



**International  
Competition  
Network**

**ANTI-CARTEL  
ENFORCEMENT  
TEMPLATE**

**CARTELS WORKING GROUP  
Subgroup 2: Enforcement Techniques**

**European Union**

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# 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.

## 1. Information on the law relating to cartels

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| <p><b>A. Law(s) covering cartels:]</b></p>      | <p>The applicable legal provision is Article 81, paragraph 1 of the EC Treaty according to which are prohibited:</p> <p>“all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:</p> <p>(a) directly or indirectly fix purchase or selling prices or any other trading conditions;</p> <p>(b) limit or control production, markets, technical development, or investment;</p> <p>(c) share markets or sources of supply;</p> <p>(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;</p> <p>(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts”</p> <p>This provision is available online at <a href="http://europa.eu.int/comm/competition/legislation/treaties/ec/art81_en.html">http://europa.eu.int/comm/competition/legislation/treaties/ec/art81_en.html</a></p> <p>in Spanish, Danish, German, Greek, English, French, Italian, Dutch, Portuguese, Finnish, Swedish (the text exists also in the following languages, but is not available online: Polish, Hungarian, Czech, Slovak, Slovenian, Latvian, Lithuanian, Estonian, Maltese).</p> |
| <p><b>B. Implementing regulation(s) (if</b></p> | <p>Article 81 of the EC Treaty is implemented by Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on</p>  |

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| <p><b>any):</b></p>                                     | <p>competition laid down in Articles 81 and 82 of the Treaty (Official Journal, L1 of 4 January 2003, pages 1-25).</p> <p>This document is available online at <a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_001/l_00120030104en00010025.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_001/l_00120030104en00010025.pdf</a> in the same languages as mentioned under A.</p> <p>This implementing regulation is further complemented by Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Official Journal, L123 of 27 April 2003, pages 18-24)</p> <p>This document is available online at <a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_123/l_12320040427en00180024.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_123/l_12320040427en00180024.pdf</a> (same languages as mentioned under 1.A.</p>   |
| <p><b>C. Interpretative guideline(s) (if any):]</b></p> | <p>The implementing regulation is also complemented by a set of interpretative guidelines regarding certain aspects of the Commission's antitrust policy. These concern:</p> <ul style="list-style-type: none"> <li>- Commission Notice on cooperation within the Network of Competition Authorities, (Official Journal C 101, 27.04.2004, pages 43-53). (<a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00430053.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00430053.pdf</a>).</li> <li>- Commission Notice on the co-operation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC (Official Journal C 101, 27.04.2004, pages 54-64). (<a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00540064.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00540064.pdf</a>).</li> <li>- Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty (Official Journal C 101, 27.04.2004, pages 65-77). (<a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00650077.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00650077.pdf</a>)</li> <li>- Commission Notice on informal guidance relating to novel questions concerning Articles 81 and 82 of the EC Treaty that arise in individual cases (guidance letters) (Official Journal C 101, 27.04.2004, pages 78-80). (<a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00780080.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00780080.pdf</a>)</li> <li>- Commission Notice - Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (Official Journal C 101, 27.04.2004, pages 81-96). (<a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00810096.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00810096.pdf</a>)</li> <li>- Communication from the Commission - Notice - Guidelines on the application of Article 81(3) of the Treaty (Official Journal C 101, 27.04.2004, pages 97-118) (<a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00970118.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00970118.pdf</a>)</li> </ul> <p>(These documents are available in the same languages as mentioned under 1.A.)</p> |
| <p><b>D. Other relevant materials (if any):</b></p>     | <p>The Commission Notice on Immunity from fines and reduction in fines in cartel cases</p>   |

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|  | <p>(Official Journal C 45, 19.02.2002, pages 3-5) is online available at (<a href="http://europa.eu.int/comm/competition/antitrust/leniency/">http://europa.eu.int/comm/competition/antitrust/leniency/</a>)</p> <p>in the same languages as mentioned under 1.A.</p> |
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## 2. Scope and nature of prohibition on cartels

