



International
Competition
Network

Trends and Developments in Cartel Enforcement

**Presented at the 9th Annual ICN Conference
in Istanbul, Turkey
April 29, 2010**

TABLE OF CONTENTS

OVERVIEW OF SURVEY RESULTS.....	3
SUPPLEMENTAL EXCERPTS FROM SURVEYED COMPETITION AUTHORITIES.....	15
I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT.....	16
A. INCREASED PENALTIES.....	16
B. CHANGES IN INVESTIGATIVE POWERS	24
C. NEW VIOLATION PROVISIONS/NEW DEFINITION OF WHAT CONSTITUTES CARTEL CONDUCT.....	30
D. OTHER SIGNIFICANT CHANGES OR DEVELOPMENTS.....	33
II. CHANGES IN LENIENCY PROGRAMS	38
III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT.....	53
IV. USE OF ANTI-CARTEL ENFORCEMENT MANUAL TO ADVANCE CARTEL ENFORCEMENT.....	66

ICN Member Survey on Trends and Developments in Anti-Cartel Enforcement

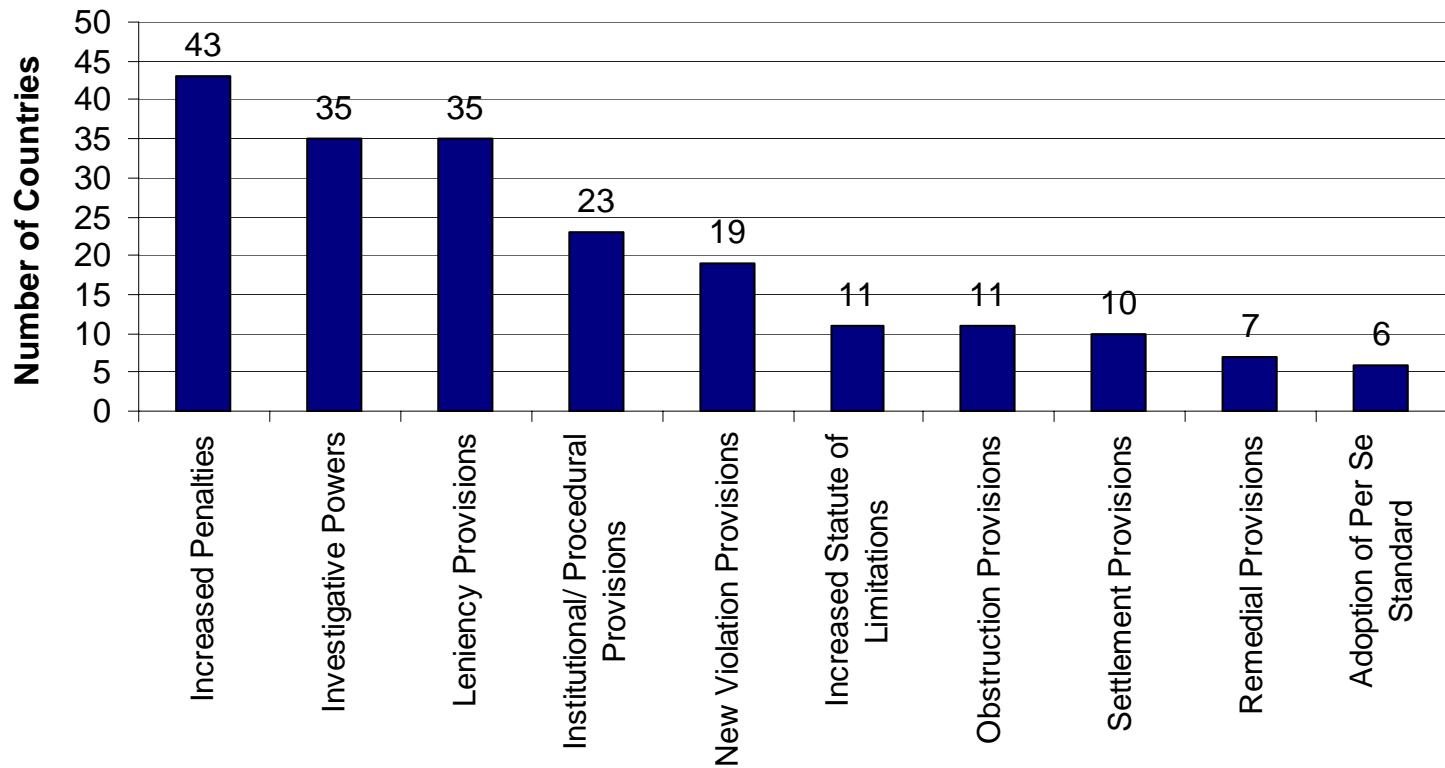
- Survey of ICN Cartel Working Group Members
- Responses Received from Members in 46 Jurisdictions

Participating Jurisdictions

1. Argentina
2. Australia
3. Austria
4. Brazil
5. Bulgaria
6. Canada
7. Chile
8. Croatia
9. Cyprus
10. Czech Republic
11. Denmark
12. Egypt
13. El Salvador
14. Estonia
15. EU
16. Finland
17. France
18. Germany
19. Greece
20. Hungary
21. Ireland
22. Israel
23. Japan
24. Jersey
25. Korea
26. Mexico
27. Mongolia
28. Netherlands
29. New Zealand
30. Norway
31. Pakistan
32. Panama
33. Peru
34. Poland
35. Portugal
36. Romania
37. Russia
38. South Africa
39. Spain
40. Sweden
41. Switzerland
42. Taiwan
43. Turkey
44. U.K.
45. U.S.
46. Vietnam

Changes in Competition Laws

What changes/developments in your competition law have impacted your cartel enforcement program over the last 10 years?



