



**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

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

**Competition Bureau of Canada
December, 2015**

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.]¹

1. Information on the law relating to cartels

A. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	<p>Provisions covering cartels in Canada are found in the Competition Act, R.S.C. 1985, c. C-34 (the Act), primarily under sections 45 (conspiracy), 46 (implementation of foreign directives), and 47 (bid-rigging).</p> <p>Amendments to the Act including which included changes to sections 45 and 47 were given Royal Assent March 12, 2009. Most of the amendments came into force immediately, however the coming into force of the amendments to section 45 was delayed for one year, until March 12, 2010.</p> <p>Conduct pre-dating the amendments will still be subject to the old provisions.</p> <p>Information about the amendments to these sections of the Act can be found at:</p> <p>http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home</p>
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¹ 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.

	The Act is also available in French.
B. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	<p>There are interpretative guidelines in the form of frequently asked questions available on the Competition Bureau's website. These guidelines were revised in September 2013.</p> <p>The FAQs can be found at: http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home</p> <p>The FAQs are also available in French.</p>
C. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]	<p>The Bureau also published an Immunity Bulletin in June 2010, and a Leniency Bulletin in September of 2010. In addition, Competitor Collaboration Guidelines were published in December, 2009.</p> <p>The Bulletins and Guidelines can be found at: http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home</p> <p>These documents are also available in French.</p>

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.]	<p>No, the Act does not expressly refer to or define "cartel".</p> <p>Section 45 of the Act prohibits conspiracies, agreements or arrangements to, among other things, fix prices, allocate markets and restrict output.</p> <p>Section 46 of the Act prohibits a corporation carrying on business in Canada from implementing a foreign directive for the purpose of giving effect to a conspiracy, combination, agreement or arrangement in violation of section 45.</p> <p>Section 47 of the Act prohibits agreements or arrangements between or among two or more bidders or tenderers, in response to a call or request for bids or tenders, to not submit a bid or to submit an agreed or arranged bid. Section 47 as amended also prohibits agreements to withdraw bids.</p> <p>The Criminal Code (the "Code") also sets out offences which may apply to cartel conduct:</p> <ul style="list-style-type: none"> - Attempting to commit an offence (subsection 24(1)); - Frauds on the government (subsection 121(1)); - Fraud (Section 380); - Attempting to commit an offence or being an accessory after the fact (Paragraph 463(b)); and - Conspiring to commit offences (section 465).
B. Does your legislation or case law distinguish between very serious cartel behaviour ("hardcore cartels" –	<p>Yes. The amendments to the conspiracy provision of the Act create a more effective criminal prohibition that is reserved for agreements commonly recognized as the most egregious forms of anti-competitive conduct; namely, agreements between competitors to fix prices, allocate markets or restrict</p>

<p>e.g.: price fixing, market sharing, bid rigging or production or sales quotas²) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p>	<p>output that in substance have no purpose or consideration other than restraining competition, and which are deserving of condemnation without requiring proof of their anti-competitive effects.</p> <p>Other forms of competitor collaborations, joint ventures and strategic alliances may be subject to review under a civil provision that prohibits agreements only where they are likely to substantially lessen or prevent competition.</p>
<p>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.]</p>	<p>The Act is a law of general application with the purpose of protecting competitive market outcomes in the Canadian economy. As a general rule, the Act applies to all competitive business activity in Canada. However, the following are some exceptions, exclusions and defences to sections 45 (conspiracy), 46 (implementing foreign directives) and 47 (bid rigging):</p> <p>1) "Old" section 45 (prior to March 12, 2010) does not apply to the following:</p> <p>Subsection 45(3) - Agreements that relate only to certain specified activities such as: (a) the exchange of statistics; (b) the defining of product standards; (c) the exchange of credit information; (d) the definition of terminology used in a trade, industry or profession; (e) cooperation in research and development; (f) the restriction of advertising or promotion, other than a discriminatory restriction directed against a member of the mass media; (g) the sizes or shapes of the containers in which an article is packaged; (h) the adoption of the metric system of weights and measures; or (i) measures to protect the environment. However, subsection 45(3) does not apply if the agreement has lessened or is likely to lessen competition unduly in respect of prices, quantity or quality of production, markets or customers, and channels or methods of distribution; or if the agreement has restricted or is likely to restrict any person from entering into or expanding their business.</p> <p>Subsection 45(5) – Agreements that relate only to the export of products from Canada unless the agreement:</p> <p>(a) has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;</p> <p>(b) has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or</p> <p>(c) has prevented or lessened or is likely to prevent or lessen competition unduly in the supply of services facilitating the export of products from Canada.</p> <p>Subsection 45(7) – Agreements that relate only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public.</p> <p>Subsection 45(7.1) – Agreements between federal financial institutions (a separate conspiracy provision in section 49</p>

² 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.

applies)

Subsection 45(8) – Agreements involving only affiliates. See also section 2 of the Act with regard to affiliates.

Under section 86 of the Act, specialization agreements can be registered by private parties with the Tribunal provided they meet certain criteria. In the event that a specialization agreement is registered, section 90 of the Act provides that section 45 does not apply to specialization agreements.

2) "New" section 45 (effective March 12, 2010) is limited in scope by the following:

Subsection 45(4) - ancillary restraints defence recognizes that some desirable business collaborations reasonably require some restraints to make them efficient, or even possible.

