



**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

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

Cyprus

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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

A. Law(s) covering cartels:	The Protection of Competition Law of 2008 (Law no. 13(I)/2008) Homepage address: www.competition.gov.cy Languages: Greek: http://www.competition.gov.cy/competition/competition.nsf/dmlcompetition_gr/dmlcompetition_gr?OpenDocument English: http://www.competition.gov.cy/competition/competition.nsf/dmlcompetition_en/dmlcompetition_en?opendocument
B. Implementing regulation(s) (if any):	None. Currently a regulation on the procedures to be followed is being drafted.
C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these	None

materials are available]	
D. Other relevant materials (if any):	<p>Ministerial Council Orders covering Block Exemptions</p> <p>Greek http://www.competition.gov.cy/competition/competition.nsf/dmlaction_gr/dmlaction_gr?opendocument</p> <p>English (some) http://www.competition.gov.cy/competition/competition.nsf/dmlaction_en/dmlaction_en?OpenDocument</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>In the national legislation there is no definition of the term cartel, but this form of anti-competitive behaviour may fall under the section of the Law that prohibits all forms of co-operation which have as their object or effect the prevention, restriction, or distortion of competition. The term "co-operation" includes an agreement between undertakings, a decision of an association of undertakings or a concerted practice (Reference Section 3 of Law 13(I)/2008)</p>
<p>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 quotas¹) and other types of “cartels”?</p>	<p>No</p>
<p>C. Scope of the prohibition of hardcore cartels:</p>	<p>Any form of co-operation (see 2/A above) between undertakings which have as their object or effect the prevention, restriction, or distortion of competition, are prohibited, in particular a co-operation which (as per Section 3 of the Law 13(I)/2008):</p> <p>(a) fixes directly or indirectly the purchase or reselling prices or other terms of agreements.</p> <p>(b) limits the production, markets or technical development to the prejudice of consumers.</p> <p>(c) distributes geographically or otherwise the markets or other sources of supply</p>

¹ 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.

	<p>(d) applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.</p> <p>(d) makes 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>The law provides for an exemption to this prohibition if it is proven that such co-operation (Section 4 of Law 13(I)/2008):</p> <p>(1) contributes, with a reasonable participation of consumers, in the resulting benefit, in the development of production or distribution of goods or in the promotion of technical or financial development.</p> <p>(2) does not impose on undertakings concerned, restrictions those other than the absolutely necessary for the achievement of the par.1 and</p> <p>(3) does not afford undertakings, to which the agreement relates, the possibility to eliminate competition from a substantial part of the market of the product concerned.</p> <p>Also in case an agreement belongs to a category of agreements regulated by a Ministerial Council Order (Block Exemption Regulation), then it can be excluded from the application of the Law (Section 5 of the Law 13(I)/2008).</p> <p>Agreements, decisions and concerted practices caught by section 3 of the Law which do not satisfy the conditions of section 4 and 5 shall be prohibited, no prior decision to that effect being required.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>?</p>	<p>Yes.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>Infringement of section 3 of the Law constitutes an administrative offence. However, anyone who continues to violate section 3 of the Law, following a relevant decision of the CPC is guilty of a criminal offence (two years imprisonment or up to 340.000 euros).</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels:</p>	<p>The Service of the Commission for the Protection of Competition</p>
<p>B. Contact details of the agency:</p>	<p>Commission for the Protection of Competition Address: 46 Themistokle Dervi Street, Medcon Tower 4th Floor, 1066 Nicosia, Cyprus Tel: 00357 22 875910 Fax:00357 22 304944</p>

	Email: chairman@competition.gov.cy Web: www.competition.gov.cy (EL, EN)
C. Information point for potential complainants:	see 3/B above
D. Contact point where complaints can be lodged:	see 3/B above
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	No

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

A. Name of the agency making decisions in cartel cases:	The Commission for the Protection of Competition (CPC)
B. Contact details of the agency:	see 3/B above
C. Contact point for questions and consultations:	see 3/B above
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	<p>The Service of the CPC is responsible for the investigation of a case (collection and examination of the necessary information). During the investigation the Service may use the investigative powers indicated in PART 7 below. With the conclusion of the investigation the Service prepares a report with its findings and recommendation which it submits to the Commission together with the file of the case.</p> <p>The Commission after evaluating the investigative report and all the evidence before it, decides, prima facie, on the merits of the case. Where there is a prima facie violation, the Commission serves the involved parties with a Statement of Objections.</p>
E. What is the role of the investigating agency if cartel cases belong	N/A

