



International  
Competition  
Network

# **ANTI-CARTEL ENFORCEMENT TEMPLATE**

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

**United States Department of  
Justice Antitrust Division**  
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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.

[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. Law(s) covering cartels:</b> [availability (homepage address) and indication of the languages in which these materials are available]	15 U.S.C. §1 (Sherman Act) <a href="https://www.justice.gov/atr/file/761131/download">https://www.justice.gov/atr/file/761131/download</a>  The website is in English.
<b>B. Implementing regulation(s) (if any):</b> [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	Not applicable.
<b>C. Interpretative guideline(s) (if any):</b> [name and reference number, availability]	Interpretative guidance may be found in the Antitrust Division's Criminal Policy Speeches located at <a href="https://www.justice.gov/atr/criminal-policy-speeches">https://www.justice.gov/atr/criminal-policy-speeches</a>

<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.

(homepage address) and indication of the languages in which these materials are available]	The website is in English.
D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]	Other relevant materials can be found at <a href="https://www.justice.gov/atr/criminal-enforcement">https://www.justice.gov/atr/criminal-enforcement</a>  The website is in English.

## 2. Scope and nature of prohibition on cartels

A. Does your law or case law define the term “cartel”? [Please quote.]  If not, please indicate the term you use instead. [Please quote.]	The Sherman Act does not define the term cartel. Case law does describe cartel activity, but does not specifically define the term. The Antitrust Division also provides additional guidance on cartel activity in its policy speeches located at:  <a href="https://www.justice.gov/atr/criminal-policy-speeches">https://www.justice.gov/atr/criminal-policy-speeches</a>  <a href="https://www.justice.gov/atr/price-fixing-bid-rigging-and-market-allocation-schemes">https://www.justice.gov/atr/price-fixing-bid-rigging-and-market-allocation-schemes</a>
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.]	The Sherman Act is broadly drafted and makes no distinction between hardcore and other cartel activity. Hardcore cartels, which case law has generally interpreted to encompass collusive agreements among horizontal competitors to fix prices, rig bids or allocate markets, are illegal and prosecuted criminally except where a type of immunity or exemption applies (see below).
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.]	The prohibition of hardcore cartel activity is absolute. That is, agreements deemed to be hardcore cartel activity are illegal per se. However, certain immunities (such as agricultural, export-trade, insurance, labor, fishing, defense preparedness, newspaper joint operating arrangements or state or foreign sovereign immunity) and other statutory exemptions may apply that limit the Antitrust Division’s ability to prosecute otherwise anticompetitive activity.  For a full discussion of such immunities see <a href="https://www.justice.gov/atr/file/761131/download">https://www.justice.gov/atr/file/761131/download</a>

<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.

<b>D. Is participation in a hardcore cartel illegal <i>per se</i><sup>3</sup>? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</b>	Yes. U.S. courts have repeatedly found hardcore cartel activity to be <i>per se</i> illegal.
<b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b>	Participation in hardcore cartel activity is a criminal offense.  See Antitrust Division Manual, Chapter III, Section C(1), available at: <a href="https://www.justice.gov/atr/file/761141/download">https://www.justice.gov/atr/file/761141/download</a>

### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</b>	<p>The United States Department of Justice, Antitrust Division investigates and criminally prosecutes hardcore cartels pursuant to federal law (the Sherman Act).</p> <p>Some states also have statutes which allow State Attorneys General Offices to prosecute antitrust cartel cases.</p> <p>For details on the Antitrust Division's interactions with State Attorneys General, see Antitrust Division Manual, Chapter VII, Section C, available at: <a href="https://www.justice.gov/atr/file/761161/download">https://www.justice.gov/atr/file/761161/download</a></p>
<b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b>	<p>U.S. Department of Justice, Antitrust Division Office of Criminal Operations 950 Pennsylvania Avenue, NW Rm. 3216 Washington, DC 20530 Tel: 202-514-3543 Fax: 202-307-9978 Website: <a href="http://www.justice.gov/atr/">http://www.justice.gov/atr/</a></p> <p>Depending on location and jurisdiction, see listing of State Attorneys General offices, available at: <a href="http://www.naag.org/naag/attorneys-general/whos-my-ag.php">http://www.naag.org/naag/attorneys-general/whos-my-ag.php</a></p> <p><a href="http://www.naag.org/naag/committees/naag_standing_committees/antitrust-committee.php">http://www.naag.org/naag/committees/naag_standing_committees/antitrust-committee.php</a></p>
<b>C. Information point for potential complainants:</b>	See D below.
<b>D. Contact point where complaints can be lodged:</b>	<p>Report Violations to: Citizen Complaint Center 950 Pennsylvania Ave., NW Suite 3322 Washington, DC 20530 Phone: 1-888-647-3258 (toll-free in the U.S. and Canada) E-mail: <a href="mailto:antitrust.complaints@usdoj.gov">antitrust.complaints@usdoj.gov</a></p>