A number of exceptions are carried over from the "old" section 45, as noted above, including:

(i) subsection 45(5);
(ii) subsection 45(6)(a) and (b); and
(iii) subsection 45(7). The defences under subsections 45(3) and (7) are no longer available due to the narrowed scope of the new section 45 and the ancillary restraints defence under subsection 45(4).

3) Section 47 of the Act does not apply to an agreement arrived at only by affiliates (subsection 47(3)).

4) The Act does not apply to certain agreements or arrangements in respect of:

- collective bargaining activities (section 4);
- travel agent commissions negotiated with an airline on ticket sales in respect of domestic flights (section 4.1);
- underwriting (subsection 5(1)); and
- amateur sport (subsection 6(1)).

5) There are other laws containing exemptions from the application of all or some of the provisions of the Act. For example, section 70 of the Copyright Act provides that section 45 of the Act does not apply to certain agreements on royalties or related terms if the agreement is filed in accordance with the Copyright Act. Section 33 of the Energy Supplies Emergency Act provides that the Energy Board, after consulting with the Minister of Industry may, by order, exempt persons from the application of the Act in respect of an agreement deemed necessary during periods of national emergency caused by shortages or market disturbances. Section 32 of the Farm Products Agencies Act provides that nothing in the Act applies to any contract, agreement or arrangement where the regulatory agency has authority over the persons involved under the Farm Products Agencies Act or any other Act. The Artists Act excludes certain associations from application of the Act. The Shipping Conferences Exemption Act exempts certain agreements involving ocean shipping from the application of the Act. Section 47 of the Canada Transportation Act provides that the Governor in Council may take any action considered "essential to stabilize the national transportation system," including the imposition of capacity and pricing restraints, and that the section prevails over the Competition

	<p>Act.</p> <p>6) Canadian courts have also developed a principle of statutory interpretation called the Regulated Conduct Doctrine which may immunize a regulatory body, exercising its authority under validly enacted federal, provincial or municipal law, from the criminal conspiracy provisions of the Act. The Bureau will always consider the regulatory context in which the conduct was engaged where it is relevant to the application of the provisions of the Act; focusing on the question of whether a validly enacted law authorizes (expressly or impliedly) or requires the conduct that would otherwise constitute a conspiracy under the Act.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p>	<p>Amendments to the conspiracy provisions of the Act came into force March 12, 2010, repealing the existing criminal offence of conspiracy and replacing it with a new <i>per se</i> criminal provision that prohibits agreements between competitors and/or potential competitors to fix prices, allocate markets and restrict output. As such, the old requirement of proving an undue anti-competitive effect to the criminal burden of proof disappeared. Other forms of competitor collaborations, such as joint ventures and strategic alliances, may be subject to review under a civil provision that prohibits agreements only where they are likely to substantially lessen or prevent competition.</p> <p>Bid-rigging is also a <i>per se</i> illegal offence.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>Conspiracies, combinations, agreements or arrangements involving activities such as price-fixing, boycotting, refusing to supply and market allocation (section 45), foreign directives to implement conspiracies (section 46) and bid-rigging (section 47) are criminal offences.</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</p>	<p>The Commissioner of Competition (Commissioner), an independent official appointed under the Act by the Governor in Council, has the statutory responsibility to enforce and administer the Act. The Commissioner heads the Competition Bureau (the Bureau), which is comprised of various branches, including the Cartels and Deceptive Marketing Practices Branch. Criminal cartel investigations are conducted by the Cartels Directorate of the Cartels and Deceptive Marketing Practices Branch. Investigations into civil offences under the Act, including some forms of competitor collaborations, are conducted by the Mergers and Monopolistic Practices Branch.</p>
<p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</p>	<p>Information Centre Competition Bureau 50 Victoria Street Gatineau, Quebec K1A 0C9 Tel: (819) 997-4282 Toll free: 1-800-348-5358 TDD (hearing impaired): 1-800-642-3844 Fax: (819) 997-0324 E-mail: compbureau@cb-bc.gc.ca</p>

	<p>Website: www.competitionbureau.gc.ca (available in French and English)</p> <p>Regional offices are located in Montreal, Toronto and Vancouver. Their contact information can be found at: http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home</p>
C. Information point for potential complainants:	See question 3B.
D. Contact point where complaints can be lodged:	See question 3B.
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	<p>The Bureau may seek assistance from other authorities including municipal or provincial police forces and the Royal Canadian Mounted Police.</p> <p>For investigations regarding international cartels, the Bureau may seek assistance from foreign competition agencies and other foreign enforcement authorities through bilateral and multilateral cooperation instruments, mutual legal assistance treaties for criminal matters, and extradition treaties.</p>

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

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	<p>The cartel enforcement process is bifurcated in Canada and generally is marked by three distinct stages: the preliminary examination, investigation and prosecution.</p> <p>The first two stages are conducted by the Bureau under the responsibility of the Commissioner.</p> <p>In the third stage, the Commissioner may refer the matter to the Director of Public Prosecution (DPP) who fulfills the responsibilities of the Attorney General of Canada in the discharge of his criminal mandate by prosecuting criminal offences under federal jurisdiction.</p> <p>Cartel matters are prosecuted as indictable criminal offences and are judged in the provincial courts of superior jurisdiction or, in some instances, the Federal Court.</p>
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	<p>See question 3B for the contact details for the Bureau.</p> <p>The following are the contact details for the DPP:</p> <p>Director of Public Prosecutions Public Prosecution Service of Canada 160 Elgin Street - 12th Floor Ottawa, Ontario K1A 0H8 613-957-6489</p>

³ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	1-877-505-7772 info@ppsc.gc.ca
C. Contact point for questions and consultations:	See questions 3B and 4B.
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	<p>The Bureau generally undertakes informal, preliminary examinations in response to complaints by marketplace participants or the public, based on its analysis of publicly available information or based on the evidence of an immunity applicant, a leniency applicant, informant or whistleblower.</p> <p>Once an inquiry is commenced under section 10 of the Act (see section 5), the Commissioner may seek court authority to exercise formal powers of investigation, such as issuing orders for oral examinations or the production of documents and conducting searches (see section 7).</p> <p>Once the inquiry is completed, the Commissioner decides whether to discontinue the inquiry (section 22 of the Act) or to refer the matter under section 23 of the Act to the Attorney General for prosecution.</p>
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	See question 4D.

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	<p>Preliminary examinations may begin with a complaint from the public, a customer, a whistleblower, or an informant. The latter may be an existing or former employee or a person, whether an individual or a corporation, seeking immunity from or leniency in prosecution. They may also be initiated by Bureau staff based on research or media reports that support an assessment that there has been a breach of the Act.</p> <p>Section 10 of the Act provides that the Commissioner shall cause an inquiry to be made,</p> <ul style="list-style-type: none"> - on application under section 9 of the Act (see question 5B) - whenever the Commissioner has reason to believe that a person has contravened certain orders (subpar. 10(1)(b)(i)), grounds exist for making certain orders (subpar. 10(1)(b)(ii)), or an offence, including a cartel, has been or is about to be committed; or - whenever directed by the Minister of Industry to inquire whether there has been a contravention of an order, grounds exist to make an order or an offence has been or is about to be committed (subpar.10(1)(c))of the Act.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	Generally, complaints are not required to be made in a specific form. However, a six-resident application under section 9 of the Act must be in the form of a solemn or statutory declaration providing:

<p>[If there is a requirement to complete a specific form, please, indicate its location (website address).]</p>	<p>(a) the name and contact information of the applicants and of counsel, if any; (b) the nature of the allegation; and (c) a concise statement of the evidence supporting the allegation.</p>
<p>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?]</p>	<p>There are no legal requirements for lodging a complaint alleging a cartel. As noted, an application by six persons resident in Canada that the Commissioner commence an inquiry may be made pursuant to section 9 of the Act. Section 9 of the Act sets out certain requirements. See response to question 5B.</p>
<p>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.]</p>	<p>Section 10 of the Act provides that the Commissioner shall cause an inquiry to be made into all such matters as the Commissioner considers necessary to inquire into with the view of determining the facts.</p>
<p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p>	<p>The Commissioner is not required to adopt a decision addressed to the complainant, although the Commissioner typically will notify the complainant of a decision not to pursue a complaint.</p> <p>Section 22 of the Act requires that if the Commissioner decides to discontinue an inquiry made on application under section 9 of the Act (six-resident complaint), the Commissioner is required to advise the applicants of the decision and the grounds for the decision.</p>
<p>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?</p>	<p>There is no time limit established under the Act.</p>

6. Leniency policy⁴

<p>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</p>	<p>The official name of Canada's immunity policy is the "Immunity Program". The Immunity Program is supplemented with responses to Frequently Asked Questions (FAQs), and a Bulletin that provides general information.</p> <p>The official name of Canada's leniency policy is the "Leniency Program". The Leniency Program is supplemented with responses to Frequently Asked Questions (FAQs), and a</p>
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⁴ 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>Bulletin that provides general information.</p> <p>These documents are available to the public and can be found at: http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>Yes. Both full leniency (under the Immunity Program) and partial leniency (under the Leniency Program) may be available.</p> <p>See question 6G.</p>
<p>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p>	<p>Only the first party (business organization or individual) who comes forward and meets all the requirements of the Immunity Program qualifies for full immunity. If the first party fails to meet the requirements, a subsequent party that does meet the requirements may be recommended for immunity.</p>
<p>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?</p> <p>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?</p>	<p>The Commissioner will recommend to the DPP that immunity be granted to a party in the following situations:</p> <p>a) the Bureau is unaware of an offence, and the party is the first to disclose it; or b) the Bureau is aware of an offence, and the party is the first to come forward before there is sufficient evidence to warrant a referral of the matter to the DPP.</p> <p>A recommendation by the Bureau that the applicant be granted immunity will occur only if the party has met all other requirements.</p> <p>See question 6F.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Both business organizations and individuals are eligible for immunity. A business organization means a firm, company or corporation.</p>
<p>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.]</p>	<p>As set out in the Immunity Program, the following requirements must be met:</p> <ul style="list-style-type: none"> - The party must terminate its participation in the illegal activity. - The party must not have coerced others to be party to the illegal activity. - Where the party requesting immunity is the only party involved in the offence it will not be eligible for immunity. <p>Throughout the course of the Bureau's investigation and subsequent prosecutions, the party must provide complete and timely co-operation:</p> <p>a) the party must reveal any and all offences in which it may</p>

