from Company X. Another example might be an agreement between a supplier and a group of customers that the supplier will cease doing business with one of its customers with whom the group competes. A ***unilateral*** refusal to deal (with a distributor/dealer with which there have been no prior dealings) – as distinguished from a concerted refusal to deal, or group boycott – is lawful as long as it is not part of an attempt to injure competition or an attempt to monopolize a market.

Terminating distributors/dealers has definite antitrust implications and is becoming increasingly troublesome. While distributors/dealers may be lawfully terminated for legitimate business reasons (such as failure to provide adequate sales coverage within their areas of primary responsibility, failure to provide adequate service, failure to maintain adequate sales offices, failure to keep up a fiscally sound operation, et cetera), there is extreme danger and risk in *any* termination or in any threat to terminate. More and more terminated distributors/dealers are suing over their termination, alleging that their termination was part of an unlawful conspiracy in restraint of trade, an attempt to maintain resale prices, or an attempt to restrict distributors/dealers to limited geographical areas or customers or otherwise due to any number of anticompetitive practices.

Although many of these suits have no merit – and often are filed to harass their former suppliers into making a payment to settle the suit – considerable time and money can be spent in defending a suit as a result of any termination of a distributor/dealer.

In addition, under Canadian and EU law, refusals to deal and termination are subject to special requirements if the company has a dominant position (see "Dominant Position" section below).

Appointment of an exclusive distributor/dealer should be avoided ***where possible.*** An exclusive distributor/dealer obtains a preferred position – sometimes a "locked in" position – in its territory. This means that without the proper safeguards, any change in distribution in the distributor's/dealer's

territory – such as reducing the territory, establishing a branch office in the territory or selling directly to ultimate customers in the territory – may require the distributor's/dealer's consent or his outright termination.

Some companies seek to avoid problems in terminating their distributors/dealers by entering into ***written distributorship or dealer agreements or contracts*** providing for specific expiration dates and having early termination rights in the event of default or otherwise. Such agreements usually set forth the rights and duties of distributors/dealers and, when handled properly, can be of immense help in defining the relationship and in eliminating misunderstandings. In such cases the risk of terminating a dealer (in accordance with the agreed-upon provisions of the contract) is diminished ***provided the company has enforced the terms of such agreements consistently in all cases.*** Therefore, a company which automatically renews its written distributorship/dealer agreements year after year regardless of breach or non-performance cannot suddenly seek to hide behind the wording of the agreement and terminate a distributor/dealer without facing the same risks as in a case of a termination in which there is no written agreement. ***Remember, – a written agreement is only as good as the people behind it.*** An agreement can be flawlessly worded yet if the parties to the agreement do not abide by its provisions, their actions (and not the agreement) will become determinative of their rights and obligations under the law.

IV. ARRANGEMENTS WITH DISTRIBUTORS AND/OR DEALERS

A. "Exclusive" Agreements

IT IS LEGALLY PERMISSIBLE FOR A COMPANY TO APPOINT A DISTRIBUTOR/DEALER AS ITS "EXCLUSIVE" IN A SPECIFIED GEOGRAPHICAL AREA. When this is done without reservation or limitation, it means that the appointing company agrees that it will sell in the specified area only through the appointed distributor/dealer and will not appoint another distributor/dealer in the same area, or part of it, and will not sell directly to customers within that area.

As noted further below, specific rules apply to exclusive distribution agreements in Canada and in the EU.

B. Restricting Distributors/Dealers to Territories

ALTHOUGH A SUPPLIER LEGALLY MAY DECIDE TO SELL EXCLUSIVELY THROUGH SELECTED DISTRIBUTORS/DEALERS IN SPECIFIED TERRITORIES, IT MAY BE UNLAWFUL TO RESTRICT DISTRIBUTORS/ DEALERS TO SPECIFIED TERRITORIES. That is, it may be unlawful to prevent distributors/dealers from selling outside of assigned territories. The lawfulness of such restrictions is judged on the basis of the reasonableness of their effect on competition. In determining reasonableness, courts look to whether the restraint imposed promotes competition or suppresses it. One of the factors the courts focus on is the business purpose of the restriction. Under certain circumstances, restraint that reduces intrabrand competition (i.e. Ford automobile products) in order to promote interbrand competition (i.e., Ford, General Motors, Toyota, etc.) is reasonable. Thus, geographic restrictions on distributors/ dealers can be lawful; however, if they are to be considered, advice of counsel is essential.