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| <p><b>A. Does your law or case law define the term “cartel”?</b></p> <p><b>If not, please indicate the term you use instead.</b></p>  | <p>The term “cartel” is not defined by the legislation.</p> <p>However, the Commission’s Notice on Immunity from fines and reduction of fines in cartel cases (Official Journal C/45 of 19 February 2002, pages 3-5, (<a href="http://europa.eu.int/comm/competition/antitrust/leniency/">http://europa.eu.int/comm/competition/antitrust/leniency/</a>)) states in its first indent that it concerns “secret cartels between two or more competitors aimed at fixing prices, production or sales quotas, sharing markets including bid rigging or restricting imports or exports.”</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>1</sup>) and other types of “cartels”?</b></p> | <p>No distinction is made between the different types of cartel behaviour.</p> <p>The Commission’s Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (Official Journal C9 of 14 January 1998; <a href="http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0114(01):EN:HTML">http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0114(01):EN:HTML</a>) qualifies horizontal restrictions such as price cartels and market-sharing quotas [...] as “very serious infringements” as opposed to other trade restrictions, mainly of a vertical nature.</p> |
| <p><b>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]</b></p>   | <p>Article 81(3) of the EC Treaty provides the possibility for the provisions of Article 81(1) EC Treaty to be declared inapplicable to certain restrictive agreements, decisions or concerted practices fulfilling certain criteria. However, cartel agreements are very unlikely to meet the criteria for Article 81(3) to apply. (Cf <a href="http://europa.eu.int/comm/competition/legislation/treaties/ec/art81_en.html">http://europa.eu.int/comm/competition/legislation/treaties/ec/art81_en.html</a>).</p>  |
| <p><b>D. Is participation in a hardcore cartel illegal <i>per se</i>?</b></p>   | <p>As a matter of practice, any agreement which fixes prices, limits its output, shares markets, customers or sources of supply or involves other cartel behaviour such as bid-rigging will be regarded as a <i>per se</i> restriction of competition within the meaning of Article 81, paragraph 1 EC Treaty, which</p>   |

<sup>1</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.

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|   | does not satisfy the conditions for exemption of Article 81(3) EC Treaty.  |
| <b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b> | The EU can only impose administrative sanctions on the undertakings participating in the cartel. Nevertheless, some Member States of the EU may also prosecute individuals participating in a cartel criminally. |

### 3. Investigating institution(s)

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| <b>A. Name of the agency, which investigates cartels:</b>   | European Commission<br>Directorate General for Competition  |
| <b>B. Contact details of the agency:</b>  | European Commission<br>DG Competition (Antitrust Registry)<br>B-1049 Bruxelles/ Brussel<br>+322.295.96.75 (telephone) and +322.295.01.28 (fax)<br>COMP-GREFFE-ANTITRUST@cec.eu.int<br><a href="http://europa.eu.int/comm/dgs/competition/index_en.htm">http://europa.eu.int/comm/dgs/competition/index_en.htm</a> (Available in same languages as mentioned under 1.A.)   |
| <b>C. Information point for potential complainants :</b>  | See contact details under D and further under Question 5.<br><br>See also <a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00650077.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_101/c_10120040427en00650077.pdf</a> ;<br><br>The standard "Form C" to lodge complaints can be found online at:<br><a href="http://europa.eu.int/comm/competition/antitrust/others/anticompetitive/formc.html">http://europa.eu.int/comm/competition/antitrust/others/anticompetitive/formc.html</a> ;   |
| <b>D. Contact point where complaints can be lodged:</b>   | European Commission<br>DG Competition (Antitrust Registry)<br><br>B-1049 Bruxelles/ Brussel+322.295.01.28 (fax)<br><br>COMP-GREFFE-ANTITRUST@cec.eu.int   |
| <b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b> | The European Commission may be assisted in carrying out its investigation by the National Competition Authorities of any of the Member States.<br><br>This assistance may consist of an exchange of information within the framework of the European Competition Network or ECN; it may also consist of cooperation in carrying out on-the-spot investigations (for instance during the preparation of the investigation, assistance to overcome obstruction, etc) or even consist of the investigations being carried out by the National Competition Authorities on behalf of the Commission. |

#### 4. Decision-making institution(s)<sup>2</sup> [to be filled in only if this is different from the investigating agency]

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| <b>A. Name of the agency making decisions in cartel cases:</b>   | Nil |
| <b>B. Contact details of the agency:</b>   | Nil |
| <b>C. Contact point for questions and consultations:</b>   | Nil |
| <b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b> | Nil |
| <b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>                | Nil |