	<p>have been involved;</p> <p>b) the party must provide full, frank and truthful disclosure of all the evidence and information known or available to it or under its control, wherever located, relating to the offences under investigation. There must be no misrepresentation of any material facts; and</p> <p>c) the party must co-operate fully, on a continuing basis, expeditiously and, when the party is a business organization, at its own expense throughout the investigation and with any ensuing prosecutions. Companies must take all lawful measures to promote the continuing co-operation of their directors, officers and employees for the duration of the investigation and any ensuing prosecutions.</p>
<p>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?]</p>	<p>The Bureau has a formal policy for partial leniency set out in the Leniency Program. When a party who is not first to approach the Bureau cooperates with an investigation, that party may qualify for a reduction in sentence. The DPP, in consultation with the Bureau, will determine whether to recommend a reduced sentence to the relevant Court. The Court will make the final decision on sentence.</p> <p>Like Immunity Program (see question 6F), there are certain eligibility conditions for an applicant to benefit from a lenient treatment recommendation to the DPP, namely, that participation in the cartel is terminated and that cooperation with the Bureau is conducted in a timely manner. While there is no obligation to furnish documentary evidence in advance of its grant of leniency, a recommendation by the Bureau to the DPP for lenient treatment is conditional upon the applicant's ongoing cooperation with the investigation and prosecution.</p> <p>See question 6N for information regarding "Immunity Plus".</p>
<p>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.]</p>	<p>There are similar obligations for the beneficiary after an immunity application (see question 6F) and a leniency application has been accepted.</p> <p>A leniency applicant must continue to meet certain conditions of eligibility including terminating its participation in the cartel, cooperating in a timely manner, at its own expense, with the Bureau's investigation as well as the DPP's prosecution of cartel participants, and disclosing all information relating to the offence(s) for which leniency is sought.</p>
<p>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.]</p>	<p>Apart from meeting the requirements for leniency as set out in the Immunity Program and Leniency Program, there are no specific requirements as to the form an application must take.</p> <p>The Bureau accepts both written and oral proffers in immunity applications. The Bureau requires full, frank and truthful disclosure of all evidence and information known or available to the applicant or under its control in respect of offences under the Act.</p> <p>In leniency applications, the Bureau requires an oral proffer disclosing all information relating to the offence(s) for which leniency is sought. Where the applicant does not disclose evidence that it was involved in the commission of an offence, the Bureau will not make a recommendation for leniency as no charge recommendation will be contemplated.</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>The Immunity process is divided into the following steps as described under the Immunity Program:</p>

<p>[e.g.: provisional guarantee of leniency – PGL – and further steps leading to a final leniency agreement / decision)?]</p>	<p>Step 1: Initial Contact / Marker Request; Step 2: Proffer; Step 3: Full, Frank and Truthful Disclosure and Ongoing Cooperation Step 4: Witness Interviews Step 5: Immunity Recommendation to DPP; Step 6: Immunity Agreement</p> <p>The Leniency process, based on timely cooperation, forms part of the DPP's settlement process and, consequently, all communications are protected by privilege including settlement privilege during the following steps:</p> <p>Step 1: Initial Contact / Marker Request; Step 2: Proffer; Step 3: Leniency Treatment Recommendation to DPP; and Step 4: Plea Agreement Step 5: Full, Frank and Truthful Disclosure and Ongoing Cooperation Step 6: Plea</p>
<p>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?</p>	<p>If an applicant is "first-in" and meets all other requirements of the Program (see question 6F), the Bureau will make a recommendation to the DPP that immunity be granted. The DPP in consultation with the Bureau will decide on whether to grant immunity to the applicant.</p>
<p>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?</p>	<p>The DPP has the sole authority to grant immunity to a party implicated in an offence under the Act. The Bureau investigates the matter and makes a recommendation to the DPP. The DPP then independently considers if the interests of the public are best served by granting immunity.</p> <p>The DPP's policy on immunity is explained in a document available at the following web address: http://www.justice.gc.ca/en/dept/pub/fps/fpd/ch35.html XXX</p>
<p>M. Does your legislation have a marker system? If yes, please describe it.</p>	<p>The Bureau does have a marker system.</p> <p>A "marker" is the request for immunity or leniency by an applicant with respect to criminal activity involving a particular product or service made by communicating with the Deputy Commissioner of Commission, Cartels, to discuss the possibility of receiving immunity from prosecution or lenient treatment in connection with an offence under the Act. An applicant can make the first contact on the basis of a limited hypothetical disclosure that identifies the nature of the criminal offence it has committed in respect of a specified product with sufficient detail to secure a "marker" as first in line to request immunity or leniency. The applicant then has a limited period of time, usually 30 days, to provide the Bureau with a detailed statement, known as a "proffer", describing the illegal activity, its effects in Canada and the supporting evidence the applicant can provide.</p> <p>The Bureau requires sufficient information to determine whether an immunity applicant is "first-in" under the Immunity Program or qualifies for leniency under the Leniency Program. It does this by comparing the product or service description received to information in its marker database and by ensuring that no other</p>

