



**EVERGREEN LINE**

# COMPETITION COMPLIANCE MANUAL





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## *A letter from Chairman of Evergreen Marine Corp. (Taiwan) Ltd.*



*As a global known liner shipping carrier, Evergreen Line commits to provide reliable worldwide shipping service. To fulfill our ambition and sustainable social responsibility as a common carrier, Evergreen Line must conduct all business in lawful manner and comply with global Competition Law regime. Evergreen Line has therefore set up a Competition Compliance Team in Project Division of Evergreen Marine Corp. to review all Competition related issues.*

*Competition Compliance Team will be in charge to study global Competition Law and cases, provide training courses to Evergreen Line employees and agents, issue Competition circulars, prepare Competition check list and self-assessment and*

*respond to the queries from authorities or all Evergreen Line members. Evergreen Line also set up a Competition mailbox ([competition@tw.evergreen-line.com](mailto:competition@tw.evergreen-line.com)) and a hot line (+886-3-3123477) if any of Evergreen Line members has any query in your daily work to consult with.*

*To comply with global Competition Law is the upmost core for Evergreen Line in doing business, and that is the reason why Competition Compliance Team prepares “Evergreen Line Competition Compliance Manual”. It is not only for all employees to learn what Competition Law is but also to reveal Evergreen Line’s determination to comply with Competition Law. Evergreen Line encourages all managers and employees to maintain Competition awareness in handling your daily job as Competition Compliance is the paramount objective within Evergreen Line.*

*Anchor Chang, Chairman of Evergreen Marine Corp. (Taiwan) Ltd.  
on behalf of Evergreen Line*



## *Evergreen Line Competition Policy*

Evergreen Line, as a known global carrier who provides worldwide shipping transportation network, herewith commits to its social responsibility and the duty of complying with the U.S. Antitrust Law, EU competition law and any other jurisdictions' similar regulations on Antitrust, Antimonopoly, Cartel or Competition.

All management levels and staffs of Evergreen Line shall always maintain high competition awareness and take the responsibility of promoting competition awareness to other employees. All employees must stay alert to the potential risks in violating competition law at all time. To comply with competition law is not only the responsibility of the top management, but also a requirement for all various management levels and employees on a daily basis.

The importance of complying with competition law does not only apply to the Evergreen Line internal sales and business related departments, but also extend to all business activities made between Evergreen Line and external parties or contractors. Any activity infringes competition law, whether intentional or unintentional, by Evergreen Line or by its external collaborators, will result in severe consequences to the company including the collapse of company reputation and hitting with immense fine. Moreover there will be potential criminal liability in most jurisdictions or disqualification of the employment.

Competition is relatively complicated to define and it is not straight forward to decide if an individual employee's activity is infringing competition law.



Nevertheless the fundamental subjects of competition law in various jurisdictions are similar. Evergreen Line stringently forbids hard core activities that infringe competition law, including but not limited to:

- A. Directly or indirectly fix price with competitors;*
- B. Concerted restrictions to capacity with competitors;*
- C. Market allocation;*
- D. Concerted boycott particular customer with other competitors;*
- E. Bid Rigging;*

Other than hard core activities mentioned above, there are various activities might potentially infringe competition law subject to different scenarios. It is difficult to define if particular activity will infringe competition law as it shall review all relevant circumstances and factors before a decision is made. To define your conduct is legal or not will be subject to the competition authority's deliberation, therefore all employees must not judge your conduct inadvertently.

Evergreen Line understands the complex of competition law and there will be plenty issues you might wish to seek further clarification and consultation, therefore Evergreen Line has published a Competition Compliance Manual for all employees to learn more about competition law. Meanwhile a hot line and a specific competition mail box have been set up. Shall any employee have any doubt in your work, Evergreen Line encourages you to make a call to the hot line +886-3-3123477 or address your queries to the competition mailbox [competition@tw.evergreen-line.com](mailto:competition@tw.evergreen-line.com) for clarification.

To comply with competition law is Evergreen Line's mission and Evergreen Line determines to comply with competition law. The only way to fulfill this mission is if we have all employees' cooperation and everyone to have strong awareness in competition law



## ***Introduction to Competition Law***

### ***The Competition Hard Core activities***

There is no clear definition to Competition Hard Core activities in global Competition Law regime. Nevertheless it can be summarized as below via various judgments and guidelines issued by national competition authority.