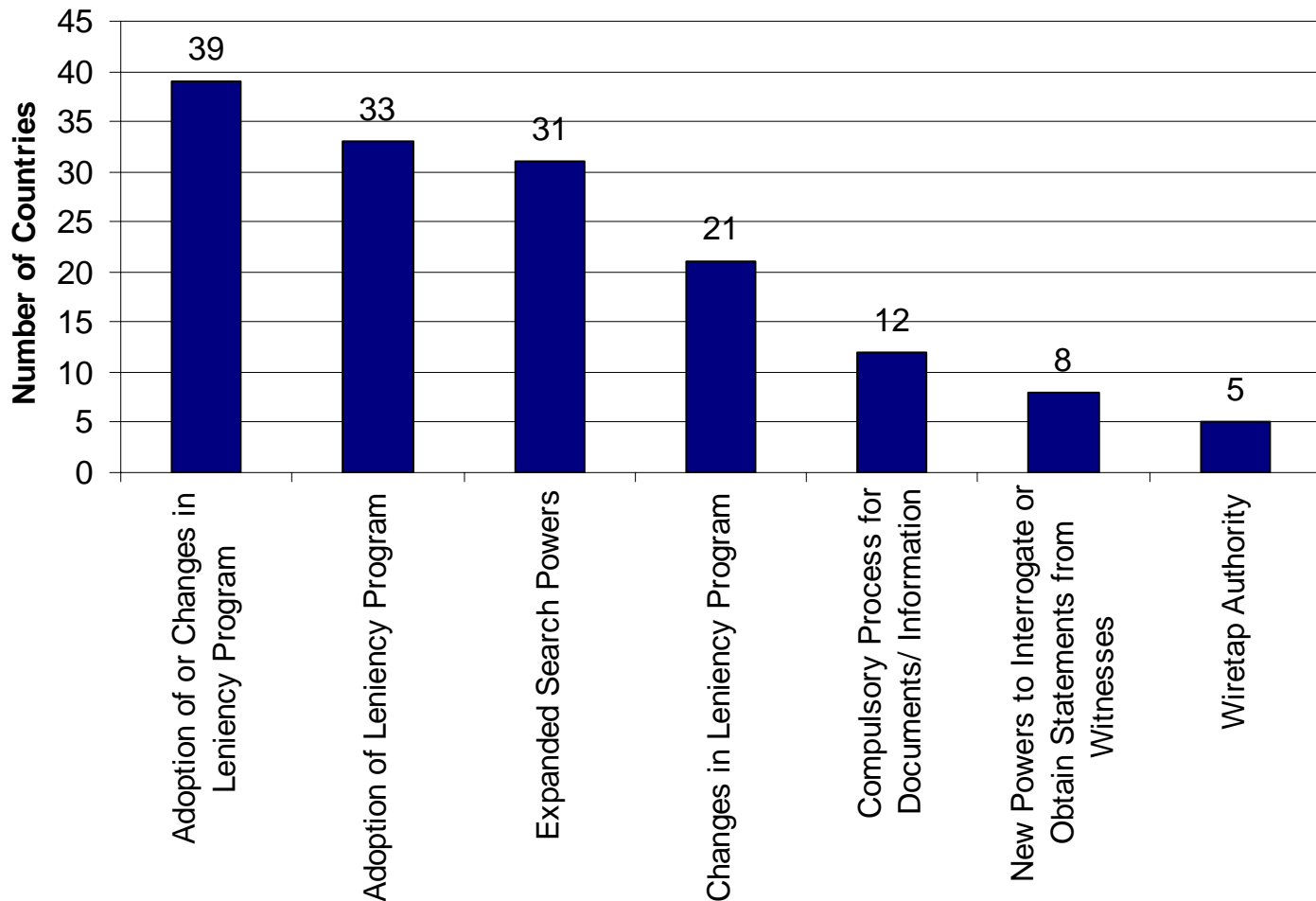
Changes in Competition Laws

What changes/developments in your competition law have impacted your cartel enforcement program over the last 10 years?

	Increased Penalties	Investigative Powers	Leniency Provisions	Institutional/ Procedural Provisions	New Violation Provisions	Increased Statute of Limitations	Obstruction Provisions	Settlement Provisions	Remedial Provisions	Adoption of Per Se Standard
Argentina	x	x		x	x		x	x	x	
Australia	x	x	x	x	x	x	x			
Austria	x	x	x	x						
Brazil	x	x	x	x				x		
Bulgaria	x	x	x	x				x	x	x
Canada	x	x			x		x			x
Chile	x	x	x	x		x		x		
Croatia	x	x	x	x		x				
Cyprus	x	x	x					x	x	
Czech.	x	x	x	x	x	x	x	x		
Denmark	x	x	x	x						
EC	x	x	x	x				x		
Egypt	x	x	x		x		x			
El Salv.	x		x	x						
Estonia	x	x			x					
Finland	x		x							
France	x	x	x	x		x	x	x		
Germany	x									
Greece	x	x	x							x
Hungary	x	x	x	x	x	x				
Ireland	x	x								
Israel	x	x	x							
Japan	x	x	x	x		x				
Korea	x				x					
Mexico	x	x	x		x					
Mongolia										
Neth.	x	x	x		x	x	x			
NZ	x	x				x			x	
Norway	x		x	x						
Pakistan	x	x	x	x	x				x	x
Panama	x		x	x	x					
Peru	x	x	x	x	x		x		x	x
Poland		x	x							
Portugal	x		x	x	x					
Romania	x	x				x				
Russia	x	x	x		x					x
S. Africa	x		x		x					
Spain	x	x	x		x		x			
Sweden	x	x	x	x				x		
Switz.	x	x	x							
Taiwan	x		x			x				
Turkey	x	x	x	x			x			
US	x	x	x							
UK	x	x		x	x					
Vietnam	x	x	x	x	x		x	x	x	
TOTAL	43	35	35	23	19	11	11	10	7	6

Creation of New Investigative Powers

What changes/developments have taken place in your competition law over the last 10 years, with respect to the creation of new investigative powers that have advanced your cartel enforcement efforts?



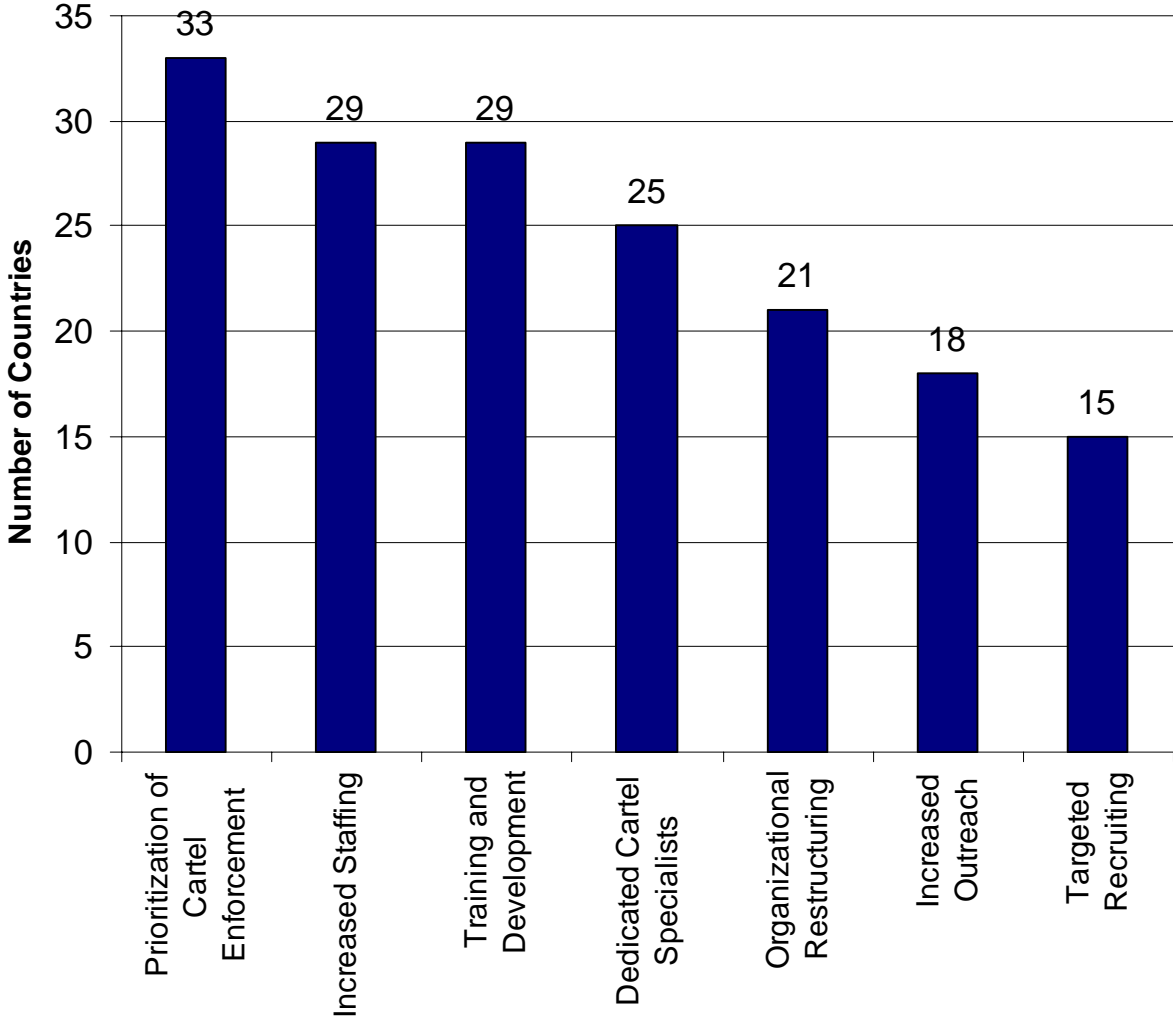
Creation of New Investigative Powers

What changes/developments have taken place in your competition law over the last 10 years, with respect to the creation of new investigative powers that have advanced your cartel enforcement efforts?