#### 5. Handling complaints and initiation of proceedings

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| <b>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</b> | Ex officio, leniency application, information from other sources (former employees, customers, other EU National Competition Authorities in the framework of ECN), complaints.   |
| <b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b>                    | Complaints have to contain the information set out in Form C (see Article 5 and annex of Commission Regulation 773/2004 (OJ 2004 L 123/18),<br>available at <a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_123/l_12320040427en00180024.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_123/l_12320040427en00180024.pdf</a> ).<br><br>Besides complaints, the Commission receives market information, i.e. more or less detailed information about |

<sup>2</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

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|  | <p>suspected infringements in any form (e-mail, letters etc.) that does not form a complaint in the formal sense.</p>   |
| <p><b>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</b></p> | <p>Complainants must be able to show a legitimate interest (Article 7(2) of Regulation 1/2003 and Article 5(1) of Regulation 773/2004; for explanations cf. Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty, OJ 2004 C 101/65, paras 33ss.).</p>  |
| <p><b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</b></p>   | <p>The Commission is obliged to carefully examine the factual and legal elements brought to its attention by the complainant. It is however not required to conduct an investigation in each case. It may give differing degrees of priority to the complaints it receives and refer to the Community interest in determining the priority of a complaint.</p>  |
| <p><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></p>  | <p>Where the Commission considers that there are insufficient grounds for acting on a complaint, it has to inform the complainant of the reasons and set a time-limit for comments by the complainant. If the complainant makes known its views within the time-limit and the comments by the complainant do not lead to a different assessment, the Commission rejects the complaint by decision. If the complainant does not reply within the time-limit, the complaint is deemed to have been withdrawn (Article 7 of Regulation 773/2004).</p> <p>Where the Commission rejects a complaint pursuant to Article 13 of Regulation 1/2003 (i.e. on the ground that a Member State' competition authority is already dealing with the case or has already dealt with the case), it shall inform the complainant of the national competition authority which is dealing or has dealt with the case (Article 9 of Regulation 773/2004).</p> |
| <p><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></p>                       | <p>There is no statutory time-limit. Pursuant to case law, the Commission is obliged to decide on complaints within a reasonable time. As a matter of good administration, the Commission has publicly stated that it endeavours to inform complainants of the action that it proposes to take within 4 months (cf. Notice on the handling of complaints, paras 60ss.).</p>   |

## 6. Leniency policy<sup>3</sup>

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| <p><b>A. What is the official name of your leniency</b></p> | <p>The Commission Notice on Immunity from fines and reduction in fines in cartel cases (Official Journal C 45, 19.02.2002, pages 3-5) ("the Leniency Notice");</p> |
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<sup>3</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.

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| <b>policy (if any)?</b>   | This document is online available at ( <a href="http://europa.eu.int/comm/competition/antitrust/leniency/">http://europa.eu.int/comm/competition/antitrust/leniency/</a> ).  |
| <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>  | Yes (Cf points 8 and 20 of the Commission Leniency Notice).  |
| <b>C. Who is eligible for full leniency?</b>  | Immunity from fines will be granted by the Commission:<br><br>1/ to the first undertaking to submit evidence which in the Commission's view may enable it to adopt a decision to conduct an investigation (cf point 8(a)), or<br><br>2/ to the first undertaking to provide evidence which in the Commission's view may enable it to find an infringement of Article 81(1) EC Treaty in relation to a cartel (point 8(b)).   |
| <b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b><br><br><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> | Yes.<br><br>Immunity will only be granted under point 8 (a) provided that the Commission did not have itself, at the time of the submission, enough evidence to adopt a decision to carry out an investigation in connection with the same cartel (point 9);<br><br>Immunity will only be granted under point 8 (b), provided the Commission did not have itself, at the time of the submission, enough evidence to find an infringement of Article 81 EC Treaty in connection with the alleged cartel, and, that no company had previously been granted immunity following the first case (under point 8(a) in connection with the same cartel (point 10).<br><br>Evidence which has been voluntarily submitted by undertakings is evaluated for leniency strictly in the chronological order in which it has been submitted. |
| <b>E. Who can be a beneficiary of the leniency program</b>  | Undertakings only (not individuals as such).   |