#### ***1.1 Agreement among competitors/association (horizontal co-operation)***

##### ***1.1.1 Price-Fixing***

Around 50% of competition infringement cases are for Price-Fixing. As per judgments made by various countries, the definition of “Price” can be widely regarded as the terms of sale, e.g.: credit terms, discounts, DM/DT.

The agreement made among competitors can be regarded as different kind of formation, e.g.: hard copy, digital record, unofficial memo, or even oral consent. In the case a competitor indicates their intention to fix price with you but you didn't reject firmly, it can be regarded as your implied consent to competitor's offer.



##### ***1.1.2 Capacity management***

To control product supply will be a key element to control the price. Any expressed or implied consent to limit the product quantity will be charged as competition infringement. In shipping industry, carriers sell the space as the product. Any agreement among competitors in limit capacity supply or restrict in deploying vessel into particular service is not allowed.

##### ***1.1.3 Market allocation***

Agreements among competitors to allocate markets or customers are also serious competition infringement because they reduce or eliminate price competition. It is illegal for competitors to agree that one of them will not sell in a particular area or to a particular customer that they both can presently serve. This kind of agreement would reduce price competition among carriers.

##### ***1.1.4 Group boycotts***

The competition law generally does not interfere with the right of a business individually to select the customers with whom it will deal. However a collective refusal to deal with particular customer by competitors, sometimes called a “group boycott,” does raise very serious competition concerns. It is dangerous for one company to agree with another company that neither will do business with a particular supplier or customer; or that they will do business only with certain suppliers or customers or only on certain terms.

##### ***1.1.5 Bid rigging***

Bid rigging refers to coordinated conduct among competing bidders that undermines the bidding process. One common form of bid rigging is an agreement among bidders as to who will win the bid. Such action is considered illegal regardless the competing bidders who give away the opportunity to win the bid benefit from such agreement or not.



## **1.2 Agreement with Suppliers and Customers (vertical restraint)**

### **1.2.1 Exclusive dealing**

A common form of exclusive dealing is a contract between a supplier and retailer under which the retailer agrees to exclusively carry the supplier's products. Exclusive dealing is most likely to be found illegal where the one imposing the agreement has market power and uses the exclusive dealing contracts in a manner to distort competition or by making it more difficult for competitors to gain a foothold.

### **1.2.2 Preferential treatment**

It is usually safe to enter into a "most-favored-nation" contract, which guarantees that no other customer will be treated more favorably than the contracting customer. On the other hand, there can often be a problem if a contract guarantees that the contracting customer will get a better treatment than anyone else.

### **1.2.3 Tying arrangement**

There may be an issue when a company attempts to extend whatever power it may possess in some segments of its business (the "tying" products) into other segments of its business (the "tied" products). In the case the tying product's market share is significant or dominates the market, it will be very likely that such tying arrangement will violate competition law.

On the other hand, it is not illegal to package the sale of goods or services at a particularly favorable price as long as the customer has the realistic choice of purchasing the individual goods or services separately.

### **1.2.4 Resale price restrictions**

Unlike other "vertical" contracts, agreements with customers on the prices that they

will charge to their customers are almost invariably illegal. Thus, if the Company is a wholesaler of products or services, it usually cannot agree with its retail customers on the resale prices they will charge to their customers.

## **1.3 Monopolization**

The definition of monopoly varies by different countries in different market share. The Company's particular activities can be accused of illegal monopolization even though they have less than a complete monopoly (subject to various jurisdictions' case law, a 70% "market share may be enough), and they could still be accused of attempting monopolization with an even smaller share. Since courts sometimes consider relatively small geographic areas or limited product and service segments to be separate "markets" that can be monopolized, this area of competition law is of concerns to any company.

In particular, if it appears that the actions in question were prompted by a desire to destroy a competitor by unfair means, as with a desire to compete aggressively and improve the Company's position generally, a court is likely to apply a narrower market definition. The reason is that courts are likely to be in full battle array against an anticompetitive intent, and also because an intention to hurt a particular competitor may provide some evidence that a company has power to do so. It is also important to note that the monopolization offenses do not require an agreement with another party; the law applies to individual actions.





### 1.3.1 Refuse to deal

Normally, a company is free to select its own customers, but there may be competition liabilities if the potential customer does not have other feasible alternatives. To define if it is illegal to refuse to deal with particular customers, it shall review all conditions e.g.: customers might have bad records in previous shipments or customers reluctant to settle owed debts.