	Adoption of or Changes in Leniency Program	Adoption of Leniency Program	Expanded Search Powers	Changes in Leniency Program	Compulsory Process for Documents/ Information	New Powers to Interrogate or Obtain Statements from Witnesses	Wiretap Authority
Argentina			x		x		
Australia	x	x	x	x	x		x
Austria	x	x	x		x	x	
Brazil	x	x	x	x			
Bulgaria	x	x	x			x	
Canada							x
Chile	x	x	x				x
Croatia	x	x	x				
Cyprus	x	x	x	x		x	
Czech.	x	x	x	x			
Denmark	x	x	x				
EC	x		x	x		x	
Egypt	x	x			x		
El Salv.			x	x			
Estonia	x		x				
Finland	x	x					
France	x	x	x	x	x		
Germany	x			x			
Greece	x	x	x				
Hungary	x	x	x	x	x		
Ireland	x	x					
Israel	x	x	x			x	x
Japan	x	x	x	x	x		
Korea	x	x		x			
Mexico	x	x	x				
Mongolia			x		x	x	
Neth.	x	x	x	x			
NZ	x	x		x			
Norway	x	x					
Pakistan	x	x	x		x	x	
Panama	x	x					
Peru	x		x	x	x		
Poland	x	x	x	x			
Portugal	x	x					
Romania	x	x	x	x			
Russia	x		x	x	x		
S. Africa	x	x		x			
Spain	x	x	x				
Sweden	x	x	x	x			
Switz.	x	x	x				
Taiwan							
Turkey	x	x	x				
US	x			x			x
UK	x	x	x	x			
Vietnam					x	x	
TOTAL	39	33	31	21	12	8	5

Institutional Changes in Anti-Cartel Enforcement

What major institutional changes/developments implemented in your agency have impacted your cartel enforcement program over the last 10 years?



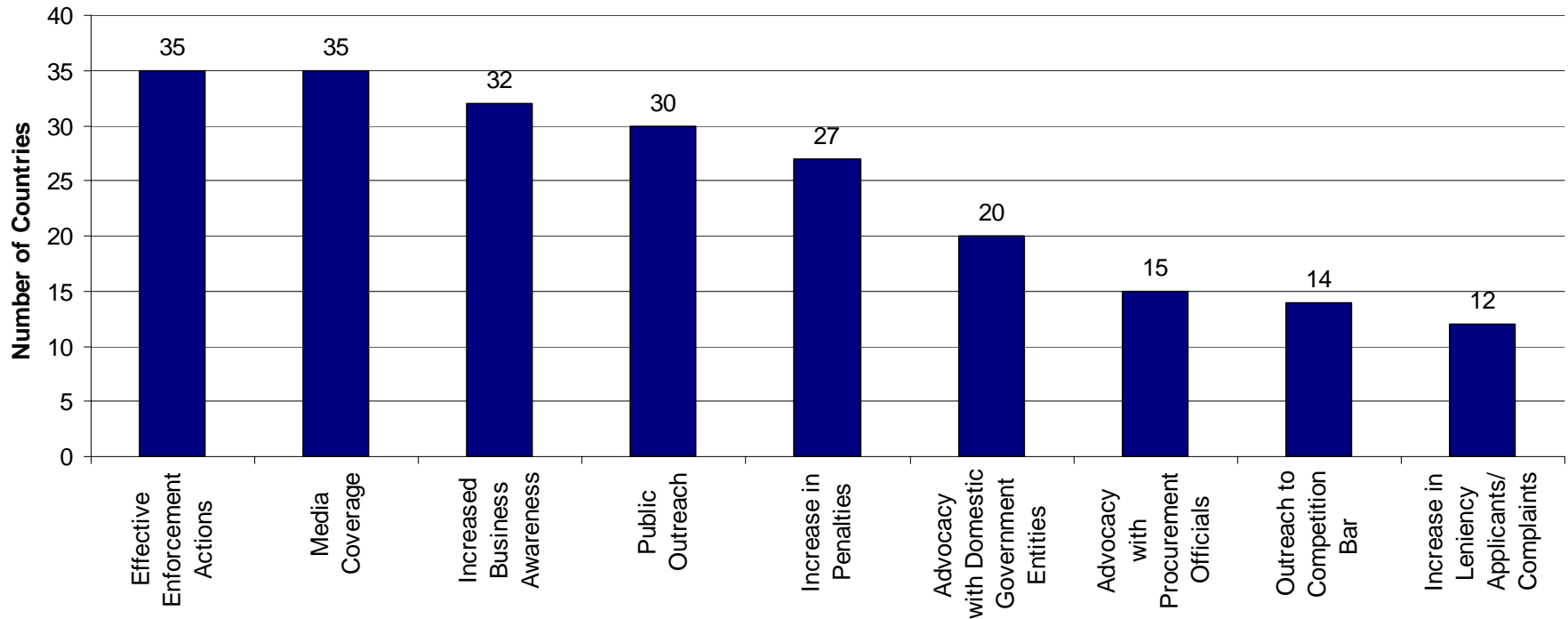
Institutional Changes in Anti-Cartel Enforcement

What major institutional changes/developments implemented in your agency have impacted your cartel enforcement program over the last 10 years?

	Prioritization of Cartel Enforcement	Increased Staffing	Training and Development	Dedicated Cartel Specialists	Organizational Restructuring	Increased Outreach	Targeted Recruiting
Argentina	x		x		x	x	
Australia	x	x	x		x	x	x
Austria				x			
Brazil	x			x	x		
Bulgaria	x	x	x	x	x	x	x
Canada	x	x	x		x	x	x
Chile	x	x	x	x			
Croatia		x	x				x
Cyprus	x	x			x	x	
Czech.	x	x	x	x	x	x	x
Denmark	x	x	x	x	x		x
EC	x	x		x			
Egypt	x	x	x			x	
El Salv.		x	x		x		
Estonia			x	x	x		
Finland	x	x					
France	x	x	x		x	x	x
Germany	x	x		x			
Greece	x	x	x				
Hungary	x		x	x			x
Ireland	x	x		x			
Israel	x	x		x	x		
Japan	x	x	x	x	x		x
Korea		x		x			
Mexico	x		x	x	x	x	
Mongolia			x			x	
Neth.	x	x	x		x	x	x
NZ	x	x	x				x
Norway	x	x		x			x
Pakistan		x	x	x	x	x	
Panama			x				
Peru	x	x	x	x	x	x	
Poland	x		x	x		x	
Portugal	x	x	x		x		x
Romania	x						
Russia	x	x	x	x	x	x	x
S. Africa	x			x			
Spain	x	x		x		x	
Sweden	x				x		
Switz.							
Taiwan			x			x	
Turkey		x	x				
US			x	x			
UK	x			x			
Vietnam	x	x	x	x	x	x	x
TOTAL	33	29	29	25	21	18	15

Perceived Importance of Cartel Enforcement

What factors have most significantly influenced the perception of the public, media, business community, defense bar or other government agencies in your jurisdiction?

