ENERCARE INC.

CORPORATE COMPLIANCE PROGRAM

Last reviewed by the Board of Directors on May 13, 2024

CORPORATE COMPLIANCE PROGRAM
of Enercare Inc., Enercare Home and Commercial Services Inc., Enercare Home and Commercial Services Limited Partnership and SE Canada Inc. (together, "Enercare")

1. INTRODUCTION

1.1 Purpose

This Corporate Compliance Program ("**Program**") has been established so that Enercare and its employees understand and comply with the competition laws that apply to them. It will help Enercare anticipate and prevent contraventions before they occur, and detect and report contraventions if they do occur.

1.2 Commitment to Compliance

Enercare is committed to complying with the law. Legal and ethical conduct is in the best interests of Enercare and its employees. Enercare's board of directors and management are firmly committed to and intend to promote and ensure compliance with the law.

While management is accountable for compliance, Enercare's board of directors has designated a senior corporate officer responsible for the development, implementation and maintenance of the Program ("**Compliance Officer**"). The Compliance Officer may be contacted at:

Tracy Li
Chief People and Legal Officer
Bus: 416.649.1862
Cell: 416.689.2473
tracy.li@enercare.ca

1.3 The Importance of Compliance with Canadian Competition Law

The purpose of the *Competition Act*, Canada's competition law, is to maintain and encourage effective competition in Canada. Enercare firmly believes that preservation of a competitive economy benefits Enercare, its employees, its customers, and all Canadians.

Violations of the *Competition Act* can have serious consequences both for Enercare and individual employees. Violations can result in criminal charges, fines or other monetary penalties, and imprisonment. No matter the outcome, investigations and litigation related to actual or potential violations of the *Competition Act* are expensive and time-consuming. They distract Enercare and its employees from serving our customers and growing our business.

1.4 Everyone is Responsible for Compliance

While the Compliance Officer manages the Program, daily responsibility for compliance with the law rests with each and every officer, manager and employee of Enercare. Compliance with the law protects not only Enercare's business, but also each of us individually.

There may be instances where this Program sets standards that are higher than those required by the law. Nevertheless, it is imperative that all Enercare employees strictly follow the rules of conduct established by this Program.

1.5 Subject Personnel

The Program applies to everyone at all levels of Enercare. Use of the term "employees" in this Program has the broadest possible meaning, including officers, managers, employees, contractors, consultants, agents and anyone else acting for Enercare.

It is the personal responsibility of all employees to conduct their activities on behalf of Enercare in compliance with the law. No one who is employed by Enercare has the authority to engage in any conduct, or knowingly permit a subordinate to engage in any conduct, that contravenes the law or this Program.

Anyone who engages in such conduct or who otherwise contravenes the Program or the law may be subject to appropriate disciplinary or corrective measures, up to and including dismissal. Any manager or supervisor who fails to take reasonable steps to prevent or detect contraventions will also be subject to discipline. This is in addition to any criminal or civil liability that may be imposed on the individual.

1.6 Employee Acknowledgement

Each employee will be provided a copy of this Program. Each employee in the Training Groups (as defined in section 3 is required to acknowledge that he/she has read and understands this Program and that he/she understands his/her obligations under it. Acknowledgements may be required on a periodic basis from Training Group employees or other employees as considered appropriate by the Compliance Officer. Such an acknowledgement will also be sought in the event that significant changes to the Program take place.

1.7 Questions

If employees have any questions concerning the Program or the law, they should contact the Compliance Officer or the legal department.

2. CORPORATE COMPLIANCE POLICIES AND PROCEDURES

Enercare recognizes that strong compliance policies and procedures are critical. Enercare's policies and procedures related to certain sections of the *Competition Act* are attached at Appendix A. These policies and procedures will be updated periodically by the Compliance Officer to reflect changes in the business, the law, government enforcement policies or the industry. Reasonable measures will be taken to promptly notify all employees of such changes.

The focus of these policies and procedures on particular sections of the *Competition Act* does not mean that employees need not concern themselves with other sections of the *Competition Act*. Rather, these policies and procedures address the sections which Enercare has identified as most relevant to its business.