<sup>3</sup> For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

	Web Address: <a href="https://www.justice.gov/atr/report-violations">https://www.justice.gov/atr/report-violations</a>
<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>	<p>Yes. Other law enforcement entities, primarily the Federal Bureau of Investigation, may assist Division staffs investigating cartels. Usually these entities provide assistance in conducting search warrants, consensual recordings, and interviews with witnesses.</p> <p>For a description of the Antitrust Division's interaction with investigating agencies, see Antitrust Division Manual, Chapter III, Section C(3)(a)(i), available at:</p> <p><a href="https://www.justice.gov/atr/file/761141/download">https://www.justice.gov/atr/file/761141/download</a></p>

#### 4. Decision-making institution(s)<sup>4</sup> [to be filled in only if this is

<b>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</b>	Not applicable. Same as investigating authority.
<b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b>	
<b>C. Contact point for questions</b>	
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	
<b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>	

<sup>4</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

## 5. Handling complaints and initiation of proceedings

<p><b>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</b></p>	<p>The Antitrust Division initiates a significant number of its international investigations based on leads and cooperation provided by corporate leniency applicants. It also detects cartel behavior through complaints directly to Division criminal offices and to the Citizen Complaint Center, inter-agency referrals, proactive community outreach and various enforcement/public awareness efforts.</p> <p>For details on complaint processing practices, see, Antitrust Division Manual, Chapter III, Section A, available at:</p> <p><a href="https://www.justice.gov/atr/file/761141/download">https://www.justice.gov/atr/file/761141/download</a></p>
<p><b>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).]</b></p>	<p>No. The Antitrust Division accepts all complaints regardless of whether they are written, e-mailed or phoned in.</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>None. The Antitrust Division accepts and evaluates all complaints.</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? [Please elaborate.]</b></p>	<p>No. The Antitrust Division has the discretion to evaluate each complaint on the merits and act accordingly.</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>No. The Antitrust Division is not required to explain its decision not to pursue a specific complaint.</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>No, there is no official time limit. The Antitrust Division attempts to track and review each complaint and ensure that all matters are acted upon in a timely manner.</p>

## 6. Leniency policy<sup>5</sup>

<b>A. What is the official name of</b>	Corporate Leniency Policy, available at: <a href="https://www.justice.gov/atr/corporate-leniency-policy">https://www.justice.gov/atr/corporate-leniency-policy</a>  Leniency Policy for Individuals, available at: <a href="https://www.justice.gov/atr/individual-leniency-policy">https://www.justice.gov/atr/individual-leniency-policy</a>  For more details on the Antitrust Division's Leniency Program, see: <a href="https://www.justice.gov/atr/leniency-program">https://www.justice.gov/atr/leniency-program</a> and Frequently Asked Questions Regarding the Antitrust Division's Leniency Program and Model Leniency Letters ("Leniency FAQs") at <a href="https://www.justice.gov/atr/file/810001/download">https://www.justice.gov/atr/file/810001/download</a>
<b>B. Does your jurisdiction offer</b>	The Division's leniency policies provide for full leniency from prosecution. Our leniency program does not provide for partial leniency or a reduction in fine.
<b>C. Who is eligible for full</b>	The first one to come forward and meet the requirements set forth by the leniency policies.
<b>D. Is eligibility for leniency</b>	Yes. One of the requirements of Type A Leniency under the Corporate Leniency Policy is that the agency had no information about the illegal activity and hence had not begun an investigation when the company reports the illegal activity to the Division. If a company does not meet all the requirements of Type A Leniency, it may seek to apply for Type B Leniency, whether it comes forward before or after an investigation has begun. One of the requirements of Type B Leniency is, however, that the Division does not yet have evidence against the company that is likely to result in a sustainable conviction at the time the corporation comes forward to report the illegal activity.  Type B Leniency is not available to individuals; under the Individual Leniency Policy only an individual reporting illegal antitrust activity before the Division has received any information about the cartel and hence before the Division has begun an investigation may apply for leniency.
<b>E. Who can be a beneficiary of</b>	If a corporation qualifies for Type A leniency under the Corporate Leniency Policy, all current directors, officers, and employees of the corporation who admit their involvement in the illegal antitrust activity as part of the corporate confession and meet the other requirements of the policy are eligible for leniency. If a corporation qualifies for Type B leniency, the

