



**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 its ambition and sustainable social responsibility as a common carrier, Evergreen Line must conduct all business in a lawful manner and comply with global Competition Law regimes. Evergreen Line has therefore set up a Competition Compliance Team under Legal Department of Evergreen Marine Corp. to review all competition related issues.*

*Competition Compliance Team will be in charge of studying global Competition Law and cases, providing training courses to Evergreen Line employees and agents, issuing Competition circulars, preparing Competition checking list and conducting self-assessment, and responding to queries from regulatory authorities and all Evergreen Line members in your daily work. Evergreen Line also set up a Competition mailbox ([competition@tw.evergreen-line.com](mailto:competition@tw.evergreen-line.com)) and a hot line (+886-3-3123232) to respond inquiries from Evergreen Line members in your daily work.*

*To comply with global Competition Law is the utmost 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 to educate all employees about what Competition Law is but also to reveal Evergreen Line’s determination to comply with Competition Law. All managers and employees are encouraged to maintain competition awareness in handling your daily jobs since competition compliance is the paramount objective within Evergreen Line.*

*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 laws and regulations of Antitrust, Antimonopoly, Cartel or Competition enacted by the U.S, E.U and any other jurisdictions around the world.

All management levels and staffs shall always maintain high awareness and take the responsibility of promoting competition compliance awareness within Evergreen Line. All employees shall stay alert to the potential risks of breaching competition law when carrying out daily business. Competition Compliance is not only the responsibility of the top management, but also a requirement for all management levels and employees on a daily basis.

Competition law applies not only to the Evergreen Line internal sales and business related departments, but also to all business activities carried out between Evergreen Line and external counterparties. Any competition infringement, whether intentionally or not, will lead to severe consequences, including but not limited to reputation damage and huge fines. In addition, it may incur potential criminal liability in many jurisdictions or disqualification of directors.

Competition Law is complicated. It is not always straight forward to determine if an activity breaches competition law.



Nevertheless, the fundamental rules to determine infringement are similar across jurisdictions. There are certain categories of restraints that are presumed to be unreasonable and illegal. Evergreen Line stringently forbids these hardcores, which includes but not limited to:

- A. Directly or indirectly fix price with competitors;*
- B. Limit or manage capacity supply with competitors*
- C. Allocate market/ customers with competitors;*
- D. Group boycott particular party;*
- E. Bid Rigging;*

Other than hardcore activities mentioned above, there are activities that might potentially breach competition law in certain scenarios. Before determining if particular activity breaches competition law, all relevant factors should be considered and analyzed. However, the final decision is subject to the competition authority's deliberation.

To educate its employees about competition law, Evergreen Line has published the Competition Compliance Manual. It also sets up a dedicated hot line and mail box to respond your daily inquiries. If any employee needs clarification or consultation on any competition compliance issues, please make a call to the hot line +886-3-3123232 or address your queries to the competition mailbox [competition@tw.evergreen-line.com](mailto:competition@tw.evergreen-line.com).

Evergreen Line is determined to comply with competition law. It requires all employee's cooperation and a deep-rooted compliance culture to fulfill its mission.





## ***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 the rule has been narrowed and reaffirmed through various judgments so most regulatory authorities now held that certain kinds of restraints are per se illegal.

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

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

Around 50% of competition enforcement cases related to Price-Fixing. Price fixing relates not only to prices, but also to other terms that affects prices to purchasers, such as credit terms, discounts, DM/DT.

The agreement made among competitors can appear in different forms, e.g.: hard copy, digital record, unofficial memo, or even oral consent. When a competitor unilaterally disclose its intentions to fix price, if you don't reject explicitly, the regulatory authorities may presume that you consent to the competitor's offer.



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

To control product supply will affect the price. Thus 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 limiting capacity supply or restricting in vessel deployment is not allowed.

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

Agreements among competitors to divide markets or customers are also serious infringement because it reduces or eliminates price competition. It is illegal for competitors to agree that one will only sell in a particular geographic area, or to a particular customer, and refuse to sell to customers in geographic areas allocated to conspirator companies. This kind of agreement would reduce price competition among carriers.

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

The competition law generally does not interfere the company's right to individually and independently select customers. However a collective agreement among competitors to refuse dealing with a particular customer/vendor, sometimes called "group boycott," raises serious competition concerns. It is dangerous for competitors to agree that all conspirator companies will not do business with a particular supplier or customer.

##### ***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 dominant market power and uses the exclusive dealing contract in a manner to distort competition or prevent competitors to gain a foothold.