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| <b>(individual / businesses)?</b>  |  |
| <b>F. What are the conditions of availability of full leniency:</b>  | <p>In addition to being the first undertaking to comply with the requirements stated under points 8-10 of the Leniency Notice as reproduced in response to question 6.C and 6.D, the applicant must meet the following second stage criteria (point 11):</p> <ul style="list-style-type: none"> <li>- The undertaking must cooperate fully, continually and expeditiously throughout the Commission’s administrative procedure and provide it with all evidence that comes into its possession or is available to it relating to the suspected infringement. In particular, it must remain at the Commission’s disposal to answer swiftly any request that may contribute to the establishment of the facts concerned;</li> <li>- The undertaking must end its involvement in the suspected infringement no later than at the time at which it submits evidence under points 8 (a) or 8(b);</li> <li>- The undertaking did not coerce other companies to take part in the infringement.</li> </ul> |
| <b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b> | <p>In order to benefit from a reduction of any fine that would otherwise have been imposed (point 20), an undertaking must</p> <ul style="list-style-type: none"> <li>- provide the Commission with evidence of the suspected infringement which represents “significant added value” with respect to the evidence already in the Commission’s possession (point 21); “Significant added value” means that the evidence presented must significantly strengthen the Commission’s ability to prove the alleged infringement (point 22);</li> <li>- terminate its involvement in the suspected infringement no later than the time at which it submits the evidence (point 21);</li> </ul> <p>(NOTE: applicants do not have a clear duty or obligation to cooperate, in contrast to immunity applications; however, the extent of cooperation provided is taken into account in the percentage of reduction granted).</p>  |
| <b>H. Obligations for the beneficiary after the leniency application has been accepted:</b>                                  | <p>As stated in response to Question 6.F, the immunity applicant must cooperate fully, continually and expeditiously throughout the Commission’s administrative procedure and provide it with all evidence that comes into its possession or is available to it relating to the suspected infringement. In particular, it must remain at the Commission’s disposal to answer swiftly any request that may contribute to the establishment of the facts concerned;</p> <p>In contrast, as stated in responded to Question 6.G, the applicant for a reduction in fine is not bound by such a duty of cooperation.</p>  |
| <b>I. Are there formal requirements to make a leniency application?</b>  | <p>There are no additional formal requirements than the ones described in response to questions 6.E- 6.H; Applications can be made both in writing and orally.</p>   |
| <b>J. Are there distinct procedural steps within the leniency program?</b>   | <p>Applications for immunity</p> <p>Applications for immunity must be made to the Competition DG of the Commission.</p> <p>The undertaking can make two types of submissions</p>   |

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|   | <ul style="list-style-type: none"> <li>- immediately provide real/tangible evidence (point 13(a));</li> <li>- provide evidence in hypothetical terms (i.e., a descriptive list of evidence the undertaking proposes to put forward)</li> </ul> <p>The Directorate General for DG Competition will acknowledge in writing the company application for immunity, confirming the date and type of submission made to the Commission (real or hypothetical);</p> <p>Provided the conditions of the Leniency Notice are met, the Commission then grants conditional immunity pursuant to points 15 and 16 of the Leniency notice (points 15 and 16 of the Leniency notice):</p> <ul style="list-style-type: none"> <li>- In case of an immediate submission of all evidence (point 13(a)), as soon as possible after the Commission has received the evidence submitted by the undertaking (Cf point 15 of the Leniency notice);</li> <li>- In case of an application in “hypothetical terms” (point 13(b)), once the Commission has received the descriptive list and has verified that the nature and content of the evidence described in the list will meet the conditions of the leniency Notice, the applicant will be informed that it will receive conditional immunity, subject only to the submission of the actual evidence, which should correspond to the description of it in the list. Conditional immunity is then granted once the evidence has been received (Cf point 16 of the Leniency notice).</li> </ul> <p>The Commission will not consider other applications for immunity whilst it has one such application pending in relation to the same suspected infringement.</p> <p>If the undertaking continues to meet the second stage conditions (point 11) at the end of the Commission’s administrative procedure, the Commission will grant the company immunity from fines in the relevant decision.</p> <p><b>Reduction of a fine</b></p> <p>Applications must be made to the Competition DG of the Commission; the same contact information applies as for immunity.</p> <p>The Directorate General for DG Competition will acknowledge in writing the company application for a reduction of a fine, confirming the date on which the relevant evidence was submitted;</p> <p>The Commission informs the undertaking in writing, no later than the date on which a statement of objections is notified of its intention to apply a reduction of a fine within a specified band as provided in point 23 (b). (Cf point 26 of the Leniency notice).</p> <p>The Commission will not consider any other submissions of evidence by an applicant for a reduction in fine before it has taken a position on any existing application for a conditional immunity from fines in relation to the same suspected infringement.</p> <p>The Commission will evaluate the final position of each undertaking which filed an application for a reduction of a fine at the end of the administrative procedure in any decision adopted.</p> |
| <p><b>K. At which time during the application</b></p> | <p>See also under response to Question 6/J:</p> <p>Certainty with respect to the eligibility for immunity is given by granting</p>   |