<sup>5</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>Corporate Leniency Policy states that individuals who come forward with the corporation will still be considered for immunity from criminal prosecution on the same basis as if they had approached the Division individually. Thus, the Division has more discretion with respect to personnel of Type B applicants.</p> <p>Under the Leniency Policy for Individuals, any individual who reports illegal antitrust activity before the Division has received any information about the activity and who meets the other requirements of the policy is eligible for leniency.</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>The provision of decisive evidence is not a requirement of leniency. The conditions for leniency are fully described in the leniency policies and memorialized in the conditional leniency letters entered into by corporations and individuals. Model conditional leniency letters for both corporations and individuals are available at <a href="https://www.justice.gov/atr/leniency-program">https://www.justice.gov/atr/leniency-program</a>.</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>Partial leniency is not available.</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>Corporate beneficiaries of conditional leniency must verify their eligibility to receive leniency and provide full, continuing and complete cooperation to the Antitrust Division throughout the investigation including in the resulting prosecutions of co-conspirators. Directors, officers, and employees who are beneficiaries of the corporate conditional leniency must admit to the Division their knowledge of, or participation in, and fully and truthfully cooperate with the Division in its investigation of, the cartel, including in resulting prosecutions of coconspirators. Beneficiaries of conditional leniency under the Leniency Policy for Individuals must verify their eligibility representations and provide the Division with full, continuing, and complete cooperation throughout the Division's investigation, including in resulting prosecutions of co-conspirators.</p>
<p><b>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</b></p>	<p>There is no application form and most applications are oral. Many applicants first seek a marker to hold their place at the front of the line for leniency while their counsel gathers additional information to perfect a leniency application. To obtain a marker, counsel must: (1) report that he or she has uncovered some information or evidence indicating that his or her client has engaged in a criminal antitrust violation; (2) disclose the general nature of the conduct discovered; (3) identify the industry, product, or service involved in terms that are specific enough to allow the Division to determine whether leniency is still available and to protect the marker for the applicant; and (4) identify the client. (As discussed in the Division's Leniency FAQs, in some limited circumstances, it is possible to secure a very short-term anonymous marker, which will be quickly followed with a disclosure of the client's identity.</p>



	<p>See Leniency FAQs at n.6.) Before the applicant may receive a conditional leniency letter, it must admit its participation in a criminal antitrust violation involving price fixing, bid rigging, capacity restriction, or allocation of markets, customers, or sales or production volumes.</p>
<p><b>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)?]</b></p>	<p>As noted above, applicants often first request a marker. Then, once they successfully complete the marker phase, they receive a conditional leniency letter. The initial grant of leniency is conditional because a final grant of leniency depends upon the applicant performing certain obligations over the course of the criminal investigation and any resulting prosecution of co-conspirators, such as establishment of eligibility; full, truthful and continuing cooperation; and for corporate applicants, payment of restitution to victims, as set forth in the letter, and the final grant also depends on the Division verifying the applicant's representations regarding eligibility. After all of the applicant's obligations have been satisfied (usually after the investigation and prosecution of co-conspirators have been concluded) and the Division has verified the applicant's representations regarding eligibility, the Division will issue the applicant a final leniency letter confirming that the conditions of the conditional leniency letter have been satisfied and that the leniency application has been granted.</p>
<p><b>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?</b></p>	<p>The conditional leniency letter provides applicants assurances up front, even if conditional, that they will receive leniency at the conclusion of the investigation if they fulfill the requirements of the leniency program. The conditional leniency letters provide applicants and cooperating employees of applicants with a transparent and predictable disclosure program, and is effective both for the Division in setting forth the requirements of leniency and for applicants in meeting those requirements. After all of the applicant's obligations have been satisfied (usually after the investigation and prosecution of co-conspirators have been concluded) and the Division has verified the applicant's representations regarding eligibility, the Division will issue the applicant a final leniency letter confirming that the conditions of the conditional leniency letter have been satisfied and that the leniency application has been granted.</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>The conditional leniency letter is a written agreement between the Antitrust Division and the applicant. The final leniency letter is a letter from the Assistant Attorney General of the Antitrust Division, who has authority to grant leniency under the leniency policies.</p>
<p><b>M. Do you have a marker system? If yes, please describe it.</b></p>	<p>Our leniency program, which is a matter of Division policy rather than legislation, includes a marker system. By providing the information discussed above, a company can obtain a "marker" to secure its place at the front of the line for leniency. The company then has a finite amount of time to gather additional information in its internal investigation to support its leniency application and obtain a conditional leniency letter.</p>