### 1.3.2 Deal termination

It is usually more risky to terminate an existing business relationship than to refuse the relationship in the first place, in part because it is easier for the terminated business to prove damage. If the termination follows complaints from competitors about the terminated dealer, it will be even more risky. Refusals to deal are extremely dangerous if a company can be characterized as having participated in or facilitated a horizontal among its dealers.

### 1.3.3 Predatory pricing

It is sometimes difficult to distinguish between pro-competitive aggressive pricing and predatory pricing that threatens the competitive process, since both kinds have



an adverse impact on particular competitors. Any price that does not cover the out-of-pocket or marginal cost of providing the service or making the product is likely to raise predatory pricing issues. There are also issues relating to the company's intent and the likelihood that the price will lead to actual monopolization and higher prices in the future. The problem is that it is hard to explain a pricing strategy that causes out-of-pocket losses, unless there is some contemplation of unreasonably high prices later on to make up the loss.

### 1.3.4 Dual distribution

Dual distribution refers to a situation where the company does business at more than one level in the distribution system, e.g.: when it acts as both a wholesaler and a retailer. The issue may be made that the company's wholesale prices are so close to its retail prices that independent retailers are unable to compete. These issues raise monopolization-type questions because the retailers will try to show that the wholesale prices are artificially high and that they do not have sources of supply at lower prices.

As already indicated in resale price restrictions, it is illegal for the company as wholesaler to agree with its retailers on the prices they will charge. For retailers, any such conduct could also be prosecuted as a particularly serious price fixing agreement between competitors.

It is not illegal, however, for the company unilaterally to select retailers on the basis of their general business philosophy, even though this selection could affect the competitive environment in which the company acts as a retailer itself. Moreover, it is not illegal for the company to choose to operate through retailers in some areas, and to act directly in others, even though this could appear to involve an allocation of markets.



## *How do authorities judge competition infringement*

Various countries and authorities have different standard in charging competition infringement. The company has the responsibility to educate all employees what should be prohibited and what are allowed to do in handling daily business. Company will not be excused from the liability if the infringement to competition law is caused by employee's ignorance to the law. Instead it will increase the possibility for an employee to violate competition law and leads to company receiving fine as well as employee's individual civil or criminal liability.

### *2.1 Agreement or consent*

Make any agreement with competitors or supply chain contractors in any deal which might be connecting to any activity violates the competition law will be definitely charged by authority.

The agreement can be made in any format and not limited to a formal contract, e.g.: meeting minute, e-mail exchange or oral agreement, could be considered by competition authority as the evidence of violating competition law. In the case competitors suggest making any deal which might reduce competition, keep silence or not responding will be regarded as implied consent. To firmly reject such proposal is the right way to respond in such scenario.

### *2.2 Concerted practice*

It is difficult for competition authority to find any physical evidence in agreement among competitors. Hence most of countries' competition legislations adopt "concerted practice" as one of the method to charge the accused in competition law infringement. It is not necessary to define guilty concerted practice by any format of records to indicate competitors' intention in conduct anti-competitive parallel behavior; instead

competition authority may define illegal behavior by sorting out a particular pattern to the concerted practice. No matter what, competition authority shall always take the burden to prove the illegal conduct.



The most important matter about determining the presence of concerted practice among competitors' behaviors is to understand whether the parallel activities between the two or more competitors are contemplated to eliminate the uncertainties of market behavior.

Most of the competition authorities will try to define concerted practice by catching "price signal". When one undertaking intends to signal their pricing strategy publically to other competitors, it can be made via website, public announcement and press release. If competitors echo to the price signal which the echo doesn't need to be clearly address their intention but a similar action will be adopted, concerted practice will be taken afterwards. Therefore it will be extremely sensitive to discuss our pricing strategy to the public although there is no intention to signal competitors.

### *2.3 Object to diminish competition*

Subject to various competition jurisdictions, it can be illegal if an undertaking intends to reduce market competition by any mean. It won't be necessary to prove the impact to the competition, instead proving one's intention is the key point when charging competition infringement.





Any information exchange with the objective of restricting competition on the market will be considered as a restriction of competition “by object”. Information exchanges between competitors regarding intended future prices or service/product quantities should therefore be considered a restriction of competition by object. It is not necessary to have information exchanges to constitute “by object” but a single express will be sufficient.