3. TRAINING AND EDUCATION

Enercare recognizes that maintaining an effective Program requires some additional education and training for certain employees, such as those who have responsibility for ensuring compliance with this Program, directing the overall business and strategy of Enercare, responding to employee inquiries regarding this Program and/or managing staff.

The Compliance Officer shall ensure appropriate additional training and education is provided to the executive team, the legal department, senior sales managers, senior customer care managers and senior managers of return depots (the "**Training Groups**").

All new employees who join the Training Groups will be required to participate in training as soon as practical after the commencement of their employment, and prior to being put in a position where they might violate the law.

The Compliance Officer may update the list of Training Groups as necessary to ensure the effectiveness of this Program.

4. MONITORING, AUDITING AND REPORTING MECHANISMS

4.1 Monitoring

The Compliance Officer shall monitor business activities to ensure compliance with this Program. The Compliance Officer shall ensure that the Program is reviewed and evaluated periodically, and that the Program is updated when issues arise, when there are new developments in the law or the business activities of Enercare, and when opportunities for improvement are detected.

4.2 Auditing

The Compliance Officer shall conduct periodic, *ad hoc* audits, or event-triggered investigations, as appropriate, to confirm whether Enercare is fully complying with the *Competition Act* and whether this Program is being implemented properly and operating effectively. The Compliance Officer may develop procedures for such audits as appropriate.

4.3 Reporting

Reporting possible violations of the Program or the law are critical tools which help Enercare and employees address potential legal violations as soon as possible, take advantage of government programs which promote self-reporting of possible criminal activity in exchange for immunity from criminal prosecution and ensure the effectiveness of this Program.

If employees become aware of a breach or possible breach of the Program or the law, they must report it to the Compliance Officer immediately. No employee shall suffer any adverse employment consequences for reporting a possible contravention of the Program or the law.

The Compliance Officer shall report any such breach or possible breach of the Program to the board of directors.

4.4 Disciplinary Procedures

Enercare is strongly committed to compliance with this Program and the law and takes non-compliance very seriously. Any breach of this Program and/or the law will result in disciplinary action, up to and including dismissal.

APPENDIX A TO ENERCARE'S CORPORATE COMPLIANCE PROGRAM

Policies and Procedures concerning Relevant Sections of the *Competition Act*

1. INTRODUCTION

As described in the Program, Enercare is committed to complying with all aspects of the *Competition Act*, Canada's competition law. In this regard, and to assist all employees with compliance, Enercare has prepared the following policies and procedures which:

i) summarize provisions of the *Competition Act* (the "**Relevant Sections**") most relevant to Enercare's business;
ii) list conduct which is prohibited under the Relevant Sections and thus under Enercare's Program;
iii) provide practical examples of conduct which may violate the Relevant Sections; and
iv) identify other important features of *Competition Act* enforcement and how Enercare's employees must conduct themselves when in those situations.

As explained in the Program, the focus of these policies and procedures on the Relevant Sections does not mean that the Program does not require compliance with the *Competition Act* as a whole. Rather, Enercare has created these policies and procedures to assist employees in understanding and complying with the Relevant Sections, which Enercare has identified as most relevant to Enercare's business.

2. AGREEMENTS WITH COMPETITORS

2.1 Price-fixing and Bid-rigging

Canada's competition law is founded on the belief that competition produces better economic outcomes for all Canadians. Accordingly, the *Competition Act* prohibits certain agreements between competitors. In particular, and subject to certain exceptions, it is a ***criminal offence***:

i) to agree or arrange with a competitor to fix prices, allocate markets, or restrict output ("**price-fixing**"); and
ii) to agree or arrange with another person (i) on the content of a bid, (ii) to refrain from bidding, or (iii) to withdraw a bid, unless the agreement is disclosed to the person calling for bids ("**bid-rigging**").

Penalties for price-fixing and bid-rigging are severe. Individuals can go to jail and both individuals and corporations can face significant fines.

What it means to "agree" or "arrange" is not always obvious, but it is clear that agreements do not have to be in writing. Agreements or arrangements are often oral and are sometimes created through tacit understandings as a result of exchanging sensitive, confidential information with competitors, such as future pricing intentions.

