



International  
Competition  
Network

# **ANTI-CARTEL ENFORCEMENT TEMPLATE**

**CARTELS WORKING GROUP**

**Subgroup 2: Enforcement Techniques**

**[jurisdiction's name]**

**[date of completion / updating  
of the template: dd/mm/yyyy]**

# ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

## IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]<sup>1</sup>

## 1. Information on the law relating to cartels

<b>A. Implementing regulation(s) (if any):</b> [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	
<b>B. Interpretative guideline(s) (if any):</b> [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	

<sup>1</sup> Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

<p><b>C. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</b></p>	
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## 2. Scope and nature of prohibition on cartels

<p><b>A. Does your law or case law define the term “cartel”? [Please quote.]</b></p> <p><b>If not, please indicate the term you use instead. [Please quote.]</b></p>	
<p><b>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas<sup>2</sup>) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</b></p>	
<p><b>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</b></p>	
<p><b>D. Is participation in a hardcore cartel illegal <i>per se</i>? [If the situation differs for civil, administrative and criminal liability, please</b></p>	

<sup>2</sup> In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

clarify this.]	
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	

### 3. Investigating institution(s)

A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]	
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	
C. Information point for potential complainants:	
D. Contact point where complaints can be lodged:	
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	

### 4. Decision-making institution(s)<sup>3</sup> [to be filled in only if this is different from the investigating agency]

A. Name of the agency	
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<sup>3</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	
C. Contact point for questions and consultations:	
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	

## 5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]	
C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to	

<b>make a complaint limited to certain categories of complainant?]</b>	
<b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</b>	
<b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b>	
<b>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</b>	

## 6. Leniency policy<sup>4</sup>

<b>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</b>	
<b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</b>	
<b>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</b>	
<b>D. Is eligibility for leniency dependent on the enforcing agency having</b>	

<sup>4</sup> For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

<p><b>either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b></p> <p><b>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</b></p>	
<p><b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b></p>	
<p><b>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</b></p>	
<p><b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</b></p>	
<p><b>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</b></p>	
<p><b>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular</b></p>	

information/data, must they be in writing or can they be made orally, etc.]	
J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency – PGL – and further steps leading to a final leniency agreement / decision)?]	
K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?	
L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?	
M. Does your legislation have a marker system? If yes, please describe it.	
N. Does the system provide for any extra credit <sup>5</sup> for disclosing additional violations? [e.g. a hardcore cartel in another market]	
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	
Q. Contact point where a leniency application can	

<sup>5</sup> Also known as: “leniency plus”, “amnesty plus” or “immunity plus”. This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p>be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</p>	
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	
<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	

## 7. Investigative powers of the enforcing institution(s)<sup>6</sup>

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>7</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	
<p>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in</p>	

<sup>6</sup> “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

<sup>7</sup> “Searches/raids” means all types of search, raid or inspection measures.

<p>another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	

## 8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: [e. g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc. Please indicate the relevant legal provisions.]</p>	
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? [Please indicate the relevant legal provisions.]</p>	

## 9. Limitation periods and deadlines

<p><b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</b></p>	
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</b></p>	
<p><b>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</b></p>	

## 10. Types of decisions

<p><b>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</b></p>	
<p><b>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</b></p>	

<p><b>C. Can interim measures<sup>8</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>9</sup>.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</b></p>	
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**11. Sanctions for procedural breaches (non-compliance with procedural obligations)<sup>10</sup>**

<p><b>A. Grounds for the imposition of procedural sanctions / fines:</b></p>	
<p><b>B. Type and nature of the sanction (civil, administrative, criminal, combined):</b></p>	
<p><b>C. On whom can procedural sanctions be imposed?</b></p>	
<p><b>D. Criteria for determining the sanction / fine:</b></p>	
<p><b>E. Are there maximum and / or minimum sanctions / fines?</b></p>	

<sup>8</sup> In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<sup>9</sup> Only for agencies which answered “yes” to question 2.C. above

<sup>10</sup> In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

## 12. Sanctions on the merits of the case

<p><b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b></p> <p>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</p>	
<p><b>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</b></p>	
<p><b>C. Are there maximum and / or minimum sanctions / fines?</b></p>	
<p><b>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b></p>	
<p><b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</b></p>	

## 13. Possibilities of appeal

<p><b>A. Does your law provide for an appeal from a decision that there has been a violation of a</b></p>	
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<p><b>prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</b></p>	
<p><b>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</b></p>	