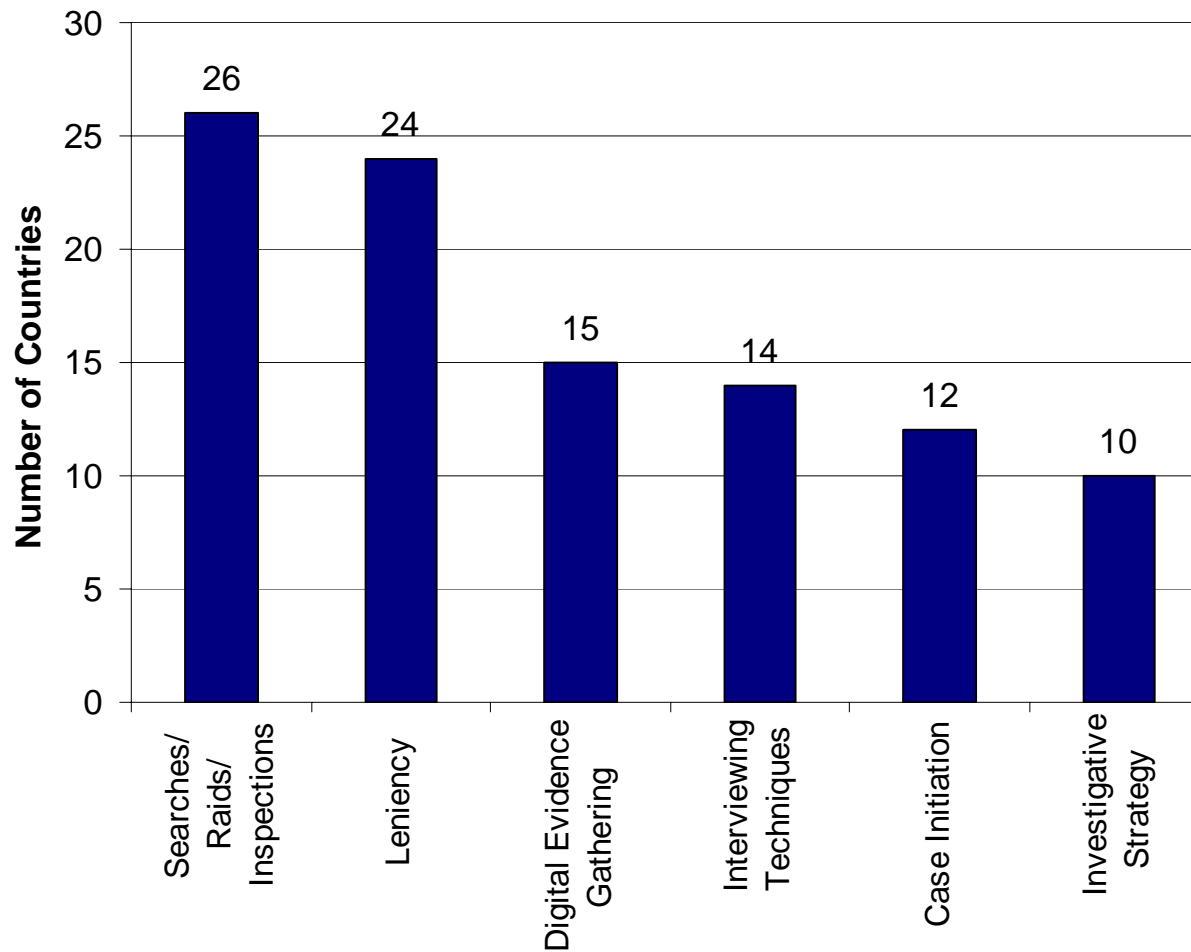


Perceived Importance of Cartel Enforcement

What factors have most significantly influenced the perception of the public, media, business community, defense bar or other government agencies in your jurisdiction?									
	Effective Enforcement Actions	Media Coverage	Increased Business Awareness	Public Outreach	Increase in Penalties	Advocacy with Domestic Government Entities	Advocacy with Procurement Officials	Outreach to Competition Bar	Increase in Leniency Applicants/ Complaints
Argentina	x	x	x		x				
Australia	x	x	x	x	x				
Austria	x	x	x		x	x		x	x
Brazil	x	x	x	x		x	x		x
Bulgaria	x	x	x	x	x	x	x	x	x
Canada	x	x	x	x	x	x	x	x	
Chile	x	x		x	x				
Croatia		x	x	x		x			
Cyprus		x	x	x	x				
Czech.	x	x	x		x			x	x
Denmark	x	x	x			x			
EC	x				x				
Egypt	x	x	x	x	x	x	x		
El Salv.		x		x	x	x	x		
Estonia		x	x						
Finland	x	x	x		x		x		
France	x	x	x		x	x		x	x
Germany	x	x	x	x					x
Greece		x		x	x				
Hungary	x	x		x	x	x			
Ireland	x				x	x	x		
Israel	x	x	x		x	x	x	x	
Japan	x		x	x	x	x		x	
Korea			x	x					
Mexico	x	x		x		x		x	x
Mongolia	x	x	x	x					
Neth.	x	x	x	x	x	x	x	x	x
NZ	x	x		x				x	
Norway	x	x					x		
Pakistan	x	x	x	x	x	x			x
Panama		x	x		x				
Peru	x	x		x	x				
Poland		x	x	x	x	x		x	
Portugal	x	x		x		x		x	
Romania	x	x	x		x				
Russia		x	x			x	x		x
S. Africa	x		x	x	x				x
Spain	x			x					
Sweden	x			x			x		
Switz.			x	x					
Taiwan	x	x	x	x					
Turkey	x	x	x		x		x	x	
US	x		x	x	x		x		x
UK	x		x	x					
Vietnam	x	x	x	x		x	x	x	
TOTAL	35	35	32	30	27	20	15	14	12

Anti-Cartel Enforcement Manual

Which chapters of the Anti-Cartel Enforcement Manual have you used to advance your cartel enforcement?



Anti-Cartel Enforcement Manual

Which chapters of the Anti-Cartel Enforcement Manual have you used to advance your cartel enforcement program?

	Searches/ Raids/ Inspections	Leniency	Digital Evidence Gathering	Interviewing Techniques	Case Initiation	Investigative Strategy
Argentina	x	x	x	x	x	x
Australia	x	x	x	x	x	x
Austria	x					
Brazil	x	x	x			
Bulgaria	x		x		x	
Canada	x	x			x	
Chile	x	x				
Croatia	x	x				
Cyprus	x					
Czech.						
Denmark	x		x			x
EC						
Egypt		x				
El Salv.	x	x				x
Estonia	x					
Finland			x		x	
France	x	x	x			x
Germany		x	x			
Greece			x			
Hungary	x		x	x	x	x
Ireland	x	x		x	x	
Israel			x			
Japan		x				
Korea						
Mexico	x	x		x	x	
Mongolia					x	
Neth.	x	x		x		
NZ		x				
Norway			x			x
Pakistan	x	x				
Panama						
Peru	x	x		x	x	
Poland			x			
Portugal	x	x		x		
Romania	x	x	x	x	x	x
Russia	x	x	x	x	x	x
S. Africa	x	x		x		
Spain	x			x		
Sweden	x					
Switz.						
Taiwan				x		x
Turkey	x	x				
US		x				
UK						
Vietnam		x		x		
TOTAL	26	24	15	14	12	10



International
Competition
Network

Trends and Developments in Cartel Enforcement: Supplemental Excerpts from Surveyed Competition Authorities