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| <p><b>process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</b></p>  | <p>conditional immunity as soon as the evidence in support of the application is submitted to the Commission and has been found to meet the conditions set out in points 8(a) or 8(b) of the Leniency notice. This is normally a matter of weeks, but can take longer in complicated cases.</p> <p>With regard to a reduction of a fine, the Commission informs the undertaking in writing, no later than the date on which a statement of objections is notified of its intention to apply a reduction of a fine within a specified band as provided in point 23 (b). (Cf point 26 of the Leniency notice). In practice, the Commission will try to do so as soon as possible. However, this evaluation usually takes longer than in the case of an immunity application.</p> |
| <p><b>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?</b></p> | <p>Immunity and/or a reduction in fine are granted in the final decision on the basis of point 19 and/or point 27 respectively of the Leniency notice. Conditional immunity and the Commission's preliminary conclusion that the undertaking qualifies for a reduction are issued in the form of a Commission decision, based on points 15, 16 and 26 of the Leniency notice respectively.</p>   |
| <p><b>M. Does your legislation have a marker system? If yes, please describe it.</b></p>  | <p>No.</p>   |
| <p><b>N. Does the system provide for any extra credit<sup>4</sup> for disclosing additional violations?</b></p>   | <p>No.</p> <p>However, as the case may be, immunity or a reduction in fine may be available in any new proceedings opened following the undertaking's disclosure of the "additional" violation.</p>  |
| <p><b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b></p>   | <ul style="list-style-type: none"> <li>- The information provided by the Leniency applicant may not be disclosed to third parties without the applicant's agreement because this would undermine the protection of the purpose of inspections and investigations within the meaning of Article 4(2) of the ["Transparency"] Regulation (EC) No 1049/2001 of the European Parliament and of the Council (Cf point 32 of the Leniency Notice).</li> <li>- Any statements made to the Commission in relation to the Notice form part of the Commission's file and may not be disclosed or used for any other purpose than the enforcement of Article 81 EC Treaty (Cf point 33 of the Leniency Notice).</li> </ul>  |

<sup>4</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.

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|   | <p>- Leniency applications as well as the information obtained on the basis of the leniency applications can not be transmitted to another member of the European Competition Network without the consent of the Leniency applicant, save where the receiving authority has also received a leniency application by the same applicant for the same infringement or where the receiving authority provides a written commitment that the information will not be used by it or by any other authority to impose sanctions (Cf points 40-41 of the Commission's notice on cooperation within the Network of Competition Authorities, see response under Question 1.C).</p> <p>- Business secrets and confidential information will not be disclosed to the other parties involved in the investigation pursuant to the "Commission's Notice on the internal rules of procedure for processing requests for access to the file in cases pursuant to Articles [81] and [82] [...] EC Treaty" (Official Journal C23 of 23 January 1997; <a href="http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:51997XC0123(01):EN:HTML">http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:51997XC0123(01):EN:HTML</a>).</p> |
| <p><b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b></p>   | <p>Yes. The final relevant decision of the Commission can be appealed before the European Court of First Instance.</p> <p>The intermediate act on conditional immunity (points 15/16) and/or the eligibility for a reduction in fine (point 26) can not be appealed.</p>  |
| <p><b>Q. Contact point where a leniency application can be lodged:</b></p>  | <p>Leniency applications can be lodged at any hour by fax at +322.299.45.85 or initiated by telephone (during working hours) at +322.298.41.90 or +322.298.41.91.</p>   |
| <p><b>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?</b></p> | <p>In case the undertaking no longer fulfils the requirements set out in the Notice, the Commission will not grant immunity, or as the case may be, a reduction of fines, in the final decision.</p> <p>The final decision in this regard can be appealed before the European Court of First Instance. The intermediate act whereby the undertaking is informed of the Commission's intention not to grant immunity or a reduction in fine cannot be appealed.</p>  |
| <p><b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b></p>  | <p>No.</p>  |