It is permissible in all cases to select distributors/dealers to cover certain geographical areas and assign them those areas as their "area of primary responsibility."

Special principles apply to territorial restrictions in the European Union. EU law is extremely strict on agreements or conduct that unjustifiably restrains the flow of goods or services across EU Member States borders, such as absolute bans on exports to other Member States or restrictions on parallel imports (i.e., prohibiting the sale of a good to anyone who would resell it into another Member State). Similar market restrictions are prohibited in Canada. While under appropriate circumstances a distributor may be prevented from actively seeking customers for products outside his assigned territory ("active sales"), given their complexity and seriousness, any territorial and/or customer restrictions should be reviewed by the law department before they are implemented.

C. Restricting Distributors/Dealers to Certain Customers

The law relating to restricting distributors/dealers to certain customers is the same as that relating to restricting distributors/dealers to specified territories. Thus, a supplier legally may decide to sell exclusively to certain customers or classes of customers through selected distributors/dealers. For example, a supplier may appoint certain distributors/dealers to resell to wholesalers, and other distributors/dealers to resell to retailers or to ultimate consumers. However, it may be unlawful for the supplier to prevent its distributors/dealers from reselling to each other's customers, or classes of customers. As in the case of restricting distributors/dealers to specified territories, recent court decisions have held that restricting distributors/dealers to specified customers, or classes of customers, is to be judged on the basis of the reasonableness of the restriction's effect on competition.

Further, specific rules apply to distribution agreements under Canadian and EU law. For example, the restriction of passive sales to an exclusive customer group that is reserved for the supplier or for another distributor is unlawful, except for restrictions on sales to end users by a distributor operating at the wholesale level.

Therefore, consultation with the law department is essential before setting up customer restrictions.

It is permissible to select distributors/dealers who specialize in selling to certain classes or types of customers and to assign them those customers as their primary responsibility.

D. Restrictions on the Handling of Competing Products

IT IS UNLAWFUL TO REQUIRE DISTRIBUTORS/DEALERS TO HANDLE ONE PRODUCT TO THE EXCLUSION OF SIMILAR PRODUCTS MADE OR SOLD BY COMPETITORS WHEN THE EFFECT MAY BE A SUBSTANTIAL LESSENING OF COMPETITION OR A TENDENCY TOWARD MONOPOLY. Under this test, the total number of distributors/dealers thus restricted and their size, considered in relation to the total number of similar distributors/dealers in the country and in the applicable regional or local area, would be the key to determining legality or illegality. It takes only a very low ratio of restricted distributors/dealers to total distributors/dealers to make such exclusive dealing unlawful. Therefore, exclusive dealing or restrictions on competing products should never be undertaken or required without first consulting the law department. It should also be noted that the U.S. has entered into various treaties of international antitrust cooperation with Canada and the European Union to foster an international enforcement of these rules.

Again, in Canada, Mexico and in the EU, specific rules apply, and the assessment of restrictions on competing products will also be based on the duration of the restriction and the parties' market shares.

E. Resale Price Maintenance

TRADITIONALLY, IT HAS BEEN ILLEGAL ***PER SE*** TO AGREE WITH A DISTRIBUTOR/ DEALER OR ANY OTHER RESELLER ON THE PRICE AT WHICH SUCH DISTRIBUTOR/DEALER WILL RESELL A PRODUCT.

It has also been illegal ***per se*** to exert any type of pressure or coercion on a distributor/dealer or other reseller to force them to resell at a stipulated price or to otherwise attempt to control the retail prices of such distributor/dealer.