### ***1.2.2 Preferential treatment***

It is usually safe to enter into a "most-favored-nation" contract, which guarantees the contracting customer that no other customer will obtain more favorable prices and terms. On the other hand, it is often a problem if a contract guarantees that the contracting customer will get a better treatment than anyone else.

### ***1.2.3 Tying arrangement***

A tying arrangement occurs when a seller conditions the sale of one product or service on the customer's agreement to take a second product or service. The seller attempts to extend its market power in one segment of its business (the "tying" products) into other business segments (the "tied" products). If the tying product market share is significant or dominant, it is very likely that such tying arrangement will violate competition law.

On the other hand, it is lawful to package the sale of goods or services at a particularly favorable price as long as the customer has the realistic choice of purchasing individual goods or services separately.

### ***1.2.4 Resale price restrictions***

Resale price maintenance is a practice in which a manufacturer fixes the price for the resale of a brand product and the retailer is not allowed to sell it at a lower price. This

type of agreement is usually considered illegal. Thus, the manufacturer or wholesaler of products/services is usually prohibited to restrict the resale prices of its retailers.

## ***1.3 Monopolization***

It isn't illegal to be a monopolist or dominant. But if one utilizes its monopoly power to obtain or enhance its market power improperly, it might run afoul of US, EU, or other antitrust and competition laws. In particular, if the actions of a company with monopoly power or dominant market share are prompted by a desire to destroy its competitors by unfair means, or to eliminate the market competition, the court is likely to be in full battle array against such anticompetitive intent. 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 and lawful to select its own customers or business partners so long as the refusal is not the product of an anticompetitive agreement with other firms or part of a predatory or exclusionary strategy to acquire or maintain a monopoly. Therefore, if particular customer has bad records in previous shipments or is reluctant to settle owed debts, it is lawful for the company to refuse further dealing with said customer. However, if a company decides to terminate an existing business with particular customer simply because of rumored complaints about the customer within the industry, such refusals to deal may be characterized as the product of group boycott agreement among competitors and will be deemed illegal.

### 1.3.2 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 adverse impacts on competitors. Any price that does not cover the out-of-pocket or marginal cost of providing the service or making the products is likely to raise predatory pricing concerns.



There are also issues relating to the company's intent and the likelihood that the predatory pricing will lead to actual monopolization and higher prices in the future. After all, it is hard to justify a pricing strategy that will cause out-of-pocket losses, unless the company can reasonably expect exceptional compensation later from its dominant position to make up the previous loss.

### 1.3.3 Dual distribution

Dual distribution refers to a company that sells directly to end-use customers (distribution) and sells to independent distributors who in turn sell the company's product to end-use customers (supply). Since the company works across multiple channels and competes directly with its channel partners, the company shall implement safeguards to manage channel conflicts without running afoul of the competition laws. Appropriate firewalls should also be put in place within the company between distribution and supply teams, advising the distribution team not to discuss competitively sensitive information with either the internal supply team or external independent distributors.



## *How do authorities judge competition infringement*

Global competition authorities may differ in their approach towards analyzing and enforcing competition laws. The company has the responsibility to educate all employees what should be prohibited and what are allowed to do in handling daily business. Otherwise, employee’s ignorance will increase the possibility of infringement, and lead to huge fine or even individual civil or criminal liability of employees or managers.

### *2.1 Agreement or consent*

Making anticompetitive agreements with competitors or supply chain contractors is definitely a violation to competition law which will be charged by any competition agencies. The agreement can be made in different forms and is not limited to a formal contract. Meeting minutes, e-mail exchange or even oral agreement, can also be considered as evidence of violation. When a competitor suggests a concerted practice which might reduce competition, if you simply keep silent or not respond, the competition agencies will presume that you consent with the offer. Firmly rejecting the proposal is the only right way to respond.

### *2.2 Concerted practice*

Concerted practice refers to a form a coordination among competitors by which, without having reached the stage of a concluded agreement, practical cooperation between them is knowingly substituted for the risks of competition. Generally speaking, the burden of proof to evidence the existence of concerted practice falls on the competition authorities. However, in some jurisdictions, the existence of an agreement between companies may be legally presumed if there exists external conformity of conducts that could be deemed as a cartel between competitors.