Although intention will be the key point to decide if you violate competition law or not, please bear in mind that to presume the intention will be on competition authority’s sole judgment. Be prudent in announcement, e-mail or any information exchange internally or externally about company’s pricing strategy, capacity management or any other competition related issues.

### **2.4 Negative effect to market competition**

Some competition jurisdictions also empower competition authorities to charge an undertaking/individual by causing negative effect to market competition whether such negative effect is made by purpose or not. However the burden of proof remains with the competition authority.

To verify if there is any negative effect to the market competition shall not refer to “illegal per se rule” but “rule of reason”. There will be different kinds of factors to consider when determining the negative effect to market competition, and competition authority will need to assign specialist to conduct economics analysis to define such negative effect does exist and the causation of such effect.

## **The consequence to competition law infringement**

Subject to various competition jurisdictions, there might be different consequences if competition law is violated.

### **3.1 Administrative penalty to the company**

Almost all competition jurisdictions pose various levels of fine against the undertaking if competition infringement is confirmed. The amount of fine will be calculated based on particular percentage of group’s global turnover with certain ranges differences subject to authority’s decision on several factors. There are also some countries might impose fixed amount fine against the undertaking who is charged in violation competition law.

### **3.2 Disqualification of directors**

A company’s competition infringement might be caught by company director’s instruction whether it is intended or not. In that case, competition authority might issue an injunction against the director to remain on his/her position.





### **3.3 Criminal liability against individual**

In some jurisdictions, there will be criminal liability for individual if there is any physical evidence being caught by competition authorities. The individual would most likely to be sent to prison without the opportunity of parole if found guilty by the authority.

### **3.4 Civil damage claim against the company**

This will be the worst part in competition law against a company. In some jurisdictions, there are clear legal regulations to authorize undertaking/individual to claim civil damage against the undertaking/individual being charged by competition authority in violation the law. Nevertheless, it will be undertaking/individual's right to claim for their civil damage against the liable party if they did suffer because of competition infringement by undertaking/individual, whether there is legislation to such right of claim.



## **Evergreen Line Competition Compliance Structure**

In order to comply with competition law, Evergreen Line sets up a Competition Compliance Structure to ensure each region/department/individual may understand their duties in complying with competition law.



### **4.1 Competition Compliance Officer**

Evergreen Line shall assign a Competition Compliance Officer to handle all competition relevant issues. Competition Compliance Officer shall be responsible to Evergreen Line top management in ensuring competition law compliance in all aspects.

*Competition Compliance Officer will take charge of below issues:*

- A. Study competition legislation and key case law;*
- B. Issue notice/circular to all parties within Evergreen Line;*
- C. Review region/department/individual daily jobs and prepare competition check list for each employee to comply with;*
- D. Prepare self-assessment to the core business in order to make sure any cooperation among competitors will not violate competition law.*
- E. Responding competition queries from all channels including competition hot line and competition mailbox;*
- F. Coordinate with relevant departments to respond competition authorities' information request;*
- G. Provide competition training to employees if necessary;*
- H. Liaise with GMO LGL and external lawyer if necessary;*



### **4.2 Competition Compliance Correspondence**

Each department head shall assign a Competition Compliance Correspondence to take care competition related issues and queries. Competition Compliance Correspondence will report any case which might potentially violate competition law and seek Competition Compliance Officer's assistance in further response.

*Competition Compliance Correspondence will take charge of below issues:*

- A. Monitor all business activities related to the department and report to Competition Compliance Officer for any potential risk to violate competition law immediately;*
- B. Report to Competition Compliance Officer of any business cooperation with competitors related to the department and provide sufficient information for preparing self-assessment;*
- C. Promote competition awareness from time to time to team members, especially for new members.*
- D. Coordinate with Competition Compliance Officer and team members to respond competition authorities' information request;*

### **4.3 Regional Competition Compliance Officer**

Each regional office shall assign a Regional Competition Compliance Officer to report to Competition Compliance Officer any update to local competition legislation or case law, and all competition law relevant issues within regional territory.