Recently the U.S. Supreme Court has ruled that such agreements between producers and dealers setting the minimum resale price of goods will no longer automatically be considered illegal. Instead, such agreements will be analyzed by courts under a "rule of reason". This means that the courts will look at the facts of the case and determine whether a restrictive pricing practice should be prohibited as imposing an unreasonable restraint on competition.

The extent of the present state of the law would be to permit a company to suggest retail prices to distributors/dealers (i.e., the "suggested retail price"). In addition, there may be circumstances under which a company may seek to require the distributor/dealer to agree upon a resale price. However, just because resale price maintenance is not *per se* illegal anymore, it does not mean that it is *always* legal either. Therefore, the law department should always be consulted before any consideration is given to either fixing resale prices with a distributor/dealer, or terminating a distributor/dealer for refusing to adhere to a suggested retail price.

F. Preventing Competition Among Distributors/Dealers

In addition to the legal concerns regarding restricting distributors/dealers to specified territories or customers, a supplier generally cannot prevent other forms of competition among its distributors/dealers. Thus, a supplier generally cannot, for example:

a. prevent any of its distributors/dealers from bidding on certain jobs,

b. notify any of its distributors/dealers that other distributors/ dealers are to be favored on certain jobs,

c. agree with a distributor/dealer on the prices, terms or conditions which the distributor/dealer will offer, or

d. combine or conspire with distributors/dealers to divide or allocate territories or customers among distributors/dealers (as distinguished from unilaterally restricting distributors/ dealers to certain territories or customers).

The situation is also different (and becomes much more critical) in the case of "dual distribution" where a supplier acts as its own distributor/dealer as well as selling through other independent distributors/dealers. The supplier in such a situation is also a competitor

of the distributor/dealer and thus the prohibitions described in Section II.B may apply to their relationship as well.

Under Canadian and EU law, it is also unlawful for a supplier to restrict active reselling or passive reselling (i.e. responding to unsolicited approaches from outside the assigned territory) of products among selected distributors. Passive reselling would encompass internet sales and the distinction between active and passive reselling can be a significant one, especially under EU law, where the intent of European Commission is to foster cross-border selling. Therefore, restrictions on a dealer's ability to compete with other dealers must be reviewed by the law department before they are implemented.

G. Conclusion

In conclusion, distributors/dealers can always lawfully be terminated for legitimate business reasons, such as failure to provide adequate sales coverage within their areas of primary responsibility, failure to provide adequate service, failure to maintain adequate sales offices, failure to maintain a financially sound operation, etc.

As noted in the preceding sections, however, threatening to terminate a distributor/dealer can constitute coercion to adhere to suggested resale prices, or coercion to discontinue dealing in competitors' products, or coercion to prevent other forms of competition among distributors. Furthermore, the termination of a distributor may violate various state laws, as well as Canadian, Mexican and EU law to the extent the distributor operates in those regions. Therefore, a distributor/dealer should <u>never</u> be terminated, or threatened with termination, without the prior advice and assistance of counsel.

V. PRICE DISCRIMINATION

A. Offenses

CHARGING DIFFERENT PRICES TO DIFFERENT CUSTOMERS FOR THE SAME THING IS GENERALLY ILLEGAL WHEN COMPETITION IS LIKELY TO BE IMPAIRED. This is price discrimination. In order for there to be an ***illegal*** discrimination there must be sales at different prices of products of like grade and quality to two or more different purchasers who compete in the resale of such products and the discrimination must take place at about the same period of time. ***All*** these conditions must be present. Thus, if there are only services involved, and not products, the price discrimination rules would not apply. Also, if the products are not of the same grade and quality there would be no unlawful price discrimination (however, superficial differences, such as a different color of paint or a different name would not suffice).

It should be noted that the impairment of competition can be on several levels:

(1) The ***primary level*** involves the effect on competing suppliers. For example, Supplier A offers special deals to take customers away from competing Supplier B. Supplier B would be injured if Supplier A's "special deals" were predatory (below cost).