	<p>party already has requested a marker for the same conduct. Typically, the request to the Bureau for this marker, is made by an applicant's legal representative.</p> <p>If the party obtains a marker and decides to proceed with the immunity or leniency application, it will need to provide a detailed description of the illegal activity and to disclose sufficient information for the Bureau to determine whether it might qualify under the Program requirements set out under 6F and 6G above.</p>
<p>N. Does the system provide for any extra credit⁵ for disclosing additional violations? [e.g. a hardcore cartel in another market]</p>	<p>The Bureau's "Immunity Plus" program provides that when an applicant approaches the Bureau with respect to an offence, but is not the first in, that applicant may qualify for leniency in respect of that offence and immunity for any other offences it divulges. The additional offence(s) notified will be considered in determining the degree of leniency. Where appropriate, the Bureau recommends that the DPP grant leniency in respect of the first offence. More detailed information on "Immunity Plus" can be found in the Responses to FAQs.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>The confidentiality provisions of the Immunity Program and the Leniency Program provide that:</p> <p>The Bureau will treat as confidential the identity of a party requesting immunity. The only exceptions to this policy are where:</p> <ul style="list-style-type: none"> - disclosure is required by law; - disclosure is necessary to obtain or maintain the validity of a judicial authorization for the exercise of investigative powers; - disclosure is for the purpose of securing the assistance of a Canadian law enforcement agency in the exercise of investigative powers; - the party has agreed to disclosure; - there has been public disclosure by the party; or - disclosure is necessary to prevent the commission of a serious criminal offence. <p>It is the Bureau's policy with respect to private actions under section 36 of the Act to provide confidential documents and evidence only in response to a court order.</p> <p>The Bureau will not share the identity of an immunity applicant or leniency applicant, or the information provided by the immunity or leniency applicant, with other enforcement agencies or a foreign agency, unless the immunity or leniency applicant provides a waiver giving the Bureau permission to do so.</p>
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>The Bulletin does not address the question of appeals and to date no decisions by the Bureau or the DPP have been contested.</p>
<p>Q. Contact point where a leniency application can be lodged [telephone</p>	<p>Anyone wishing to apply under the Commissioner's Immunity Program with respect to cartel activity, may contact the following:</p>

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

<p>and fax including the country code, plus out of hours contacts (if any):</p>	<p>Deputy Commissioner, Cartels Tel: 819-953-7765 Fax: 819-934-3602</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>Failure to comply with any of the requirements of the immunity agreement (see question 6F above) may result in the Bureau recommending that the DPP revoke immunity (see section F of Immunity Program). There also may be circumstances under which the Bureau declines to make a recommendation for lenient treatment of a party to the DPP or, in consultation with the DPP rescinds its recommendation to the DPP for lenient treatment.</p> <p>The Bureau may resume investigating a party who has agreed to co-operate but does not fulfill its obligations under the agreement and may thereafter refer the matter to the DPP.</p>
<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>The Immunity Program and Leniency Program do not specifically address the issue of “affirmative leniency” nor does it preclude the possibility for “affirmative leniency”. The Bureau’s Programs are designed to encourage, rather than target potential applicants, to come forward and to disclose their participation in an offence. The decision to apply for immunity or leniency remains with the potential applicants.</p>

7. Investigative powers of the enforcing institution(s)⁶

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information,⁷ searches/raids, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>a) Orders for oral examination, production or written return (subpoenas)</p> <p>There are three types of orders under section 11 of the Act. Paragraph 11(1)(a) requires a person to give testimony under oath before a presiding officer. Paragraph 11(1)(b) requires a person or a corporation to provide records and other things together with an affidavit as to the completeness of the returns. Paragraph 11(1)(c) is an interrogatory power requiring written answers to questions set out in the order. A judge of a superior court must be satisfied that the Commissioner is under inquiry and that the person or corporation named in the order has, or is likely to have, the information being sought. Subsection 11(2) provides that a corporate party named in the order must provide records being sought from its affiliates, including foreign affiliates. However, subsection 11(2) requires that the judge issuing the order be satisfied that the affiliate has, not merely is likely to have, the information being sought.</p> <p>b) Search and Seizure</p> <p>Section 15 of the Act provides the Commissioner with the power to apply to the courts for a warrant authorizing representatives of the Commissioner to enter premises to search for records and other things, and seize those falling</p>
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⁶ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

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

within the scope of the warrant.

Section 16 of the Act authorizes the search of computer systems and the seizure of electronic records contained in or available to the computer systems.

Pursuant to sections 15 and 16 of the Act, a judge of a superior court may issue a warrant, if satisfied on an ex parte application by the Commissioner, that an offence has been, or is about to be, committed and that reasonable grounds exist to believe that relevant records are located at the premises to be searched. Following the execution of the search, where records are seized, the Commissioner must, as soon as practicable, make a report to the judge or court issuing the warrant describing the records seized, the premises searched and the location in which the records are detained.

c) Expert Opinion

Section 25 of the Act allows the Commissioner to employ temporary, technical and special assistants.

d) Interception of Private Communications (Wiretap)

Part VI of the Code, which covers the interception of private communications (wiretap), can be used in the context of investigations under sections 45 (conspiracy) and 47 (bid rigging) of the Act, among other offences, provided that specific legal criteria are met.

Pursuant to section 185 of the Code, the Attorney General, on behalf of the Bureau, can apply for judicial authorization to intercept private communications. Section 186 provides that judicial authorization may be given if the judge is satisfied that it would be in the best interests of the administration of justice to intercept the private communications and that other investigative procedures have been tried and have failed, other investigative procedures are unlikely to succeed or it would be impractical to carry out the investigation using only other investigative procedures. Judicial authorization is required whether or not the originator of the private communications, or the person intended by the originator to receive the communications, has consented to the interception.

e) Mutual Legal Assistance Treaty Requests

Mutual Legal Assistance Treaties (MLATs) are a useful tool to gather evidence located in foreign jurisdictions as they permit law enforcers to request formal assistance from each other in relation to the service of documents, taking of evidence, provision of documents and records, and execution of requests for search and seizure. Canada enters into MLATs pursuant to the general treaty making authority of the executive under the Constitution. MLATs are implemented pursuant to the Mutual Legal Assistance in Criminal Matters Act to enable the Government of Canada to action others' requests. MLATs are not specific to competition matters. The Minister of Justice plays a pivotal role as Canada's "central authority" in the administration and exercise of powers under MLATs. The Minister of Justice approves the sending of an MLAT request to a central authority in another jurisdiction. Canada has entered into over 30 MLATs.