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

under criminal proceedings?	
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5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases:	Investigations in cartel cases commence on the basis of complaints or ex officio.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	<p>Complaints must be submitted to the Cyprus Commission for the Protection of Competition. The complaint must be written and signed either by the complainant or lawyer or authorised representative of the complainant and must contain all the information included in the Annex of the Law. In case the complaint does not include all the information requested in the Annex, the Commission has the discretionary power to decide to go on with the investigation if it consider that the information communicated is adequate for the examination of the complaint. (section 35 of the Law 13(I)/2008)</p> <p>Form for the submission of complaints in the homepage:</p> <p>Greek http://www.competition.gov.cy/competition/competition.nsf/dmlapplication_gr/dmlapplication_gr?OpenDocument</p> <p>English http://www.competition.gov.cy/competition/competition.nsf/dmlapplication_en/dmlapplication_en?opendocument</p>
C. Legal requirements for lodging a complaint against a cartel:	Any natural or legal person having a legitimate interest may lodge a complaint regarding an alleged infringement of the provisions of the Law. The complaint must contain the information stated in 5/B
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	Upon receiving a complaint that was filed in the correct form, the Commission is obliged to investigate the infringement or act in accordance with the Law and exercise the powers conferred upon it by the Law.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	The complainant must be informed of the decision of the Commission not to open up an investigation due to the fact that the minimum requirements set by the Law were not fulfilled. All the decisions of the Commission must be fully reasoned.
F. Is there a time limit counted from the date of receipt of a complaint by the	No

competition agency for taking the decision on whether to investigate or reject it?	
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6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	A new leniency programme is currently being drafted.
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	
C. Who is eligible for full leniency?	
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? 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?	
E. Who can be a beneficiary of the leniency program (individual / businesses)?	
F. What are the conditions of availability of full	

³ 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.

leniency:	
G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):	
H. Obligations for the beneficiary after the leniency application has been accepted:	
I. Are there formal requirements to make a leniency application?	
J. Are there distinct procedural steps within the leniency program?	
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 credit⁴ for disclosing additional violations?	
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	

⁴ 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.

decision rejecting a leniency application?	
Q. Contact point where a leniency application can be lodged:	
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?	
S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?	

7. Investigative powers of the enforcing institution(s)⁵

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>The CPC may:</p> <ul style="list-style-type: none"> -collect all the necessary information, documents or other material by a written request, from the undertakings or other natural or legal persons (section 30 of Law); - enter business premises, land and means of transport of the undertakings (no court order required) (section 31(1) of Law 13(I)/2008) -examine the books and other records related to the business, irrespective of the medium on which they are stored during unannounced raids (section 31(1) of the Law) -to take or obtain in any form copies from such books or records during unannounced raids (section 31(1) of the Law) - to seal any business premises and books or records for the period and to the extent necessary for the unannounced raid (section 31(1) of the Law) - to ask any representative or member 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 to record the answers (section 31(1) of the Law) - to enter any premise or means of transport other than those
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⁵ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

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

	mentioned in section 31 above or residence after obtaining a Court Order (section 32 of the Law)
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	Yes, The CPC has the power to enter residences after obtaining a Court Order.
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)?	No (section 31(9) of the Law)
D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.	No

8. Procedural rights of businesses / individuals

A. Key rights of defence in cartel cases:	<p>- A statement of objections is served to the undertaking or association of undertakings under investigation, in order to enable it to state its position in regards to the objections. A reasonable time is provided to the undertaking to prepare its position which is submitted in writing.</p> <p>-The party has a right to legal representation.</p> <p>-The party has right to access documents in the file. However, the CPC is not obliged to give access, to the whole file of the investigation to parties concerned, but only the documents it will rely upon to issue its decision. The CPC cannot base its decision on a document that has not been disclosed to the parties.</p> <p>-Any undertaking has a right to be heard orally and respond to the case in writing.</p>
B. Protection awarded to business secrets (competitively sensitive information): is there a	The CPC does not disclose information that the undertakings regard as confidential, except to the effect that it has to support its findings.

difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?	
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9. Limitation periods and deadlines

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?	<p>There is a time limit of five years for the exercise of the Commissions power to impose pecuniary sanctions, in cases of infringements of section 3 or 6 of the Law (anticompetitive agreements and abuse of dominance) and three years in case of infringements for collecting evidence and the conduction of inspections.</p> <p>The above limitation period begins from the date the infringements takes place and where the infringement continues or is repeated, from the date the infringement ceases.</p> <p>The limitation period is interrupted with the commencement of the procedure before the Commission.</p>
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?	see 9/A above
C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?	Any person with a legitimate interest may file an appeal against a decision of the CPC within a period of 75 days, starting from the date the decision was notified to it. (article 146 of the Constitution)