(2) ***Buyer or customer level(s)*** involve the effect on competition among customers or customers of customers rather than on competition among suppliers. For example, Supplier A offers one of its customers a special deal and there are other customers of Supplier A in competition with the favored customer. The nonfavored customers would have a cause of action against Supplier A. However, price "discriminations" among different classes of customers which are not in competition would not be illegal. For example, sale of plastic at different prices to those who use it for auto steering wheels and those who use it for toys is permissible since automobile manufacturers do not compete with toy manufacturers. Price differentials between wholesale and retail outlets may also be permissible.

It should be further noted that price discrimination is generally illegal regardless of whether it is direct (the actual dollar price itself) or indirect (differences in terms of sale such as making promotional/advertising allowances, delivery terms or specific discounts available to one purchaser but not to another). Also, just as it is generally illegal to ***grant*** a discriminatory price, it is equally illegal to ***induce or receive*** a discriminatory price or the benefit of a discrimination in price where one is aware the discrimination exists or, under the circumstances, has reason to be aware that a discrimination might exist.

B. Defenses

Even if all of the conditions for an unlawful price discrimination are present, THE DISCRIMINATION IN PRICE MAY YET BE LAWFUL IF CERTAIN DEFENSES ARE MET UNDER CERTAIN VERY LIMITED CIRCUMSTANCES. The three principal defenses to a charge of price discrimination are (1) ***meeting competition*** in good faith, (2) ***cost justification*** and (3) ***functional discounts***.

1 . Meeting Competition

A price discrimination can be justified by showing it was made in good faith to meet what is believed to be a lawful, specific and equally low price of a competitor. Reasonable belief as to the competitor's price and its lawfulness is sufficient and it should be remembered that ***the competitor must not be contacted to determine what its price was***. Instead you may refer to the competitor's published price list if it is publicly available or you may ask your customer to show you the competitor's quotation which you are being asked to meet.

Under U.S. law, it is important to note that the meeting competition defense only applies where a competitor's price is ***met***. The defense does not allow you to ***beat*** a competitor's price. Accordingly, the defense of "meeting competition" does not always allow a company to meet a competitor's entire pricing ***system.*** For example, a company cannot safely grant an additional five percent discount "across the board" merely because a competitor does, since this may put the company's net price on certain lines below the competitor's net price for those lines, in which case the company would be beating the competitor's price instead of meeting it. Also it should be noted that the meeting competition defense is available only to meet the price granted by a ***competitor.*** For example, Manufacturer 1 can grant a lower price to its dealer to meet an offer from a competing Manufacturer 2. But Manufacturer 1 cannot grant a lower price to its dealer just to enable that dealer to meet the lower price of another dealer (unless Manufacturer 1 makes that lower price available to all its other dealers).

2. Cost Justification

The "cost justification" defense rests upon the principle that a seller should not be compelled to exact an equal price from a particular buyer when the economy of selling to that buyer would justify a lower price as compared to other customers. Therefore, under this defense, a seller is permitted to show that it actually costs less to sell goods to a given buyer or class of buyers, and that the lower price to that class reflects only that savings.

It should be noted that the cost justification defense is limited to actual dollar-for-dollar savings and a cost justification study should always be made ***before*** the discriminatory price is granted.

Volume or quantity discounts would be an example of making use of the cost justification defense. Volume or quantity discounts are lawful if they reflect ***only actual savings*** in the manufacture, sale or delivery of products and if they are available to all purchasers.

3. Functional Discounts

Discounts to buyers performing different functions (such as wholesaling vs. retailing) may be lawful if the discounts reflect the different distribution costs of the buyers and related cost savings to the seller. However, before any functional discount is granted (such as setting a lower price for wholesalers than retailers), advice of counsel is essential.