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT

A. INCREASED PENALTIES

Competition Authority	Supplemental Excerpts
Argentina	<p>The actual law number 25.156 dates from October 1999, and was sanctioned to substitute Law number 22.262. This later had two main articles, which were based upon the Articles 85 and 86 of the Treaty of Rome. It was an administrative law (not penal, as the firsts ones dating 1923 and 1946). Sanctions included fines and orders, and this law created the first specific organization to enforce the law (National Commission for the Defence of Competition –CNDC-). The application of the law was quite sporadic during the eighties but it was increasingly applied along the following decade, due to the structural market reforms at the beginning of the nineties.</p> <p>The Competition Law provides the authority with necessary faculties for enforcing the law. Articles 46/51 establish sanctions, among which is included the power to deliver a cease order and, if necessary, impose the fulfilment of conditions to neutralize the effects of such anticompetitive conducts. Also sanctions include fines to legal entities and/or natural person, the extreme case of legal entity dissolution.</p> <p>The law also establishes another tool to fight cartels, which is the possibility for the Competition Authority to deliver preliminary cease orders under article 35 the National Commission for the Defence of Competition has delivered, during the 2001/2009 period about 45 cease orders. These measures can be appealed in Court, but the execution of the appealed decision is not suspended.</p>
Australia	<p>In 2009, the Trade Practices Act was amended to incorporate new provisions criminalising serious cartel conduct. For individuals, a criminal violation is punishable by imprisonment of up to ten years and/or fines of up to A\$220,000 per contravention. Further, individuals may be disqualified from managing a corporation. Under the civil prohibition, individuals may be liable to a pecuniary penalty of up to A\$500 000 per contravention. For corporations, each contravention of the civil prohibition or cartel offence is subject to a pecuniary penalty or fine (respectively) not to exceed the greater of: (a) A\$10 million; (b) three times the total value of the benefits obtained by one or more persons reasonably attributable to the commission of the offence, or reasonably attributable to the act or omission in contravention of the civil prohibition, or (c) where the value of those benefits cannot be fully determined, 10% of the corporate group’s annual turnover in a 12 month period when the offence/contravention occurred.</p>
Austria	<p>Penalties increased dramatically from EUR 80.000 in 2005/2006 to up to EUR 75,4 million in 2008.</p>
Bulgaria	<p>A new <i>Law on Protection of Competition /LPC/ was adopted on 14 November 2008</i>, and came into force on 2 December 2008. It replaced the <i>Law on Protection of Competition of 1998</i>. One of the most important changes is the introduction of a new method for quantification of pecuniary sanctions imposed for infringements. In line with EC competition law, the sanctions are defined as certain percentage of the turnover of the undertakings during the previous year (in an amount not exceeding 10% of the total turnover), rather than as a lump sum, as was the case with the repealed law. The new Methodology adopted by the Commission has the effect of achieving adequate deterrent effect of sanctions.</p> <p>In 2004 the CPC adopted its first Methodology for setting fines in order to enhance the transparency of its sanctioning policy. According to the established Methodology the CPC determined the basic amount of the fine according to the gravity and the duration of the infringement. In assessing the gravity of the infringement, account had to be taken of its nature, its actual impact on the market and the size of the relevant geographic market. The CPC would then assess the duration of the infringement and apply a different percentage increase as follows: for duration from 1 to 5 years- 50 % of the fine and for more than 5 year a 10% increase per year. However. the 1998 Law provided for penalties within a minimum and maximum limits – from 2 500 EUR to 154 000</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT

A. INCREASED PENALTIES

	EUR.
Competition Authority	Supplemental Excerpts
Bulgaria (continued)	<p>The 2008 LPC introduced a new sanctioning policy and a new Methodology for setting fines has been adopted that ensures the effective enforcement of competition law and provides an opportunity for imposing adequate and proportional sanctions to infringers. Moreover, this policy aims at prevention of commitment of infringements by other undertakings or association of undertakings and at termination of the infringement.</p> <p>The basic amount of the sanction in case of participation in a secret cartel has been set as up to 10% of the value of sales of the goods or services affected by the infringement. The CPC adopts a two-step methodology for setting fines - the CPC will determine the basic amount of the fine based on the value of the sales, made by the undertaking during the last financial year of its participation in the infringement, on the market affected by the infringement. Such basic amount will then be adjusted to reflect aggravating and/or attenuating circumstances. The duration of the infringement will have a greater weight on the amount of the fine as the starting amount is to be multiplied by a coefficient based on the number of years of participation as opposed to a percentage increase per year under the previous practice. The basic amount of the sanction shall be set with an increase for deterrence of up to 25% of the basic amount if the cartel is an infringement of Article 101 of the TFEU. Set in this way, the total amount of the imposed sanction may reach 10% of the total turnover of the undertaking in the preceding financial year.</p> <p>Since the adoption of the new LPC and the Methodology for setting fines the CPC significantly increased the level of fines compared to previous years which is particularly manifested in the case of cartels. In April 2008 the CPC adopted its first decision based on the parallel application of national and community law on prohibited agreements. The Commission imposed sanction of 2 450 000 BGN (approx. EUR 1 250 000) on the Association of Bulgarian Insurers and on 14 of its members. This has been the largest amount that the CPC has ever imposed as pecuniary sanction in its decisional practice. In 2009 the Authority's decision was confirmed by final judgement of the Bulgaria's Supreme Administrative Court.</p> <p>Procedural fines: CPC may also impose fines for procedural infringements where undertakings or associations of undertakings supply incorrect or misleading information in response to a request for information or do not supply information within the required time-limit to respond, break seals affixed by the CPC or breach their duty of loyal cooperation with the CPC. The CPC may impose periodic penalty sanctions up to 1% of the total turnover of the undertaking in the preceding financial year, taking account of the nature, significance and the necessity of information for the investigation, the gravity of the infringement made and any mitigating and aggravating circumstances.</p> <p>The Commission can impose on undertaking periodic penalty sanctions of up to 5% of its daily turnover for failure to comply with CPC's infringement decision.</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT

A. INCREASED PENALTIES

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Canada	<p>In March, 2009, the Parliament of Canada passed amendments to the Competition Act that are regarded as the most significant reforms to Canada's competition laws since the mid 1980s.</p> <p>Amendments to the conspiracy provisions will come into force in March, 2010, repealing the existing criminal offence of conspiracy and replacing it with a new per se criminal provision that prohibits agreements between competitors and/or potential competitors to fix prices, allocate markets and restrict output. As such, the current requirement of proving an undue anti-competitive effect to the criminal burden of proof will disappear. Penalties for violations of the conspiracy provisions will also increase: the maximum fine will increase from \$10 to \$25 million per count, while the maximum term of imprisonment will increase from five to 14 years. 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. These amendments were designed to create a more effective criminal enforcement regime for the most egregious forms of cartel agreements, while at the same time removing the threat of criminal sanctions for legitimate collaborations between competitors so as to avoid discouraging firms from engaging in potentially beneficial alliances.</p> <p>The bid-rigging provisions have also been strengthened. The maximum jail term for individuals convicted of bid-rigging has increased from five to 14 years. There is no maximum fine for a bid-rigging offence (fines are at the discretion of the court). As well, agreements to withdraw a bid now constitute an offence under the provision. The amendments to the bid-rigging provisions have been in force since March, 2009.</p> <p>In addition, certain penalties were increased in March, 2009, to promote compliance with the Competition Act and to deter conduct that would compromise the effective enforcement of the Act.</p> <ul style="list-style-type: none"> • The maximum term of imprisonment for failure to comply with a Prohibition Order increased from two to five years. • The fine for obstructing an inquiry or examination under the Competition Act is now at the discretion of the court (it was formerly a maximum of \$5,000) and the maximum term of imprisonment was increased from two to ten years. • The penalty for failing to comply with a section 11 order or obstruction of a search is a fine at the discretion of the court (the previous maximum was \$5,000). The maximum term of imprisonment of two years was not changed. • The penalty for the destruction or alteration of records is now a fine at the discretion of the court (it was formerly a maximum of \$50,000) and a maximum term of imprisonment of ten years (increased from five years).
Chile	Amendments in 2009 raised the maximum fines for collusion to approximately US\$ 24.2 million and increased the statute of limitations for all competition infringements from two to five years.
Croatia	Amendments to the Competition Act in 2009 allow the Croatian Competition Agency to impose fines of up to 10% aggregate turnover for the most serious breach of competition rules. The new power to impose fines will also include the possibility to increase the fine in order to exceed the amount of gains improperly obtained as a result of the infringement, but the legal maximum of the fine cannot be exceeded.
Cyprus	Increased administrative fines for procedural infringements
Czech Republic	2007 Guidelines for fines, higher statutory penalties for obstructions