2.2 Agreements that Substantially Lessen or Prevent Competition

Even if discussions with a competitor do not constitute price-fixing or bid-rigging, the *Competition Act* prohibits agreements or arrangements between competitors that substantially lessen or prevent competition. Whether conduct substantially lessens or prevents competition will vary in

every case, so it is strongly recommended to speak with the legal department if you are talking to a competitor about your respective businesses.

2.3 What Must You Do?

- Employees must refrain from price-fixing or bid-rigging.
- Any employee who is approached by a competitor inviting them to engage in price-fixing or bid-rigging should immediately end the conversation and report the incident to the legal department.
- Any employee who is aware of or becomes aware of conduct which may constitute price-fixing or bid-rigging should immediately report it to the legal department.
- Employees who are unsure whether conduct may constitute price-fixing or bid-rigging should immediately contact the legal department to discuss it.
- Employees should not disclose competitively sensitive information to competitors. Such information includes but is not limited to Enercare's confidential prices, discounts, costs, marketing strategies, bidding intentions, or contents of a bid.
- If employees are aware of or become aware of industry/trade association meetings or other meetings at which competitively sensitive information is exchanged by competitors, they should immediately contact the legal department.
- Agreements with competitors that are not price-fixing or bid-rigging can still raise issues under the *Competition Act*. Employees discussing business issues with Enercare's competitors should advise the legal department of their discussions so that the legal department can evaluate potential issues.

2.4 Some Examples of Conduct which should be Avoided and Reported

Floor Price: Competitor A mentions at a trade show that it intends to raise its price for Product A from $9 to $10, and that both it and Enercare should refrain from selling Product A below $10.

Market Allocation: A representative of Competitor B mentions to you that it is considering closing its operations in the Greater Toronto Area for cost reasons to focus on its business in Eastern Ontario. He suggests that it would make sense for Enercare to similarly focus its efforts on business in the Greater Toronto Area and close its operations in Eastern Ontario.

Bid-Rigging: A representative of Competitor C calls you to discuss an upcoming RFQ response to Developer X with whom Enercare has worked closely in the past. She proposes that Competitor C not bid on this RFQ, and that Enercare "return the favour" when the companies respond to Developer Y's RFQ with whom Competitor C has a strong historical relationship.

All of the above are invitations to participate in criminal conduct. No Enercare employee should engage in such conduct and if they become aware of it should immediately report it to the legal department.

3. ABUSE OF DOMINANCE

3.1 Predatory, Exclusionary, or Disciplinary Conduct

The *Competition Act* recognizes that aggressive competition produces the best outcomes for all Canadians. However, certain conduct when engaged in by a "dominant" firm, can have negative consequences on competition and result in higher prices, lower quality products, and less innovation.

Whether a firm is "dominant" for the purposes of the *Competition Act* is fact-specific. While Enercare does not consider itself to be dominant in any business segment given the vigorously competitive markets in which it operates, the Competition Bureau has taken the position that Enercare is dominant in some business segments in certain parts of Ontario. Thus, it is important for Enercare employees to be aware of the types of conduct which may violate the abuse of dominance section of the *Competition Act*.

In general, employees should be cautious about conduct which does not have a legitimate business objective and is intended solely to harm a competitor of Enercare. This type of harmful conduct is often described as predatory, exclusionary, or disciplinary. Unlike price-fixing or bid-rigging, abuse of dominance is not a criminal offence. Penalties, however, can be severe and include significant monetary penalties.

3.2 What Must You Do?

It is not always easy to differentiate harmful conduct from aggressive, competitive conduct. It is important that you speak with the legal department if you become aware of conduct which does not appear to have a legitimate business purpose and is intended to harm a competitor (or potential competitor) of Enercare.

3.3 Some Examples of Conduct which should be Avoided and Reported

Artificial Barriers to Customer Switching: In an attempt to keep customers from switching to Competitor A, Enercare implements artificial barriers which significantly deter customers from terminating their contractual relationship with Enercare and taking their business to Competitor A. Examples of such conduct include: refusing to respond to customer calls about termination requests or obstructing customers wishing to return their water heater tank to an Enercare drop off location.