C. Promotional Allowances and Services

Promotional allowances and services must be made available to all competing customers on a proportionally equal basis and must be of such a nature that all competing customers would be capable of utilizing such allowances or services. This would include such things as paying advertising or display allowances and furnishing training, advertising brochures or posters, et cetera. The requirements for such benefits include ***availability*** (making such benefits known to all customers and designing such benefits so that all customers would be able to take advantage of them), and ***proportionately equal terms*** (so that each customer may receive them in the same proportion as other customers with which it competes). Examples would be allowing each competing customer a fixed dollar allowance per unit of merchandise bought or by paying each customer an allowance equal to a fixed percent of such customer's total volume of purchases with the same percentage being applied to all competing customers. If a supplier sells to both wholesalers and retailers, it must see that promotional allowances and services which it grants directly to retailers are also passed through by its wholesalers to their retail customers who compete with the supplier's direct retail customers.

D. EU Law

Under EU law, charging different prices or applying different sale conditions for like goods and services to competing customers at the same point in time can raise complex legal questions, although the relevant rules are much less detailed than those described for the U.S. above and generally are applied less strictly. However, a sales policy involving the application of different prices or other conditions of sale in the European Union for a product in which the company has a dominant position must be reviewed by the law department prior to implementation.

E. MEXICAN AND CANADIAN LAWS

In Mexico, an antitrust law, the Federal Law on Economic Competition ("Ley Federal de Competencia Económica") prohibits monopolies, monopolistic activities and unlawful business concentrations. In Canada, the Competition Act legislates anticompetitive practices. These laws resemble U.S. antitrust legislation and one of their main objectives is preventing monopolistic activities such as price fixing and the elimination of competition. Therefore sales policies involving the application of differing prices for the same products sold under the same terms and conditions should be reviewed by the law department.

VI. RECIPROCITY AND TIE-IN SALES

GENERALLY SPEAKING A SELLER MAY NOT USE ITS STRONG POSITION IN ONE PRODUCT OR IN A PRODUCT'S UNIQUENESS OR ATTRACTIVENESS IN THE MARKETPLACE TO FORCE OR INDUCE A CUSTOMER TO PURCHASE OTHER PRODUCTS MADE BY THE SELLER. The question of tie-in sales often occurs in connection with selling several products as a package. A seller can require a distributor/dealer to stock a reasonably representative line of the seller's products. This is not generally illegal provided the distributor/dealer is not coerced to ***overstock*** ("full line forcing") or is not required to handle ***only*** the supplier's products. It is important to note that such a policy of requiring the distributor/dealer to stock a reasonably representative line of the seller's products should be put into effect when a distributor/dealer is first opened and must be administered on a nondiscriminatory basis.

SIMILARLY, RECIPROCITY OR RECIPROCAL DEALING IS GENERALLY ILLEGAL (i.e., Company 1 agreeing to buy Company 2's products if Company 2 will buy Company 1's products). In the case of a multidivision or multisubsidiary company, reciprocity could consist of one division or subsidiary refusing to buy from an independent supplier unless that supplier buys from another division or subsidiary of the purchaser. Problems of illegal reciprocal dealings can arise even in discussions between a company and its supplier regarding the relationship of purchases and sales between them or ***implying*** that sales by one company to another are a factor in that company's purchases or purchasing decisions with respect to the other company.

A related area would be the use of requirement and supply contracts. While the antitrust laws do not prohibit agreements between a seller and a buyer to supply all of the buyer's requirements for a particular product, the use of such supply requirement contracts for anticompetitive purposes has been held to be illegal under certain circumstances. Therefore, supply or requirements contracts covering unreasonably long periods where the effect may be to foreclose actual or potential competitors from a substantial part of the market for the particular product have been held to be illegal such as in the case of tying up suppliers of raw or finished products by long-term, full-output contracts.

Finally, antitrust concerns can arise from the use of bundled discounts or rebate programs (e.g., offering additional discounts/rebates if the customer purchases certain quantities of product A, product B and product C), if the seller has a dominant market share in any one of the products. Before offering bundled discounts or rebates, you should consult with the law department.