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT

A. INCREASED PENALTIES

Competition Authority	Supplemental Excerpts
Egypt	From approximately 2 Million USD in 2005 to 55 Million USD in 2008
Estonia	Criminal penalties were introduced in 2002 for certain individuals and companies who participate in anti-competitive agreements. A member of the management board, of a body substituting for the management board or of the supervisory board, senior official or authorized representative of a legal person, who violates a prohibition against anti-competitive agreements, decisions or concerted practices can be punished by a pecuniary punishment or up to 3 years' imprisonment. A legal person shall be punished by a pecuniary punishment up to 16 million euros.
European Commission	The new Commission Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 has resulted in a tendency for higher fines in the last decade.
Finland	In 2009, the cartel infringement penalties increased considerably in Finland. For instance, in 2009 the Supreme Administrative Court imposed competition infringement fines for a total of EUR 82.55 million in relation to a national asphalt cartel operating in Finland 1994-2002. In addition, in 2009 the Market Court imposed competition infringement fines for a total of EUR 51 million in relation price fixing and illegal exchange of information in the national timber purchasing markets during 1997-2004.
France	Over the last decade, three major legal changes have occurred in relation to penalties imposed on cartels by the Autorité: (1) <u>ceiling</u> : the maximum fine was enlarged from 5% of the French turnover of the firm liable for the infringement to 10% of the worldwide turnover of the group to which it belongs, in line with European standards and with the fact that cartel strategies are increasingly going global; (2) <u>recidivism</u> : the high rate of recidivism led the government to introduce recidivism in the law as a specific aggravating circumstance to be taken into account when calculating the fine imposed on cartelists; (3) <u>settlement</u> : in order to incentivize firms that have missed the “leniency race” to come forward, a settlement procedure was introduced in 2001, pursuant to which companies that waive their right to contest the charges notified by the Autorité can earn a fine reduction in exchange. These legal changes, together with the signal given by the French Parliament in favor of more deterrent fines, led the Autorité to gradually step up its policy, by pushing the fines up to a level which is considered deterrent, while always taking into account the individual situation of the firms concerned and the proportionality principle.
Germany	In the last 10 years, the German law was adjusted with regard to the fines: the former level of fines, which was based on a maximum level of three times the additional proceeds generated by the infringement were abolished. Instead the level of fines imposed for violations of competition law was raised to up to 1 million Euros; in addition Bundeskartellamt can impose fines for certain violations of up to 10 per cent of the company's total turnover. In addition in 2007 it was clarified in the statute that when calculating this capping threshold the turnover of the economic entity at stake has to be taken into account.
Greece	There has been no amendment of Law 703/77, which is the Greek Competition Act, with regard to the level of administrative penalties and fines. However, the Hellenic Competition Commission (HCC) published in 2006 a new set of Fining Guidelines, which resulted in significantly higher fines being imposed by the HCC in cartel cases.

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
A. INCREASED PENALTIES

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Hungary	2000 amendments to the Hungarian Competition Act that entered into force in February 2001 increased maximum fine threshold to 10% of the previous year's turnover. A 2003 notice established rules on the imposition of fines resulting in a more consistent and severe fining policy, and also provided legal certainty for the undertakings. It has to be noted, however, that the GVH repealed its notice on fines pending ongoing judicial procedures on the questions, whether the GVH may establish a notice on the imposition of fines and in the affirmative, what methods can the GVH apply for the calculation of fines. A recent judgement of the Supreme Court of Hungary seems to confirm the fundamentals of the GVH's fining policy, nevertheless, some modifications may be expected in this regard. 2005 amendments to the Act implemented criminal penalties for cartel activity on public procurements and concession procedures.
Ireland	In 2002, the Competition Act was amended to increase penalties for cartel offences on undertakings and individuals to fines not to exceed the greater of €4,000,000 or 10% of turnover. The 2002 amendments increased the period of imprisonment for individuals for a term not exceeding 5 years. Previously the penalties had been fines of up to €3 million on undertakings and individuals and a period of imprisonment for individuals not exceeding 2 years.
Israel	In 2001 The Law was amended and an "aggravating circumstances" clause was introduced. The law states that aggravating circumstances are, inter alia, duration and scope of the cartel and its impact on the market. Also, under aggravating circumstances the maximum jail-time is extended from 3 years to 5 years.
Japan	The 2005 amendments to the Antimonopoly Act, which took effect in January 2006, revised the surcharge system and surcharge rates imposed on cartel participants were increased from 6% to 10% of the sales amount of the relevant goods or services. Higher rates (50% increase of the normal rate) were established for repeat offenders. The 2009 amendments to the Antimonopoly Act, which took effect in January 2010, increased maximum jail terms for cartel offenses from three to five years and introduced additional surcharge for offenders playing the leading role in cartel. In addition, a separate act empowered Japan Fair Trade Commission (JFTC) to take actions against government-facilitated bid rigging (enactment in 2002, amendment in 2006).
Jersey	The Competition (Jersey) Law 2005 introduced financial penalties not exceeding 10% of the turnover of the undertaking during the period of the breach of the prohibition up to a maximum period of three years.
Korea	In 2005, the upper limit of surcharges was increased from 5% to 10% of annual turnover.
Mexico	2006 amendments to the Federal Law of Economic Competition introduced higher penalties and fines for cartel activity. Fines for cartel activity were increased by four times for the first case; double of normal fine, 10%, or 10% of the previous annual sales, in case of recidivism; and divestiture or transfer of assets, in case of two infractions.
Netherlands	Amendments to the Dutch Competition Act entering into force in 2007 introduced the power to impose fines on individuals for the first time for both substantive and procedural infringements.
New Zealand	The 2001 amendments to the Commerce Act 1986 (New Zealand's competition law) increased maximum fines from NZ\$5 million to NZ\$10 million for corporations, and from NZ\$300,000 to NZ\$500,000 for individuals. In addition, the amendments introduced alternative maximum penalties for corporations of three times the commercial gain or 10% of turnover.