## 7. Investigative powers of the enforcing institution(s)<sup>5</sup>

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| <p><b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>6</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b></p> | <p>1. The Commission may by simple request or by decision require undertakings and associations of undertakings to provide all necessary information (Article 18 of Regulation 1/2003). Penalties may be imposed in case of non compliance to a request by decision, or the provision of incorrect, incomplete or misleading information.</p> <p>2. The Commission may conduct all necessary inspections of undertakings and associations of undertakings. In carrying out these inspections, the Commission has the power to (a) enter any premises, land and means of transport; (b) examine the books and other records related to the business irrespective of the medium on which they are stored and (c) take or obtain copies or extracts from such books or records (Article 20(2) and 21(4) of Regulation 1/2003).</p> <p>- In case of inspections at business premises, the inspections are carried out either on the basis of a simple mandate signed by the deputy Director General of DG Competition or on the basis of a Commission decision (in which case the undertaking is obliged to cooperate). In addition to the powers mentioned above, the Commission also has the power to (d) seal any business premises and books or records for the period and to the extent necessary for the inspection as well as (e) ask any representative of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and record the answers Article 20(2) of Regulation 1/2003).</p> <p>- In case of inspections at non-business premises, the inspections must be authorized by Commission decision as well as a prior authorization of the relevant national judicial authority.</p> <p>3. The Commission also has the power to interview any natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject-matter of an investigation (Article 19 of Regulation 1/2003).</p> |
| <p><b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court</b></p>  | <p>Automobiles and briefcases at business premises can be searched on the basis of the Commission decision or mandate ordering.</p> <p>Private residences can only be searched on the basis of a Commission decision and with prior authorization of the relevant national judicial authority.</p>   |

<sup>5</sup> “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

<sup>6</sup> “Searches/raids” means all types of search, raid or inspection measures.

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|   | Physical persons can not be searched.  |
| <b>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</b> | No.  |
| <b>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b>  | There have been challenges to the Commission's powers to seek information and documents. See for instance in relation with inspections, joined cases 46/87 and 227/88, Hoechst AG v Commission, judgement of 21 September 1989, ECR (1989) page 2859; case T-30/89, Hilti v Commission, judgement of 4 april 1990, ECR (1990) page II-163. See also on requests for information case 374/87, Orkem v Commission, judgement of 18 October 1989, ECR (1989) page 3283. |

## 8. Procedural rights of businesses / individuals

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| <b>A. Key rights of defence in cartel cases:</b>   | <p>1. Right of appeal against the final decision before the European Court of First Instance which reviews the legality of and reasons for the decision. It also reviews whether the procedural rules have been respected and assesses whether the amount of the fines imposed is appropriate.</p> <p>2. Procedural rights, see Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Official Journal L123 of 27 April 2004; available online at <a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_123/l_12320040427en00180024.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_123/l_12320040427en00180024.pdf</a>).</p> <p>These include for instance the right to be informed in writing by the Commission of the objections it raises against them; the right to reply to those objections within a set time-limit (Article 10); the right of access to the Commission's file, save to business secrets and other confidential information and internal documents of the Commission (Article 15); the right to be heard in an oral hearing (Articles 11 and 12).</p> <p>3. Right against self-incrimination, as endorsed by the European Courts of Justice (see for instance judgement of 18 October 1989, Orkem v Commission, ECR (1989) page 3283</p> |
| <b>B. Protection awarded to business secrets (competitively sensitive information): is there a</b> | Information properly claimed to constitute business secrets is protected from disclosure. (See Article 15 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Official Journal L123 of 27 April 2004; available online at <a href="http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_123/l_12320040427en00180024.pdf">http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_123/l_12320040427en00180024.pdf</a> ; See also "Commission's Notice on the internal rules of procedure for processing requests for access to the file in cases pursuant to Articles [81] and [82]  |

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| <p><b>difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</b></p> | <p>[...] EC Treaty” (Official Journal C23 of 23 January 1997; <a href="http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:51997XC0123(01):EN:HTML">http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:51997XC0123(01):EN:HTML</a></p> |
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## 9. Limitation periods and deadlines

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| <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>No limitation period for the investigation and prosecution of cartels.</p> <p>There are limitation periods applying to penalties against cartel participants (Cf Article 25 of Regulation 1/2003).</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>No limitation period.</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>  | <p>The final decision imposing sanctions may be challenged before the European Court of First Instance within a period of 2 months (Article 230 EC Treaty).</p>   |