<p><b>N. Does the system provide for any extra credit<sup>6</sup> for disclosing additional violations? [e.g. a hardcore cartel in another market]</b></p>	<p>Yes. The Division's leniency plus program allows a company that does not qualify for leniency for an initial matter under investigation to disclose a second cartel and receive leniency for the second offense if it qualifies for leniency in that matter and a substantial additional reduction (the "plus") in the calculation of the fine for its participation in the first offense.</p>
<p><b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b></p>	<p>Yes. The Antitrust Division's confidentiality policy for leniency applicants provides that the Division will not publicly disclose the identity of a leniency applicant or information provided by the applicant, absent prior disclosure by, or agreement with, the applicant, unless required to do so by court order in connection with litigation.</p>
<p><b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b></p>	<p>The Antitrust Division's leniency program is an exercise of its discretion and an applicant cannot appeal a Division decision not to grant leniency.</p>
<p><b>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</b></p>	<p>An applicant's counsel may contact the Division's Criminal Deputy Assistant Attorney General or the Director of Criminal Enforcement directly at 202-514-3543 to apply for leniency.</p> <p>For details on making a leniency application see: <a href="https://www.justice.gov/atr/file/810001/download">https://www.justice.gov/atr/file/810001/download</a>.</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>Revocation is not specifically addressed in the leniency policy, but is addressed in the model conditional leniency letters and the Leniency FAQs. No, there is no appeal from a decision to revoke leniency as the Division's leniency program is an exercise of the Division's discretion. The proper avenue to challenge a revocation of a leniency letter is to raise the letter as a defense post-indictment if the applicant is indicted.</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>Yes.</p>
<p><b>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</b></p>	<p>The Division holds the identity of leniency applicants and the information they provide in strict confidence, much like the treatment afforded to confidential informants. Therefore, the Division does not publicly disclose the identity of a leniency applicant or information provided by the applicant, absent prior disclosure by, or agreement with, the applicant, unless required to do so by court order in connection with litigation.</p>

<sup>6</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.

## 7. Settlement

<p><b>A. Does your competition regime allow settlement?</b></p> <p><b>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</b></p>	<p>The Antitrust Division may discuss and reach an agreement with the defendant to plead guilty pursuant to Rule 11 of the U.S. Federal Rules of Criminal Procedure, available at <a href="https://www.law.cornell.edu/rules/frcrmp/rule_11">https://www.law.cornell.edu/rules/frcrmp/rule_11</a>.</p> <p>The Antitrust Division may recommend a particular sentence, which must be approved by a federal district court. A model corporate plea agreement is available on the Antitrust Division's website at <a href="https://www.justice.gov/atr/file/889021/download">https://www.justice.gov/atr/file/889021/download</a></p> <p>For additional information, see <a href="https://www.justice.gov/atr/speech/us-model-negotiated-plea-agreements-good-deal-benefits-all">https://www.justice.gov/atr/speech/us-model-negotiated-plea-agreements-good-deal-benefits-all</a>.</p>
<p><b>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b></p>	<p>The Antitrust Division may resolve any criminal investigation of hardcore cartel activity pursuant to Rule 11.</p>
<p><b>C. What is the reward of the settlement for the parties?</b></p>	<p>Pursuant to a plea agreement, the Antitrust Division secures an admission of guilt from the defendant, a commitment to cooperate with the Antitrust Division's investigation of other defendants, a monetary fine, and a prison term for individuals. In exchange, the defendant is discharged of further criminal liability for acts or offenses undertaken in furtherance of the antitrust conspiracy, and certain of the directors, officers and employees of corporate defendants may also be discharged of criminal liability. In addition, the recommended fine and prison term will typically be lower than if the defendant is convicted after trial.</p>
<p><b>D. May a reduction for settling be cumulated with a leniency reward?</b></p>	<p>No. The Division's leniency policies provide for full leniency from prosecution. Our leniency program does not provide for partial leniency or a reduction in fine.</p>
<p><b>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</b></p>	<p>The Justice Department's Principles of Federal Prosecution set forth the considerations prosecutors must weigh in determining whether it is appropriate to enter a plea agreement. U.S. Attorneys' Manual § 9-27.000 et seq., <a href="https://www.justice.gov/usam/usam-9-27000-principles-federal-prosecution">https://www.justice.gov/usam/usam-9-27000-principles-federal-prosecution</a>. The prosecutor should weigh all relevant considerations in determining whether it is appropriate to enter a plea agreement, including:</p>