	<p>f) Extradition involves the surrender of persons to or from Canada. Canada's Extradition Act provides for the surrender of persons to "extradition partners" which is defined in that Act to include both a state or entity with which Canada has a bilateral or multilateral extradition agreement. Extradition for individuals accused of offences under section 45 of the Competition Act is currently possible for persons located in the U.S. and the U.K.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Under the Canadian Charter of Rights and Freedoms (the Charter), everyone has the right to be secure against unreasonable search and seizure. A search will be considered reasonable if the search is authorized by law pursuant to section 15 of the Act and is carried out in a reasonable manner.</p> <p>A warrant does not confer any power to arrest or search individuals present at the search premises. However, it can confer power to search private locations, automobiles and briefcases as long as it is within the scope of the search warrant.</p> <p>A search can be executed without warrant if the things to be seized are in plain view or where by reason of exigent circumstances it would be impossible to obtain a search warrant. Also, when a person is arrested, a search incidental to arrest may be performed without a warrant.</p>
<p>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)?</p>	<p>In most circumstances, another warrant (pursuant to sections 15 or 16 of the Act) would have to be obtained in order to be able to seize the additional evidence. However, as mentioned in the response to question 7B, a search can be executed without warrant if the things to be seized are in plain view or where by reason of exigent circumstances it would be impossible to obtain a search warrant.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>Recent challenges regarding the use of orders under section 11 of the Act have been based on grounds that include the following:</p> <ul style="list-style-type: none"> - failure to comply with the threshold requirements; - violation of section 7 of the Charter (life, liberty and security of person); - violation of section 8 of the Charter (right to be secure against unreasonable search or seizure); - violation of section 13 of the Charter (protection against self-incrimination); and - violation of section 2(d) of the Canadian Bill of Rights (protection against self incrimination) <p>Recent challenges regarding the search and seizure powers under sections 15 and 16 have been based on grounds including the following:</p> <ul style="list-style-type: none"> - abuse of process arguments linked to the use of a confidential informant under the immunity program; and - facial invalidity of the affidavit used to obtain the warrant authorizing the search and seizure.

8. Procedural rights of businesses / individuals

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.]

Accused are entitled to exercise their rights under the Charter, including, the right to life, liberty and security of the person (section 7), the right to be secure against unreasonable search or seizure (section 8), the right not to be arbitrarily detained (section 9), the right to retain counsel (section 10) and protection against self incrimination (section 13).

Subsection 11(3) of the Act provides, in part, that no testimony given or written return made under section 11 may be used or received against the individual in any criminal proceedings thereafter instituted against that person.

Subsection 12(4) of the Act provides, in part, that counsel for any person whose conduct is being inquired into at an examination pursuant to section 11 are entitled to attend the examination unless it is established that the presence of counsel would be prejudicial to the examination or result in the disclosure of confidential information.

Section 50 of the Canada Evidence Act provides that any person examined has the right to refuse to answer questions tending to incriminate him or herself.

It is a fundamental element of the fair and proper operation of the Canadian criminal justice system as established by the jurisprudence that an accused person has the right to the disclosure of all relevant information in the possession or control of the DPP, with the exception of privileged information. The DPP must disclose all relevant information to the accused, whether inculpatory or exculpatory, subject to the exercise of the DPP's discretion to refuse to disclose information that is privileged or plainly irrelevant.

In practice, in the context of inquiries under the Act, the evidence in the possession of the DPP required to be disclosed is the evidence collected by the Bureau during its inquiry.

B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? [Please indicate the relevant legal provisions.]

Subsection 10(3) of the Act provides that all inquiries shall be conducted in private.

Section 29 of the Act states that no person shall communicate or allow to be communicated to any other person information including:

- the identity of the person from whom information was obtained;
- information obtained pursuant to sections 11 (orders), 15 (search and seizure), 16 (search and seizure of electronic evidence); and
- information provided voluntarily under the Act.

Section 29 of the Act further provides that information that would otherwise be required to be kept confidential may be communicated to a Canadian Law enforcement agency or for the purposes of the administration or enforcement of the Act.

The Immunity and Leniency Programs both contain confidentiality provisions (see question 60 above).