## 10. Types of decisions

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| <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.</b></p> | <p>The Commission finds that there is an infringement of Article 81 of the EC Treaty requiring the undertaking and associations of undertakings concerned to bring such infringement to an end. The Commission may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end.</p> <p>If the Commission has a legitimate interest in doing so, it may</p> |
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|  | also find that an infringement has been committed in the past (Article 7.1 of Regulation 1/2003). |
| <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>   | As above at 10.A.   |
| <b>C. Can interim measures<sup>7</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>8</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> | Yes, but rarely applied (see Article 8 of Regulation 1/2003).                                     |

## 11. Sanctions for procedural breaches (non-compliance with procedural obligations)<sup>9</sup>

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| <b>A. Grounds for the imposition of procedural sanctions / fines:</b> | <ul style="list-style-type: none"> <li>- Non compliance with a request for information by supplying incorrect, incomplete or misleading information.</li> <li>- Producing the required books or other records related to the business in incomplete form during inspections;</li> <li>- Refusal to submit to inspections;</li> <li>- Providing incorrect or misleading answers (and falling to rectify within the set time-limit) in response to a questions asked during an inspection;</li> <li>- Breaking a seal affixed during an inspection.</li> </ul> |
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<sup>7</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>8</sup> Only for agencies which answered “yes” to question 2.C. above

<sup>9</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.

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|  | (Article 23 of Regulation 1/2003).  |
| <b>B. Type and nature of the sanction (civil, administrative, criminal, combined):</b> | Administrative pecuniary sanction.  |
| <b>C. On whom can procedural sanctions be imposed?</b>                                 | Undertakings.   |
| <b>D. Criteria for determining the sanction / fine:</b>                                | In fixing the amount of the fine, the Commission will have regard to both the gravity and duration of the infringement. |
| <b>E. Are there maximum and / or minimum sanctions / fines?</b>                        | No minimum.<br>Fine may not exceed 1% of the total turnover in the preceding business year of the undertaking.          |

## 12. Sanctions on the merits of the case

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| <b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b> | Administrative. Nevertheless, certain Member States may also impose criminal sanctions.   |
| <b>On whom can sanctions be imposed?</b>  | Undertakings only. Nevertheless, certain Member States may also impose sanctions on individuals.  |
| <b>B. Criteria for determining the sanction / fine:</b>   | The Commission basic amount for a fine is determined by the gravity and the duration of the infringement. As for gravity, cartel infringements are generally classified as "very serious infringements" with likely fines above EUR 20 million. As for duration, fines may be increased by 50% for infringements of medium duration (1-5 years), and 10 % per year for infringements of long duration (more than five years).<br><br>The basic amount of the fine may be further increased or decreased for aggravating or attenuating circumstances. |
| <b>C. Are there maximum and / or minimum sanctions / fines?</b>                                     | No real minimum fine. The fine shall not exceed 10 per cent of the total turnover of the undertaking in the preceding business year (Cf Article 23 of Regulation 1/2003)  |
| <b>D. Guideline(s) on calculation of fines:</b>   | Commission Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (Official Journal C9 of 14 January 1998,<br><br>available online at: <a href="http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0114(01):EN:HTML">http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0114(01):EN:HTML</a>  |

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|   | Available in the same languages as mentioned under 1.A   |
| <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>No automatic suspensory effect.</p> <p>The Court may however, if it considers that circumstances so require, order that application of the contested act be suspended (Article 242 of the EC Treaty);</p> <p>Parties who wish to apply for such suspension must do so together with the appeal against the decision and state the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for (Article 105(2) of the Rules of Procedure of the Court of First Instance of 2 May 1991, Official Journal L 136 of 30 May 1991, available online at <a href="http://curia.eu.int/en/instit/txtdocfr/txtsenvigreur/txt7.pdf">http://curia.eu.int/en/instit/txtdocfr/txtsenvigreur/txt7.pdf</a> )</p> |

### 13. Possibilities of appeal

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| <b>A. Does your law provide for an appeal from a decision that there has been a violation of a 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>Yes. It is open for the parties to appeal the final decision before the Court of First Instance which reviews the legality of and reasons for the decision. It also reviews whether the procedural rules have been respected and assesses whether the amount of the fines imposed is appropriate.</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>European Court of First Instance</p> <p>Further information online available at <a href="http://curia.eu.int/">http://curia.eu.int/</a> in all official languages of the European Union.</p>  |