5. The desirability of prompt and certain disposition of the case;
6. The likelihood of obtaining a conviction at trial;
7. The probable effect on witnesses;
8. The probable sentence or other consequences if the defendant is convicted;
9. The public interest in having the case tried rather than disposed of by a guilty plea;
10. The expense of trial and appeal;
11. The need to avoid delay in the disposition of other pending cases; and
12. The effect upon the victim's right to restitution. United States Attorneys' Manual § 9-27.420.

To obtain a plea agreement, the defendant must admit that it committed a criminal offense and acknowledge the factual basis for the guilty plea. The defendant should generally agree to plead to the most serious, readily provable offense that is consistent with the defendant's conduct. In selecting charges that will be the subject of the settlement agreement and determining the terms of the agreement, the prosecutor makes "an individualized assessment of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purpose of the Federal criminal code, and maximize the impact of Federal resources on crime." U.S. Attorneys' Manual § 9-27.300; Eric H. Holder, Jr., Department Policy on Charging and Sentencing (May 19, 2010), <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/holder-memo-charging-sentencing.pdf>. The selected charges should make likely the imposition of an appropriate sentence under the circumstances of the case. In addition, the selected charges should not adversely affect the investigation or prosecution of others. U.S. Attorneys' Manual § 9-27.430.

Most Antitrust Division plea agreements include the requirement that the defendant cooperate in the ongoing investigation and resulting prosecutions. To obtain a plea agreement with cooperation provisions and a corresponding recommendation for a reduced sentence, an individual defendant or a corporate defendant and its personnel who are included in the scope of the plea agreement must provide cooperation that is full, truthful, and continuing, including against a corporate defendant's own culpable officers, directors, and employees.

In addition, in most cases, Antitrust Division plea agreements are sentence agreements in which the Division takes a certain position regarding the sentence to be imposed. In many or most of these cases, the plea agreement will contain an agreed-upon fine recommendation and for individual defendants, also an agreed-upon recommendation for a prison sentence. In such cases, the defendant must agree to a fine and/or prison sentence recommendation that is appropriate under the U.S. Sentencing Guidelines and 18 U.S.C. § 3553. U.S. Attorneys' Manual § 9-28.1500, <https://www.justice.gov/usam/usam-9-28000-principles-federal-prosecution-business-organizations>; U.S. Sentencing Commission, Guidelines Manual (Nov. 2015), <http://www.ussc.gov/guidelines/2015-guidelines-manual>. If the Antitrust Division agrees to a plea agreement recommending a sentence below the range established by application of the Sentencing Guidelines, that recommendation will normally be based on the defendant's substantial assistance in an investigation or prosecution or the defendant's inability to pay a fine within the Guidelines range. U.S.S.G. §§5E1.2(e), 5K1.1, 8C3.3, 8C4.1; United States Attorneys' Manual § 9-27.400.