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT

A. INCREASED PENALTIES

Competition Authority	Supplemental Excerpts													
Norway	Implementation of the National Competition Act (NCA) in 2004 mirroring much of the EC regulations has initiated substantially higher fine levels.													
Pakistan	<p>The Monopolies and Restrictive Trade Practices Ordinance, 1970 was replaced with the Competition Ordinance, 2007 (2 October 2007). The Ordinance was re-promulgated in November 2009 and is awaiting the approval of the Parliament to become the Competition Act, 2010. The <i>Monopoly Control Authority</i> (MCA) was replaced with a new agency called the <i>Competition Commission of Pakistan</i> (CCP).</p> <p>Penalties under the Ordinance are higher than under previous law. In addition, the Commission can penalize not only violations but also any disregard of its orders, which its predecessor, the Monopoly Control Authority, was unable to do.</p>													
Panama	2007 amendments increased the maximum fine from \$100,000 to \$1 million for cartel infringements.													
Peru	<p>Legislative Decree 1034, Repression of Anticompetitive Conducts Law (hereinafter, the Law) was enacted on 2008 and it includes provisions that increase penalties.</p> <table border="1" data-bbox="611 656 1738 1300"> <thead> <tr> <th data-bbox="611 656 968 688"></th> <th data-bbox="974 656 1360 688">Legislative Decree 701</th> <th data-bbox="1367 656 1738 688">Legislative Decree 1034</th> </tr> </thead> <tbody> <tr> <td data-bbox="611 693 968 899">Minor offenses</td> <td data-bbox="974 693 1360 899">Fines up to 1000 tax units (US\$ 1 263 157 approx.), but those could not exceed 10% of sales or gross income earned by the infringer for the year immediately preceding the decision of the Commission.</td> <td data-bbox="1367 693 1738 899">Fines up to 500 tax units (US\$ 631 578 approx.), but those could not exceed 8% of sales or gross income earned by the infringer for the year immediately preceding the decision of the Commission.</td> </tr> <tr> <td data-bbox="611 904 968 1110">Serious offenses</td> <td data-bbox="974 904 1360 1110"></td> <td data-bbox="1367 904 1738 1110">Fines up to 1000 tax units (US\$ 1 263 157 approx.), but these could not exceed 10% of sales or gross income earned by the infringer for the year immediately preceding the decision of the Commission.</td> </tr> <tr> <td data-bbox="611 1115 968 1300">Very serious offenses</td> <td data-bbox="974 1115 1360 1300">Fines exceeding 1000 tax units (US\$ 1 263 157 approx.), but these could not exceed 10% of sales or gross revenue earned in the year immediately preceding the decision of the Commission.</td> <td data-bbox="1367 1115 1738 1300">Fines up to 1000 tax units (US\$ 1 263 157 approx.), but those could not exceed 12% of sales or gross revenue earned in the year immediately preceding the decision of the Commission.</td> </tr> </tbody> </table>			Legislative Decree 701	Legislative Decree 1034	Minor offenses	Fines up to 1000 tax units (US\$ 1 263 157 approx.), but those could not exceed 10% of sales or gross income earned by the infringer for the year immediately preceding the decision of the Commission.	Fines up to 500 tax units (US\$ 631 578 approx.), but those could not exceed 8% of sales or gross income earned by the infringer for the year immediately preceding the decision of the Commission.	Serious offenses		Fines up to 1000 tax units (US\$ 1 263 157 approx.), but these could not exceed 10% of sales or gross income earned by the infringer for the year immediately preceding the decision of the Commission.	Very serious offenses	Fines exceeding 1000 tax units (US\$ 1 263 157 approx.), but these could not exceed 10% of sales or gross revenue earned in the year immediately preceding the decision of the Commission.	Fines up to 1000 tax units (US\$ 1 263 157 approx.), but those could not exceed 12% of sales or gross revenue earned in the year immediately preceding the decision of the Commission.
	Legislative Decree 701	Legislative Decree 1034												
Minor offenses	Fines up to 1000 tax units (US\$ 1 263 157 approx.), but those could not exceed 10% of sales or gross income earned by the infringer for the year immediately preceding the decision of the Commission.	Fines up to 500 tax units (US\$ 631 578 approx.), but those could not exceed 8% of sales or gross income earned by the infringer for the year immediately preceding the decision of the Commission.												
Serious offenses		Fines up to 1000 tax units (US\$ 1 263 157 approx.), but these could not exceed 10% of sales or gross income earned by the infringer for the year immediately preceding the decision of the Commission.												
Very serious offenses	Fines exceeding 1000 tax units (US\$ 1 263 157 approx.), but these could not exceed 10% of sales or gross revenue earned in the year immediately preceding the decision of the Commission.	Fines up to 1000 tax units (US\$ 1 263 157 approx.), but those could not exceed 12% of sales or gross revenue earned in the year immediately preceding the decision of the Commission.												

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT

A. INCREASED PENALTIES

Competition Authority	Supplemental Excerpts
Poland	<p>The Act on Competition and Consumer Protection of 2007 (similarly to the previous Act of 2000) authorizes financial penalties up to 10% of revenue in preceding accounting year.</p> <p>In January 2009 guidelines for entrepreneurs on setting fines for competition restricting practices were drafted. The aim of the Guidelines is to increase the transparency of the methodology used to set fines for the infringements of the Act on the Protection of Competition and Consumers. They indicate the ways of setting the fines provided for in the Act. According to the Guidelines there are several factors which determine the fine: harmfulness of the infringement, durability of the infringement, mitigating and aggravating circumstances.</p>
Portugal	<p>A new competition law in 2003 introduced additional sanctions, including fines based on a percentage of annual turnover, and fines for individuals. In 2008, a new sanction was introduced for bid rigging. In addition to a fine, bid rigging participants can now be banned from participating in procurement activities for up to two years.</p>
Romania	<p>Amendments in 2003 increased fines to up to 10% of turnover for cartel participants, and fines of up to 1% of turnover for administrative infringements related to cartels. In addition, under current law, participation of an individual with fraudulent intent and in a decisive way to the conceiving, the organization or the realization of cartels shall be considered a criminal offence and shall be convicted to jail from 6 months to 4 years or shall be fined.</p>
Russia	<p>2009 legislation introduced increased criminal sanctions for cartel agreements effective from October 2009.</p>
South Africa	<p>The Competition Act no 89 of 1998 (the “Act”) was passed in 1998, but its most substantive provisions came into effect on 1 September 1999. Section 4(1)(b) of the Act contains a per se prohibition of price fixing, market allocation and bid rigging.</p> <p>In 2005 in a case brought against a US export cartel exempted in the US in terms of the Webb–Pomerene Act, the South African Supreme Court of Appeal confirmed that section 4(1)(b) contains per se prohibitions, but ruled that the conduct complained of must still be characterized as to its nature, purpose and effect.</p> <p>The Act was recently amended on 28 August 2009 by the Competition Amendment Act of 2009 (the “CAA”). The CAA will enter into force on a date to be fixed by the President of the Republic of South Africa by proclamation in the Gazette. The CAA has a dual impact on the country’s anti-cartel enforcement program:</p> <ul style="list-style-type: none"> (i) it introduces criminal liability for individuals who - while being a director of a firm or while engaged or purporting to be engaged by a firm in a position of management authority - cause the firm to engage, or knowingly acquiesced in the firm engaging, in cartel conduct. The criminal sanction consists of a fine not exceeding R500 000 or imprisonment of up to 10 years or both. Such a prosecution can only be conducted by the National Prosecuting Authority in South Africa. (ii) The CAA expressly empowers the Competition Commission to certify a firm or a person as deserving of leniency. The CLP has therefore received, through the CAA, express statutory underpinning. The CLP is in the process of being amended, in particular to reflect the provisions of the CAA granting the Commission the discretion to certify persons as deserving of leniency.