See the Bureau's Information Bulletin "Communication of Confidential Information Under the Competition Act" at <http://www.competitionbureau.gc.ca/eic/site/cb->

9. Limitation periods and deadlines

<p>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>	<p>The Act does not set out a limitation period in relation to the termination of the infringement and the commencement of an investigation or decision on the merits in relation to sections 45 to 47 of the Act.</p>
<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?</p>	<p>There is no deadline for the completion of an investigation or to make a decision on the merits in relation to sections 45 to 47 of the Act.</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</p>	<p>There are no deadlines to challenge the commencement or completion of an investigation or a decision regarding sanctions in relation to sections 45 to 47 of the Act by the Bureau.</p> <p>There are relevant statutory time limitations under the process and practice regulations of the federal and provincial courts in Canada.</p>

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. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<p>Accused persons found guilty of an offence under the old sections 45 (conspiracy), 46 (foreign directives) and 47 (bid rigging) of the Act are convicted of a criminal offence and subject to financial penalties or imprisonment or both. The penalties range from 5 years imprisonment and \$10 million dollars (s.45), a monetary fine at the discretion of the court (s.46) and 5 years imprisonment and a fine at the discretion of the court (s.47).</p> <p>Under the new provisions of the Act, the penalties range from 14 years imprisonment and a fine of \$25 million dollars (s.45) and 14 years imprisonment and a fine at the discretion of the court (s.47).</p> <p>Individuals cannot be found guilty of an offence or fined under section 46 of the Act.</p>
<p>B. Please list which types of decisions on the merits of the case can be</p>	<p>Under section 45, a court may order the prohibition of the cartel conduct.</p>

<p>made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</p>	
<p>C. Can interim measures⁸ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁹.) 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>Section 33 of the Act provides for an interim injunction in certain circumstances. The DPP can, before a prosecution is commenced or a permanent injunction is requested from a court, request an interim injunction forbidding any person from doing any act or thing that may constitute an offence or is directed toward the commission of an offence. The court may issue such an order if it is satisfied that the commission or the continuation of an offence, pending the commencement of the prosecution or the proceedings for a permanent injunction, may,</p> <p>(1) harm the competition in manner that cannot be otherwise remedied adequately under the Act; or</p> <p>(2) cause to a person a damage that cannot be adequately compensated under the Act and that will be substantially greater than the damage that the target of the order may suffer if afterwards it turns out that an offence has not been committed, was not about to be committed and was not likely to be committed.</p> <p>In order to obtain an interim order, the DPP must establish that it has in its possession evidence needed to institute and conclude criminal or permanent injunction proceedings, and that it will act expeditiously to that end.</p> <p>Subsection 34(2) of the Act provides that where a court is satisfied that a person has done, is about to do or is likely to commit an offence under Part VI of the Act, which includes sections 45 to 47, it may issue a prohibition order. The order may prohibit a person from committing the offence or the doing or continuation of any act by the person or any other person constituting or directed toward the commission of an offence.</p>

11. Sanctions for procedural breaches (non-compliance with procedural obligations)¹⁰

<p>A. Grounds for the imposition of procedural</p>	<p>Competition Act</p>
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⁸ 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].

⁹ Only for agencies which answered “yes” to question 2.C. above

¹⁰ 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/ fines:</p>	<p>Obstruction: Section 64 of the Act provides that no person shall impede or prevent or attempt to impede or prevent, an inquiry under the Act.</p> <p>Failure to comply with an order or warrant: Subsection 65(1) of the Act provides that every person who fails to comply with an order under section 11 of the Act and every person who contravenes subsection 15(5) or subsection 16(2) (search and seizure) is in contravention of the Act and subject to certain criminal penalties.</p> <p>Destruction of evidence: Subsection 65(3) of the Act provides that a person who destroys or alters a record or other things required to be produced under section 11 or in respect of which a warrant under section 15 or 16 is issued is in contravention of the Act and subject to certain criminal penalties.</p> <p>Criminal Code</p> <p>Wilfully obstructing a public officer in the execution of his or her duty (Section 129)</p> <p>Perjury (Section 131)</p> <p>Witness giving contradictory evidence (Section 136)</p> <p>Fabricating evidence (Section 137)</p> <p>Obstructing justice (dissuading a person by threat, bribe or other corrupt means from giving evidence; influencing a juror by threat, bribe or other corrupt means; accepting a bribe or other corrupt consideration to abstain from giving evidence or to refrain from doing anything as a juror (Subsections 139(2) and (3)).</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined):</p>	<p>Competition Act</p> <p>Obstruction is a criminal offence. On summary conviction, the person is subject to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years, or to both (s.64(2)(b)). On conviction on indictment, a person is subject to a fine at the discretion of the court or to imprisonment for a term not exceeding 10 years or to both (s. 64(2)(a)).</p> <p>Failure to comply with an order under section 11 or a warrant under sections 15 and 16 is a criminal offence. On summary conviction, the person is subject to a fine under the Act by a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years, or to both. On conviction on indictment, a person is subject to a fine at the discretion of the court or to imprisonment for a term not exceeding 2 years or both (s. 65(1)).</p> <p>Destruction or alteration of a record is a criminal offence. On summary conviction, the person is subject to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years, or to both. On conviction on indictment, a person is subject to a fine at the discretion of the court or to imprisonment for a term not exceeding 10 years, or to both (s. 65(3)).</p> <p>Criminal Code</p>