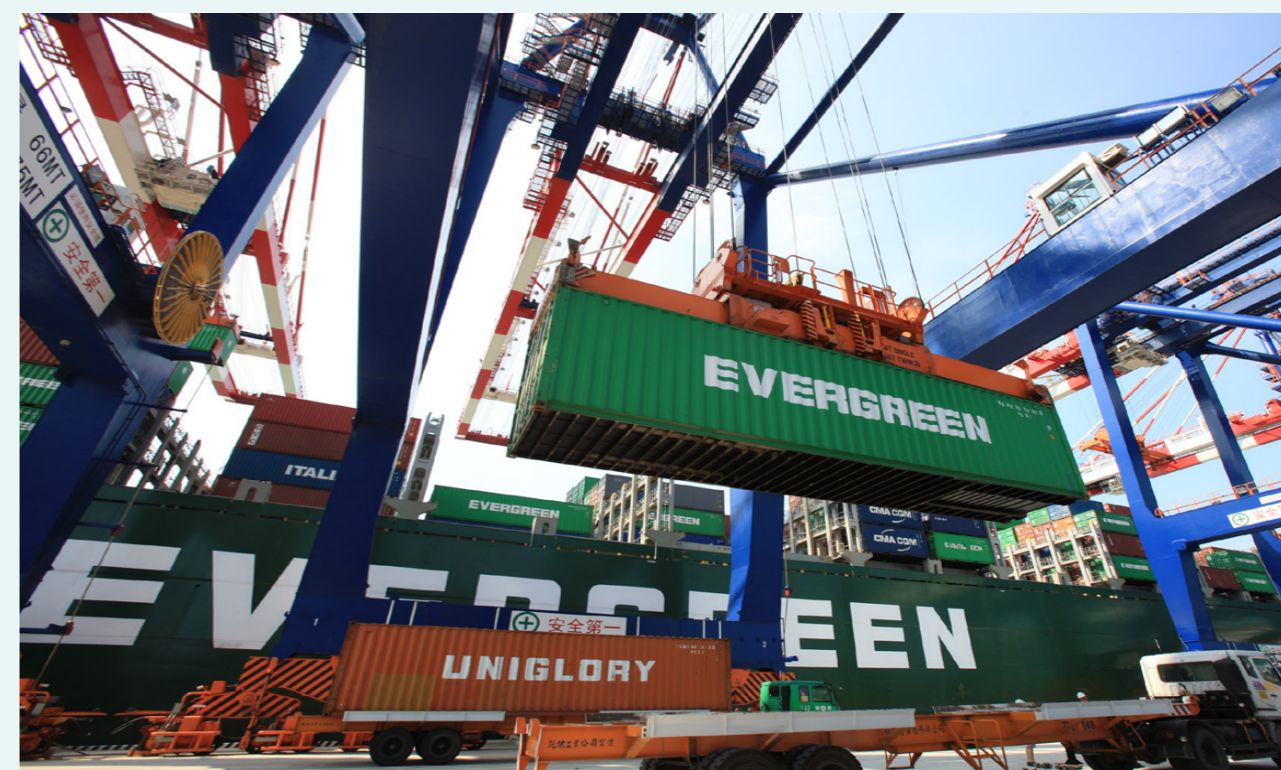
“Price signaling” is one forms of concerted practice which draws the attention of most competition authorities. When one company announces it pricing or commercial strategy publicly, via website, newspaper or press release, and such

announcement is followed by public announcement of other competitors, it may be deemed as an alignment among competitors about their business strategies and commercial terms. Therefore, it is extremely sensitive to publicly announce our future pricing strategy although it is not our intention to signal competitors.

### *2.3 Object to diminish competition*

If an agreement among competitors is made, by any means, with the intention to reduce market competition, it is categorized as restriction of competition by object. It will be deemed as illegal by competition authorities, without the need to examine the actual impact on the market, once its anticompetitive object has been established.

Any information exchange among competitors regarding the intended future prices or service/ product quantities will be considered a restriction of competition by object. The information exchange does not need to be bilateral. Even unilateral information disclosure can be sufficient for competition agencies to presume the intention of infringement. Be prudent in announcement, e-mail or any information exchange internally or externally about company’s future strategic information on either pricing, capacity management or other commercial related issues.







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

Some competition regimes also find activities which cause negative effect to market competition illegal, no matter such negative effect is caused intentionally or not. However, the burden of proof remains with the competition authority.

There will be different kinds of factors to be considered when determining the negative effect to market competition, and competition authority will need to assign a specialist to conduct economics analysis to determine such negative effect exists and the causation of such effect



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

The consequences of competition infringement vary in different jurisdictions.

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

Most competition jurisdictions pose various levels of fines against the undertaking if the competition infringement is confirmed. Some major enforcers, like US and EU, calculate fines based on particular percentage of group's global turnover with certain aggravating/extenuating factors subject to authority's discretion. There are also countries that impose a fixed fine against the company breaching the competition law.

### ***3.2 Disqualification of directors***

A director of a company which is found by a regulator to have breached competition law is potentially liable to have proceedings commenced against him/her. The competition authority might issue an injunction against the director to disqualify his/her position as a company director.