Conduct by a dominant firm violates the *Competition Act* when it does not have a legitimate business justification. Some conduct may make it difficult for customers to switch to a competitor from Enercare and yet still have a legitimate business justification. You should speak with the legal department if you have questions about what conduct may be justified and what is likely not justified under the *Competition Act*.

Exclusive Supply Contracts: Supplier A is the only supplier of Product X, without which Enercare and its competitors cannot do business. Enercare decides to enter into an exclusive arrangement with Supplier A so that Supplier A will not sell Product X to any of Enercare's competitors. Without access to Product X, Enercare's competitors are significantly harmed in their ability to compete, and risk going out of business.

Exclusive contracts which keep competitors of the dominant firm from buying key inputs have been held to violate the *Competition Act* in certain circumstances. Employees should speak with the legal department if considering such conduct.

Predatory Pricing: Enercare reduces its prices to below cost for a period of time to drive Competitor B out of business, because Competitor B cannot match Enercare's artificially low prices over the long-term. Once Competitor B has gone out of business, Enercare raises its prices to even higher levels than initially to recover the losses it incurred during its low-pricing period.

This type of pricing behavior by a dominant firm is called predatory pricing because it is designed to drive competitors out of the market at which point the dominant firm can raise prices to recover its losses. It is a very specific type of pricing strategy which is hard to differentiate from legitimate pricing strategies designed to win market share and grow business. If you have questions about whether pricing strategies cross the line into conduct which could be predatory, you should speak with the legal department.

4. FALSE AND MISLEADING ADVERTISING

4.1 False or Misleading Representation to the Public

When a business represents its products or services in a materially false or misleading way, customers may make purchasing decisions based on the wrong information. Both the *Criminal Code* and *Competition Act* have provisions dealing with advertising and promotions to the public.

It can be a ***criminal offence*** if, for the purpose of promoting the supply or use of a product, a person makes a representation to the public that is false or misleading in a material way. Criminal penalties will be sought where there is "clear and compelling evidence" that the person knowingly or recklessly made a false representation to the public and criminal prosecution is in the public interest (i.e., targeted to a vulnerable group or repeat offence). However, more often than not, such representations will be dealt with under the civil review provisions of the *Competition Act*. In either case, penalties can be severe. Civil remedies include monetary penalties for individuals and corporations. Criminal penalties include fines and imprisonment.

4.2 What Must You Do?

Employees must not make false or misleading representations about Enercare's products or services to the public. Such representations violate this Program and the law, and undermine Enercare's business by damaging our brand and customer relationships.

4.3 Some Examples of Conduct which should be Avoided and Reported

Misleading Representations about Performance: Enercare runs advertisements knowingly misrepresenting the energy efficiency or length of life of its water heaters.

5. OTHER

5.1 Immunity and Leniency Programs

The Competition Bureau, the government department which enforces the *Competition Act*, offers immunity from criminal prosecution for whistleblowers who are the first to report violations of the criminal provisions of the *Competition Act*. Parties who are not the first to report criminal conduct but who cooperate with the Competition Bureau's investigation and plead guilty may be eligible for lenient treatment, which can mean a significant reduction in any fine or jail time.

For more information on these programs, please speak with the legal department.

5.2 Obstruction

It is a criminal offence to obstruct a government investigation into criminal conduct. Obstruction includes conduct like destroying incriminating documents upon becoming aware of an

investigation. Employees who obstruct government investigations not only expose themselves to criminal prosecution, they may expose Enercare to significant consequences as well. Accordingly, employees must not obstruct government investigations. In the unlikely event you are responding to a government investigation, contact the legal department immediately.

5.3 Searches and Production Orders

In investigating violations of the *Competition Act*, government agents may execute search warrants in Enercare's offices, compel production of records from Enercare, or compel oral testimony from employees of Enercare. In the unlikely event that this occurs, employees should immediately contact the legal department. Under no circumstances should employees refuse to cooperate with government agents who are executing a search warrant as this may constitute obstruction as discussed in section 5.2.