VII. DOMINANT POSITIONS

Additional concerns are raised when a company has a dominant position in a particular product or service. In general, U.S., Canadian and EU law presume that a company has a dominant position if it has more than 35 or 40% of a particular product or service. Activities that are particularly sensitive for a company with a dominant position include:

a. limiting a competitor's access to raw materials or supplies,

b. pricing predatorily below costs with the purpose of eliminating competitors and harming long-term competition, or imposing unfair, discriminatory or excessive prices or other trading conditions,

c. using the product in which the company has a dominant position to sell other products,

d. taking actions with the sole purpose of harming a competitor,

e. entering into exclusive agreements or implementing practices (e.g., fidelity, loyalty or target discounts) that encourage buyers to purchase all or a high percentage of their requirements from the dominant supplier,

f. engaging in unjustified refusals to deal, and

g. engaging in a price squeeze.

With respect to any product or services in which this company has a greater than 35% share, the above activities should not occur unless there has been review and approval from the law department before the action is started.

VIII. UNFAIR OR DECEPTIVE ACTS OR PRACTICES

FEDERAL LAW ALSO PROHIBITS "UNFAIR METHODS OF COMPETITION" AND "UNFAIR OR DECEPTIVE ACTS OR PRACTICES." The language of the prohibition is so general that it provides little help in determining or defining the propriety or legality of any specific practice under consideration. Accordingly, a large body of case law has developed under which the courts have interpreted what is unfair or deceptive in a variety of different fact situations.

Generally speaking, the prohibition includes all of the conventional antitrust violations and any practice designed to adversely affect competition. The following is a list of practices which have been held to violate the law in this area: (1) brokerage or commission arrangements between a buyer and seller having the effect of a price discrimination; (2) false or misleading advertising or mislabeling or misrepresentation of a company's or a competitor's product; (3) disparagement of competitors and their products; (4) wrongful acquisition of a competitor's trade secret; (5) selling below cost for the purpose of destroying competition; (6) hiring away competitor's personnel for commercial espionage; (7) interfering between a competitor and its customers or suppliers; and any other acts having no commercial purpose other than to destroy competition.

These practices can also be illegal under the laws of Canada and Mexico and of the individual EU Member States.

IX. LOCAL LAWS

In addition to the U.S. federal laws which provide the basis for the definition of antitrust and anticompetitive activities, most states have adopted some form of trade regulation or antitrust laws. These are patterned largely after the federal laws; however, they sometimes have severe penalties which deviate from federal law.

All Canadian provinces and all the Member States of the European Union also have antitrust or competition laws, many of which parallel the national laws (in the case of Canada) and the EU competition laws (in the case of the EU) but may be stricter either in their content (particularly with respect to abuses of a dominant position and unfair practices) or in terms of the sanctions they impose. In all EU, competition authorities of all the EU Member States apply EU laws in conjunction with their national laws. In Canada the attorneys general of the Canadian provinces and the Attorney General of Canada are responsible for enforcement of the Canadian competition laws. In Mexico, the Mexican Federal Commission on Competition issues regulations and decisions applicable to each Mexican state or region.

X. ENFORCEMENT

Antitrust is an intricate and complicated subject and no attempt is made here to cover or anticipate all the ramifications or potential problem areas. In any situation in which any Kaman Corporation employee or Kaman company is notified, either by an outside company or, by any government employee or agency, that a lawsuit is being considered or an investigation is being commenced, the following procedure should be strictly followed:

(1) Employees should not submit themselves to interviews or answer any questions relating to company sales practices or other business operations or activities unless the interviews have been arranged by the law department.

(2) Any employee receiving a call or visit or other notice from any government agent or attorney for any third party should politely inform the inquirer that all such requests or inquiries should be addressed in writing to the law department and that the law department will make the necessary arrangements to respond with the information requested. Immediately after receiving any such inquiry or contact the employee should discuss it with his supervisor and notify the law department in order to facilitate efficient compliance with the requests made. The law does not require that any employee make any statement or divulge any information or allow access to any files or documents without first consulting the proper officers of the corporation and legal counsel.

Rev. 7/16/07