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

In some jurisdictions, there will be criminal liability for individual if there is any physical evidence identified by the competition authorities. Those identified individuals would be likely to be sent to prison without the opportunity of parole.

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

This is the worst part for a company in breaching competition law for a company in some jurisdictions, there are clear legal regulations authorizing victims to seek compensation for damage from the breaching company by filing private claims. In US, a party injured as a consequence of a competition violation may even recover three times of its actual damages.



## **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 fulfills its duty in complying with competition law.



### **4.1 Top-down Commitment**

Evergreen Line commits to adhere to all Competition Laws from top management levels down to staffs. It also allocates appropriate work forces and resources to promote competition compliance tasks.

### **4.2 Competition Compliance Team**

Evergreen Line has established a Competition Compliance Team to handle all competition relevant issues. This dedicated team takes charge of below issues and directly reports to Evergreen Line top management to ensure competition compliance in all aspects.

- 1. Study competition legislation and key case law and provide competition training to employees**
- 2. Issue notice/circular to all parties within Evergreen Line;**
- 3. Review regional/department/individual daily jobs and prepare competition check list for each employee to comply with;**
- 4. Prepare self-assessment to the core business in order to make sure any cooperation among competitors will not violate competition law.**
- 5. Liaise with external lawyer if necessary;**
- 6. Responding competition queries from all channels including competition hot line and competition mailbox;**
- 7. Coordinate with relevant departments to respond competition authorities' information request;**





### 4.2 Global Agents and Offices

The office head of each global agents and offices shall take charge of below issues and liaise with Competition Compliance Team for assistances.

1. *Monitor all business activities related to the department and report to Competition Compliance Team immediately if any potential risk to violation is identified;*
2. *Report to Competition Compliance Team of any business cooperation with competitors and provide sufficient information for conducting self-assessment;*
3. *Promote competition awareness from time to time to team members, especially for new members.*
4. *Coordinate with Competition Compliance Team to respond competition authorities' information request;*
5. *Collect and forward to Competition Compliance Team with the updated information about local competition legislation and case law.*

### 4.4 Competition Compliance Individual

Each member within Evergreen Line is the Competition Compliance Individual, and is the most important element in the whole structure. Without the cooperation and support of each individual, the whole Competition Compliance Structure will collapse. Each Competition Compliance Individual will take charge of below issues:

1. *Maintain and promote competition awareness in handling daily job;*
2. *Alert your team members if their job handling might potentially violate competition law;*
3. *Check with Competition Compliance Team immediately if there is any doubt in handling daily job that might potentially violate competition law;*







## ***Competition Compliance Document***

In order to comply with competition legislations, 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 checking 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, Competition Compliance Team will ask each section/department to provide job function list first, and will identify the risk of each single business activity which might violate competition law.

Based on the risk identified, Competition Compliance Team will tailor-make the Competition Check List for each section/ department so that each Competition Compliance Individual may carry out his/her daily work without worrying about breaching the competition law.

The Competition Check List will categorize business activities into “DO”, “Don’t” and “CHECK”. Apparently, business activities fall in the “DO” category are risk free, whilst those activities under category “Don’t” are prohibited as they will without doubts violate competition law. Such “DO” and “Don’t” categories are promoted by most competition jurisdictions.

A single business activity might be lawful in one way, but be potentially unlawful if other factors are involved. Hence, Evergreen Line sets up a 3rd column “CHECK” to remind Competition Compliance Individual to seek legal opinions in advance before carrying out such activities.

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

In general, competition law prohibits the cooperation among competitors. However, particular cooperation among competitors might be exempted if below conditions are met cumulatively:

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

The cooperation must generate benefits. The benefit can be physical profit or methods to save costs.

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

Competitors must share part of the benefit gained from the cooperation to 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 justify that the level of cooperation is necessary in order to be exempted from competition legislation. The indispensability means there is no other way to achieve the goal except for the proceeding of cooperation among competitors.

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

Any cooperation among competitors shall 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 sets up a dedicated Competition Compliance Team in Taipei, prepares the Competition Compliance Manual, and establishes measures and framework to cultivate the compliance culture within Evergreen Line. Nevertheless, all efforts will be in vain without everyone's attention and continuous awareness in the way of doing business. Upon Evergreen Line top management's instruction, Competition Compliance Team will always be at everyone's disposal to respond any inquiry in connection to 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 six 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., Evergreen Marine (Hong Kong) Ltd., Evergreen Marine (Singapore) Pte. Ltd and Evergreen Marine (Asia) Pte. Ltd, was established May 1, 2007 in response to the request and expectations of global customers. Evergreen Line will maintain all of the services currently operated and develop new trades to meet worldwide customer demands.

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