*Regional Competition Compliance Officer will take charge of below issues:*

- A. Collect updated information to local competition legislation and case law and forward the information to Competition Compliance Officer for further study and take proper counter measures;*
- B. Coordinate to each Competition Compliance Correspondence to monitor all business activities related to this region and report to Competition Compliance Officer for any potential risk to violate competition law immediately;*
- C. Promote competition awareness to all members under his jurisdiction;*

### **4.4 Competition Compliance Individual**

All members within Evergreen Line will be Competition Compliance Individual and it is the most important part of the whole structure. The whole Competition Compliance Structure will collapse if there is no fully support from Competition Compliance Individual.

*Competition Compliance Individual will take charge of below issues:*

- A. Maintain competition awareness in handling daily job;*
- B. Alert team members if your team members' job handling might potentially violate competition law;*
- C. Check with Competition Compliance Officer/Competition Compliance Correspondence immediately if there is any doubt in handling daily job might potentially violate competition law;*





## ***Competition Compliance Document***

In order to comply with competition legislation, Evergreen Line will review all business and tailor-make Competition Compliance Documents according to his/her specific business nature and contents of cooperation among competitors. There will be two kinds of Competition Compliance Documents including Competition Check List and Self-Assessment.

### ***5.1 Competition check list***

Each Competition Compliance Individual shall be given guidance in handling his/her daily job to ensure all business activities comply with competition law regime. Therefore Evergreen Line will ask each section/department to provide job function list first, and Competition Compliance Officer will identify the risk of each single business activity in violating competition law.

Based on the verification to the risk of each single business activity, Competition Compliance Officer shall tailor-make Competition Check List for each section/department so that each Competition Compliance Individual may work without worrying about competition law infringement.

The Competition Check List will catalog each business activity into “DO”, “Don’t” and “CHECK” for each Competition Compliance Individual to follow. Apparently all business activities listed in catalog “DO” are clear from violating competition law, and all business activities listed in catalog “Don’t” are prohibited to conduct as it should violate competition law. Such “DO” and “Don’t” catalogs are promoted by most of competition jurisdictions.

A single business activity might be legal in a way but it could potentially violate

competition law if other factor is involved, hence it is difficult to simply catalog various business activities into “DO” and “Don’t” only. Evergreen Line set up another column in “CHECK” to remind Competition Compliance Individual to seek legal opinions before moving forward.

### ***5.2 Self-Assessment***

In general competition law prohibits the cooperation among competitors, but particular cooperation among competitors will be allowed providing below conditions are met cumulatively:

#### ***5.2.1 Efficiency gains***

There must be some benefit for competitors to stand together. The benefit can be physical profit or other methods which might save costs.

#### ***5.2.2 Fair share for consumers***

Competitors must share part of the benefit they have gained from the cooperation to the consumers. The contribution doesn't need to be a significant figure but proper contribution is a must.

#### ***5.2.3 Indispensability of the restrictions to competition***

Competitors must identify this cooperation is necessary then it can be allowed under competition legislation. The indispensability means there is no other way to achieve the goal unless the cooperation among competitors proceeds.

#### ***5.2.4 No elimination of competition***

Unless there is compulsory legislation ruling, any cooperation among competitors must not connect to competition hard core activities.



## *The only way for Evergreen Line to ensure Competition Law compliance*

It is company's responsibility to provide proper training to all employees regarding Competition Law. That is the reason why Evergreen Line set up a Competition Compliance Team in Taipei, prepare this Competition Compliance Manual and other measures to keep alerting all Evergreen Line's employees and agents the importance to comply with Competition Law regime. Nevertheless all efforts will be in vain without everyone's attention and continuous awareness in the way in doing business. Upon Evergreen Line top management's instruction, Competition Compliance Team will always be at everyone's disposal shall you have any query in Competition Law.



### **Evergreen Line Competition Compliance Team**

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### **What is EVERGREEN LINE**

Evergreen Line is the unified common trade name for the four shipping companies of the Evergreen Group. The brand 'Evergreen Line' is used for international marketing purposes for Evergreen Marine Corp. (Taiwan) Ltd., Italia Marittima S.p.A., Evergreen Marine (UK) Ltd. and Evergreen Marine (Hong Kong) Ltd. and was established May 1, 2007 in response to the request and expectations of global customers.

A fifth ocean carrier Evergreen Marine (Singapore) Pte Ltd. has also signed the joint service agreement, effective May 1, 2009. Evergreen Line operates the fourth largest container fleet in the world, with over 190 ships by capacity of approximately 850,000 TEU.

Evergreen Line will maintain all of the services currently operated and develop new trades to meet worldwide customer demands.

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