	<p>Wilfully obstructing a public officer in the execution of his or her duty, fabricating evidence and obstructing justice are all criminal offences.</p> <p>Wilfully obstructing a public officer is punishable by way of summary conviction or indictment. By way of summary conviction, a person is liable to a fine of not more than \$2,000 or to imprisonment for six months or to both. By way of indictment, a person is liable to imprisonment for a term not exceeding 2 years or to a fine in the discretion of the court, or to both.</p> <p>Perjury and a witness giving contradictory evidence are indictable offences and are punishable by imprisonment for a term not exceeding 14 years or to a fine in the discretion of the court, or to both.</p> <p>Fabricating evidence is punishable by way of indictment. On conviction, a person is liable to imprisonment for a term not exceeding 14 years or to a fine in the discretion of the court, or to both.</p> <p>Obstructing justice is punishable by way of indictment. On conviction, a person is liable to imprisonment for a term not exceeding 10 years or to a fine in the discretion of the court, or to both.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>Fines may be imposed on both individuals and corporate entities.</p> <p>Individuals may also be subject to imprisonment.</p>
<p>D. Criteria for determining the sanction / fine:</p>	<p>In addition to the legislated parameters under the Act and the guidance given in the Leniency Bulletin, section 718 of the Criminal Code sets out the principal objectives of sentencing:</p> <p>The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:</p> <ul style="list-style-type: none"> (a) to denounce unlawful conduct; (b) to deter the offender and other persons from committing offences; (c) to separate offenders from society, where necessary; (d) to assist in rehabilitating offenders; (e) to provide reparations for harm done to victims or the community; and (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community. <p>According to section 718.1 of the Code, a sentence must be proportionate to the gravity of the offence and the degree of responsibility.</p> <p>Subsection 718.2(b) of the Code provides that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.</p> <p>Subsection 718.21 lists additional factors that a court shall consider in sentencing an organization:</p>

	<p>(a) any advantage realized by the organization as a result of the offence;</p> <p>(b) the degree of planning involved in carrying out the offence and the duration and complexity of the offence;</p> <p>(c) whether the organization has attempted to conceal its assets, or convert them, in order to show that it is not able to pay a fine or make restitution;</p> <p>(d) the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees;</p> <p>(e) the cost to public authorities of the investigation and prosecution of the offence;</p> <p>(f) any regulatory penalty imposed on the organization or one of its representatives in respect of the conduct that formed the basis of the offence;</p> <p>(g) whether the organization was — or any of its representatives who were involved in the commission of the offence were — convicted of a similar offence or sanctioned by a regulatory body for similar conduct;</p> <p>(h) any penalty imposed by the organization on a representative for their role in the commission of the offence;</p> <p>(i) any restitution that the organization is ordered to make or any amount that the organization has paid to a victim of the offence; and</p> <p>(j) any measures that the organization has taken to reduce the likelihood of it committing a subsequent offence.</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>See response to question 11B.</p>

12. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</p>	<p>Cartel activity is subject to criminal sanctions.</p> <p>Offences under section 45 (price fixing, market allocation, etc.) are punishable by fines up to \$25 million and a term of imprisonment of up to 14 years. Upon conviction, the court can also issue a prohibition order pursuant to section 34 of the Act to prohibit repetition of the offence in the future and an interim injunction pursuant to section 33 of the Act to stop the person (individual or corporation) from continuing to engage in anti-competitive behaviour(s).</p> <p>Bid rigging under section 47 of the Act is punishable by fines at the discretion of the court and imprisonment for a term not exceeding fourteen years or both.</p> <p>Fines can be imposed on both companies and individuals.</p> <p>Individuals may also be subject to imprisonment, or alternative measures such as probation and community service.</p> <p>Corporations convicted of offences under section 46 of the Act (implementation of foreign directives to fix prices, allocate</p>
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	markets, etc.) are liable to a fine in the discretion of the court.
B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]	<p>Sections 718, 718.1, 718.2 and 718.21 of the Code set out some principal objectives of sentencing (see response to question 11D).</p> <p>The following specific sentencing factors have been pleaded in previous conspiracy cases and are well accepted:</p> <ul style="list-style-type: none"> - the size and influence of the accused, both specifically in the conspiracy and, more generally, in terms of market share, sales and affected volume of commerce; - the role of the accused in the offence, whether it initiated or resisted participation in the offence; - the duration of the conspiracy is very significant: the longer the conspiracy, the greater the profit and the greater the economic harm; - geographical scope of the market; - the nature of the product or service; - recidivism or recent convictions of criminal conduct, degree of planning, efforts to conceal and the complexity of the cartel conduct as serious aggravating factors; - factors in mitigation include the extent of cooperation with the Crown, restitution, the timeliness of cooperation and ability to pay.
C. Are there maximum and / or minimum sanctions / fines?	See response to question 12B.
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]	<p>Canada does not have legislated sentencing guidelines. However, the Bureau does provide guidance regarding its approach to the calculation of fines within the Leniency Program.</p> <p>Sections 718, 718.1, 718.2 and 718.21 of the Code set out some principal objectives of sentencing (see response to question 11D).</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>There is no automatic suspension of the sentence when an application for leave to appeal is made before the Court of Appeal. Subsection 683 (5) of the Code states that the court may, where it considers it to be in the interests of justice, order that any obligation to pay a fine be suspended until the appeal has been determined. The interests of justice do not refer exclusively to the merits of the appeal and include the interests of the state, and the public's confidence in and respect for the court in its administration of the criminal law.</p> <p>A person found guilty and sentenced to a prison term will have to apply for release pending the appeal pursuant to section 679 of the Code. The person must establish under subsection 679(4) of the Code that his or her appeal has sufficient merit and it would cause unnecessary hardship if he or she were detained in custody.</p>

13. Possibilities of appeal

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?	Section 674 of the Code provides for a right of appeal from a conviction for an indictable offence (includes sections 45 to 47 of the Act) based on questions of law and fact.
B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]	Appeals are to the provincial or federal court of appeal, whichever is appropriate. A decision of a court of appeal may be appealed to the Supreme Court of Canada, with leave.