**F. Describe briefly**

Either party may initiate plea agreement discussions at any point in the

<p><b>the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</b></p>	<p>investigation. However, in recommending substantial assistance sentencing departures as part of a plea agreement, the Antitrust Division considers the timing, nature, extent, and value of cooperation provided by a defendant. Thus, companies and individuals that accept responsibility and begin cooperating earlier in an investigation will have a greater opportunity to provide substantial assistance when it is most needed in a matter and thus obtain a corresponding recommendation in a plea agreement for a reduction in sentence. The longer a subject waits to cooperate, the less likely its cooperation will have value in an investigation. In addition, even if a subject is the first to accept responsibility and plead guilty but delays providing cooperation, the subject risks losing the chance to obtain, or diminishing the amount, of a substantial assistance sentencing reduction. Brent Snyder, Deputy Ass't Att'y Gen. for Criminal Enforcement, Antitrust Div., Individual Accountability for Antitrust Crimes 11-12, Speech Before the Yale School of Management Global Antitrust Enforcement Conference (Feb. 19, 2016), <a href="https://www.justice.gov/opa/file/826721/download">https://www.justice.gov/opa/file/826721/download</a>; Bill Baer, Ass't Att'y Gen., Antitrust Div., Prosecuting Antitrust Crimes 6, Speech Before the Georgetown University Law Center Global Antitrust Enforcement Symposium (Sept. 10, 2014), <a href="https://www.justice.gov/atr/file/517741/download">https://www.justice.gov/atr/file/517741/download</a>.</p>
<p><b>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</b></p>	<p>In many cases, a plea agreement is reached before the defendant is indicted (i.e., formally charged with an antitrust violation). A pre-indictment agreement allows both parties to avoid formal discovery, trial before a U.S. district court, and any potential appeal process.</p>
<p><b>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</b></p>	<p>Yes.</p>
<p><b>H. Is there a possibility for settled parties to appeal a settlement decision at court?</b></p>	<p>No. Both parties are bound by the agreement, which is approved by a federal district court.</p>

## 8. Commitment

<p><b>A. Does your competition regime allow the possibility of commitment?</b></p> <p>If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].</p>	<p>Civil investigations may be resolved by consent agreement, which must be approved by a federal court. Cartel conduct is prosecuted criminally, and is not eligible for resolution by civil consent.</p>
<p><b>B. Which types of restrictive</b></p>	

<p>agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there commitments which are excluded from the commitment possibility?</p>	
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	
<p>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</p>	
<p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p>	
<p>J. Describe how your authority monitors the parties' compliance to the commitments.</p>	
<p>K. Is there a possibility for parties to appeal a commitment decision at court?</p>	

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

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>8</sup>,</p>	<p>Search warrants must be authorized by a court. Computers can be searched and seized if necessary pursuant to a search warrant. Subpoenas are issued by the grand jury for testimony and documents, including electronic documents. The Division can also ask for voluntary cooperation, including interviews and document production.</p>
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<sup>7</sup> “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

<sup>8</sup> “Searches/raids” means all types of search, raid or inspection measures.



<p><b>electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b></p>	<p>For details on investigative powers, see Antitrust Division Manual, Chapter III, Section F, available at:  <a href="https://www.justice.gov/atr/file/761141/download">https://www.justice.gov/atr/file/761141/download</a></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>Yes, private locations, automobiles, briefcases and persons may be searched pursuant to a search warrant if authorized by a court.</p>
<p><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></p>	<p>No, evidence outside the scope of the warrant may not be seized without additional court authorization.</p>
<p><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></p>	<p>No.</p>

## 10. Procedural rights of businesses / individuals

<p><b>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.</b></p>	<p>Defendants have the right to a trial at which the government must prove the alleged violation beyond a reasonable doubt. Defendants are entitled to legal counsel at trial, to confront the witnesses against them, and to refuse to incriminate themselves. In advance of trial, defendants are generally entitled to discovery and inspection of their statements and their employees' statements (if the defendant is an organization). Defendants are also entitled to certain documents, including documents that are in the government's possession and are either material to the defense or belong to the defendants or if the government intends to use them at trial against the defendants.</p> <p>For details on criminal antitrust litigation procedures, see Antitrust Division Manual, Chapter IV, Section F, available at:  <a href="https://www.justice.gov/atr/file/761146/download">https://www.justice.gov/atr/file/761146/download</a></p>
<p><b>B. Protection awarded to business secrets (competitively sensitive information): is there a</b></p>	<p>It is the Division's policy that sensitive information will only be used by the Division for a legitimate law enforcement purpose and the Division will not disclose such information unless it is required by law or necessary to further a legitimate law</p>

<p><b>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.</b></p>	<p>enforcement purpose. In the Division's experience, the need to disclose sensitive material occurs rarely. In addition, sensitive information provided by an amnesty applicant is covered under the amnesty confidentiality policy discussed above and in other instances sensitive information may be covered under the rule of grand jury secrecy which would bar disclosure.</p>
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## 11. 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 on the merits of the case must be made?</b></p>	<p>A case must be brought within 5 years of the end of the illegal activity.</p>
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</b></p>	<p>The investigation and decision on the merits must be completed in sufficient time to bring a case within the statute of limitations (5 years).</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? (see also 15A)</b></p>	<p>None.</p>