10. Types of decisions

<p>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.</p>	<p>Where the Commission, in the course of the proceedings carried before it, finds an infringement regarding a cartel, it may (section 24 of the Law):</p> <ul style="list-style-type: none"> - impose a fine on undertakings for the infringement of the provisions of the law. - order the undertakings involved to terminate (cease) (within a set fixed time-period) the infringement and to avoid repetition thereof, or in case the infringement was terminated before the decision of the CPC, to condemn the undertaking by a declaratory judgement. - impose structural remedies to the undertakings involved and that are necessary depending on the infringement for the cessation of the infringement. - impose a fine on undertakings or association of undertakings in case where the infringement continues. - accept commitments offered by the involved undertakings.
<p>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).</p>	<p>see 10/A above</p>
<p>C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>The Commission has the power, after an application or on its own initiative, to order temporary interim measures and to impose such terms which under the circumstances it deems necessary. These measures, whether positive or injunctory, must be of a temporary and conservative in nature and they must not exceed what is reasonably necessary under the circumstances. The following conditions must be satisfied cumulatively for such an order to be issued:</p> <ul style="list-style-type: none"> (a) there should be a reasonably strong prima facie case of an infringement (b) it is a matter of urgency (c) there a risk of irreparable damage to the interests of the person lodging the application or to the public interest. <p>Failure to comply with the interim measures imposed by the Commission constitutes an offence and the Commission has the power to impose up to 17.000 euros for every day the infringement continues.</p>

⁷ 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].

⁸ Only for agencies which answered “yes” to question 2.C. above

11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

A. Grounds for the imposition of procedural sanctions / fines:	<p>-A procedural sanction may be imposed for the omission to provide the required information within the fixed time period and for the intentional or negligent provision of inaccurate or misleading information. (section 30 (7) of the Law)</p> <p>-A procedural sanction may also be imposed in case of omission to comply with an order of the Commission to conduct an unannounced raid or alteration of documents or records. (section 31(7) of the Law)</p>
B. Type and nature of the sanction (civil, administrative, criminal, combined):	The sanctions imposed by the CPC are administrative. Criminal sanctions may only be imposed by the National Courts in regards to failure to comply with an unannounced raid order, alteration, destruction, conciliation of documents or records, provides incorrect or misleading information or refusal to provide information.
C. On whom can procedural sanctions be imposed?	On the parties participating in the proceedings
D. Criteria for determining the sanction / fine:	see 11/A above
E. Are there maximum and / or minimum sanctions / fines?	<p>-In relation to violations provided for in sections 30(7) and 31(7) (see 11/A) the Commission has the power to impose a fine up to 85.000 euros. It may also impose a fine up to 17.000 euros for every day the infringements continue.</p> <p>- In case a person knowingly and for the purpose of misleading the Commission fails to comply with an unannounced raid order, alters, destructs, conceals documents or records, provides incorrect or misleading information or refuses to provide information that person commits a criminal offence that is punishable with up to one year imprisonment or a fine up to 85.000 euros.</p>

12. Sanctions on the merits of the case

A. Type and nature of	The decisions taken by the Commission are of administrative
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⁹ 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.

<p>sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed?</p>	<p>nature and administrative sanctions may be imposed on undertakings or association of undertakings.</p> <p>In relation to the criminal sanctions the national Courts may impose criminal penalties to the legal entity, all the members of the Board of Directors responsible for the acts of the legal entity and the General Manager or Managing Director of the legal entity. (section 39 of the Law)</p>
<p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</p>	<p>The Commission determines the level of a fine according to the gravity and duration of the infringement (section 24 (a) of the Law).</p> <p>The Commission may decide on the immunity or the reduction of a fine imposed, according to the criteria specified in the Leniency Programme that is currently being drafted.</p>
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>The fine imposed should not exceed ten percent of the combined annual revenue of the undertaking or association of undertakings in the year within which the infringement took place or in the year which immediately preceded the infringement.</p>
<p>D. Guideline(s) on calculation of fines:</p>	<p>N/A</p>
<p>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?</p>	<p>A challenge of the decision reached on the merits of the case has no automatic suspensory effect in respect to the fine in question. However, a suspension may be requested by the party through an application for interim measures to the Supreme Court of Cyprus.</p>

13. Possibilities of appeal

<p>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?</p>	<p>A party having a legitimate interest may file an appeal to the Supreme Court of Cyprus against a decision of the CPC. The Supreme Court examines whether the decision of the CPC was taken according the administrative law. Grounds for recourse include a claim that the CPC acted wrongly vis-à-vis the true facts of the case or erred in applying the provisions of the law.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</p>	<p>Supreme Court of Cyprus.</p>