## 12. Types of decisions

<p><b>A. 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>At the conclusion of a trial, defendants are found by a jury to be guilty or not guilty. Individuals can be sent to jail for up to 10 years and fined \$1 Million and Corporations can be fined up to \$100 Million or double the gain or loss caused by the cartel. Restitution payments to victims can also be ordered.</p> <p>For details on sentencing, see, Antitrust Division Manual, Chapter IV, Section F(6), available at: <a href="https://www.justice.gov/atr/file/761146/download">https://www.justice.gov/atr/file/761146/download</a></p>
<p><b>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under</b></p>	<p>See response to A.</p>



the laws listed under Section 1 (if different from those listed under 12/A).	
C. Can interim measures <sup>9</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both <sup>10</sup> .) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	No.

### 13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

A. Grounds for the imposition of procedural sanctions / fines [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.]:	<p>The Antitrust Division will actively protect the integrity of its grand jury investigations. Depending on the conduct, the Division may seek an order to compel production of documents and where appropriate prosecute those who attempt to thwart a Division investigation for contempt, perjury or obstruction of justice.</p> <p>For a list of non-antitrust offenses that could accompany a criminal antitrust investigation or prosecution, see the Antitrust Division Manual, Chapter II, Section B.  <a href="https://www.justice.gov/atr/file/761131/download">https://www.justice.gov/atr/file/761131/download</a></p> <p>Also see the Antitrust Division Manual, Chapter III.  <a href="https://www.justice.gov/atr/file/761141/download">https://www.justice.gov/atr/file/761141/download</a></p>
B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):	Depending on the conduct, sanctions may be criminal, civil or both.
C. On whom can procedural sanctions be imposed?	Sanctions can be imposed against both the individual and the company.
D. Criteria for determining the	Sanctions are imposed by a court and may be agreed upon pursuant to a plea agreement.

<sup>9</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>10</sup> Only for agencies which answered “yes” to question 2.B. above

<b>sanction / fine:</b>	
<b>E. Are there maximum and / or minimum sanctions / fines?</b>	Yes. The United States Code sets forth the maximum sentence for violation of a particular crime. The advisory sentencing guidelines must be taken into account by the sentencing court.

## 14. 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><b>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?]</b></p>	<p>An individual may be fined, incarcerated or both. Corporations can be criminally fined. In addition, where appropriate, the defendant may be ordered to make restitution.</p> <p>Sanctions may be imposed on both individuals and companies.</p> <p>For a description of criminal antitrust sanctions, see: <a href="https://www.justice.gov/atr/file/518936/download">https://www.justice.gov/atr/file/518936/download</a></p> <p>For details on charging and sentencing policy, see: <a href="https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/holder-memo-charging-sentencing.pdf">https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/holder-memo-charging-sentencing.pdf</a></p> <p>See also, Antitrust Division Manual, Chapter IV, Section F(6), available at: <a href="https://www.justice.gov/atr/file/761146/download">https://www.justice.gov/atr/file/761146/download</a></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>Sentencing is handled by the court, who is assisted by the Probation Office. The advisory sentencing guidelines must be taken into account by the sentencing court. Usually in antitrust cases the sentencing is determined by the volume of commerce affected, the criminal history, and role in the offense.</p>
<p><b>C. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>Yes.</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>Although the United States Sentencing Guidelines are no longer mandatory, courts are required to consider them when determining a sentence.</p>
<p><b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction</b></p>	<p>If the appeal concerns the amount of a fine or incarceration, then a defendant may apply to temporarily stay its imposition pending a decision by a higher court.</p>

/ fine? If it is necessary to apply for suspension, what are the criteria?	
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## 15. Possibilities of appeal

<p><b>A. Does your law provide for an appeal against 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>	<p>Yes. A defendant may appeal on errors of law, fact or procedural breach to a higher court.</p> <p>For details on the Antitrust Division's appellate process, see Antitrust Division Manual, Chapter IV, Section G, available at:</p> <p><a href="https://www.justice.gov/atr/file/761146/download">https://www.justice.gov/atr/file/761146/download</a></p>
<p><b>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</b></p>	<p>Appeals are filed with the appropriate Circuit Court of Appeals or in rare instances, filed directly to the Supreme Court of the United States.</p>