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
A. INCREASED PENALTIES

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Spain	<p>The new Competition Act of 2007 has increased the level of fines for cartel infringements to 10% of turnover or 10 million Euros. In addition, the legislation provides that the legal representatives or the members of the management bodies that have participated in a cartel may be sanctioned with a fine of up to 60,000 Euros.</p> <p>With the Communication of the Spanish Competition Commission (CNC) on the quantification of sanctions arising from violations of Competition Act 15/2007, adopted on February 2009, the CNC has established a set of guidelines to enhancing transparency and objectivity in calculating penalties, strengthening their deterrent effect and reinforcing legal security.</p>
Sweden	<p>The new 2008 Competition Act introduces a new sanction of disqualification orders for hard-core cartel activity. The Swedish Competition Authority can make an application for a summons concerning a disqualification order for persons at CEO-level, and a court makes the final decision. Persons who reveal a hard-core cartel to the Authority or fulfill the requirements for cooperation within the leniency program will not be an object for a disqualification order.</p>
Switzerland	<p>Competition law reform in 2004 added direct financial sanctions for the first time, where previously competition law offenders had been let off with a warning. Financial sanctions may be as much as 10% of total turnover in Switzerland for each of the previous three business years.</p>
Turkey	<p>2008 amendments to the Competition Act introduced turnover-based fines for procedural violations such as obstruction/non-compliance. Moreover, a fine up to 5% of the substantive fine, which could be imposed up to 10% of the turnover of undertakings and association of undertakings, was introduced for the first time for executives or employees who have had decisive impact on the violation.</p>
United Kingdom	<p>In 2003, criminal penalties were introduced for ‘dishonest’ cartel behaviour by individuals, punishable with up to five years imprisonment and an unlimited fine. In addition, in 2003 OFT gained the ability to apply for directors disqualification powers.</p>
United States	<p>In June 2004, the Sherman Antitrust Act, 15 U.S.C. § 1, was amended to increase (1) the maximum corporate fine to \$100 million from \$10 million; (2) the maximum individual fine to \$1 million from \$350,000; and (3) the maximum prison term to 10 years from 3 years. (With respect to the amount of the fine, higher maximums are still available under the alternative fine statute, 18 U.S.C. § 3571, which provides for a maximum of twice the gross gain from the offense or twice the gross loss to victims of the offense.)</p>
Vietnam	<p>A fine up to ten percent (10%) of the total revenue in the financial year prior to the year in which the breach was committed.</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT

B. CHANGES IN INVESTIGATIVE POWERS

Competition Authority	Supplemental Excerpts
Argentina	The Competition law gives the Commission very important tools in order to fight cartels, such as raids, which the Commission may ask for to the judiciary. The raids in the case of liquid oxygen case were crucial to collect determinant proof. But nonetheless, it has been difficult for the Commission to develop an effective anti cartel program. The most effective tool (the raids) were used in a few number of cases. The law also establishes another tool to fight cartels, which is the possibility for the Competition Authority to deliver preliminary cease orders under article 35 the National Commission for the Defence of Competition has delivered, during the 2001/2009 period about 45 cease orders. These measures can be appealed in Court, but the execution of the appealed decision is not suspended. The Competition Law provides the authority with necessary faculties for enforcing the law. Article 24 grants the authority with basic investigative power through different faculties such as market studies, audiences to receive testimonies, books and documents examination, and raids.
Australia	The ability to search for and seize documents under a search warrant (formerly the ACCC could only inspect and copy under a statutory notice), criminal investigatory powers including telephone interception and surveillance detection warrants; ability to compel persons to provide documents they have, even if it incriminates them and to use those documents against those persons in a criminal proceeding.
Austria	In 2002 the Austrian Federal Competition Authority (Bundeswettbewerbsbehoerde, BWB) was created. The BWB is competent for the take-up and investigation of competition cases, while the Cartel Court remains to exist as the decision making body. To fulfill the task of investigating competition cases the BWB is vested with substantial powers including requests for information and in cases where there is reasonable suspicion of an infringement of competition law the BWB can obtain a search warrant from the Cartel Court. In addition, it is the responsible authority to assist the European Commission in investigations and to participate in European Commission's proceedings.
Brazil	In 2000, the Brazilian Congress amended the Law 8.884/94 (Brazilian Antitrust Law) to include the possibility of dawn raids.
Bulgaria	<p>The CPC enjoys extensive and wide-ranging powers of investigation in the fight against cartels.</p> <p>Since 01.01.2003 CPC is empowered coercively to collect evidence. The amended law laid down detailed procedural rules for seizures of evidence for collusive agreements. In 2004 the CPC exercised for the first time its powers to collect evidence through search of business premises as well as through seizure of copies or abstract of documents.</p> <p>The new 2008 law further strengthened the investigatory powers of the Commission. The CPC can examine all documents and records, related to the activity of the undertakings or association of undertakings, irrespective of the medium on which they are stored. It can seize or obtain in paper, digital or electronic medium any copies of or extracts of documents and records or, where this is impossible, to seize the originals, as well as any other material evidence. The law empowers the Commission to receive access to all types of information media, including servers, accessible by computer systems or other means, located in the inspected premises.</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
B. CHANGES IN INVESTIGATIVE POWERS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Bulgaria (continued)	<p>The CPC has been granted also the right to seal business premises and books or records which aims at rendering dawn raids more effective by allowing officials to ensure that evidence is not removed or altered in particular where inspection is carried out for longer than one day. Moreover, the CPC has the power to seize any document or evidence found if they contain data raising well-founded doubts of other infringements under the LPC or under Art.101 TFEU.</p> <p>Due to the lack of leniency applications the unannounced inspections or “on-the-spot” investigations have been the most effective tool used by CPC for exposing hard-core cartels. The CPC officials conducting the inspection are entitled to enter the undertaking’s business premises and search vehicles of the inspected undertaking, examine its books and records, take copies of them, retain original documents, “image” computer hard drives using forensic IT tools, ask undertaking’s representatives or members of staff for explanations of facts or documents relating to the subject matter and purpose of the investigation. The fact that a document contains business secrets or confidential information is not a justification for withholding it since undertakings are considered to be sufficiently protected by the case handlers’ obligation to respect professional secrecy.</p> <p>Interviews are regularly used in investigations carried out by the CPC. They usually complement other investigative tools, such as written requests for information and inspections, as they provide useful first hand information and evidence from the staff of the defendant undertakings, associations, informal complainants and external witnesses. Interviews usually take place at the beginning of an investigation in order to collect initial information and evidence about the alleged infringement, which is then cross-checked against the other collected evidence.</p> <p>In 2008 CPC successfully made use of the specialized Forensic software and hardware of the Laboratory established by the Commission. The availability of a contemporary and modern Forensic laboratory for coercive collection of electronic evidence provided the CPC with the opportunity to considerably enhance its capacity to investigate and prove the existence of “cartel agreements” on the market, taking full advantage of the computerization of document circulation and of the development of new communication methods.</p>
Canada	<p>The <i>Criminal Code</i> was amended in 1999 to allow the Bureau to intercept electronic communications for certain offences, including conspiracy and bid-rigging.</p>
Chile	<p>In recent years the decisional bodies for competition matters (the TDLC and the Supreme Court of Justice) have followed a high standard of proof for collusion cases, -as in other jurisdictions-, the practical outcome of which were several acquittals despite indirect evidence available. At that time the FNE was not empowered with strong investigative tools, which precluded the collection of direct evidence.</p> <p>Amendments in 2009 empowered the Fiscalía Nacional Económica (FNE), the competition agency in charge of the investigation and prosecution of infringements against competition, with hard investigative powers (dawn raids and wire-tapping) subject to previous judicial authorization.</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
B. CHANGES IN INVESTIGATIVE POWERS

Competition Authority	Supplemental Excerpts
Croatia	2003 Competition Act authorized searches of apartments and business premises and seizure of property based on the written warrant from the court. The 2009 amendments add further provisions on dawn raids and searches of business premises and vehicles.
Cyprus	Increased search powers including the entry into any premises, land and means of transport of undertakings, the power to seal premises, the power to search private premises through issuance of a court order, more explicit powers to ask questions and receive explanations during search raids, and the power to be accompanied by police or any other experts during search raids.
Czech Republic	Power to investigate in non business premises
Egypt	Compelling the market players to Provide the Competition Commission with all requested data; otherwise offenders will be subjected to a criminal fine (2008)
El Salvador	First dawn raid conducted in 2008
Estonia	Acting as an investigative body in the criminal proceedings pursuant to Code of Criminal Procedure, the Estonian Competition Authority has extensive rights during the pre-trial phase of the criminal procedure under normal criminal procedure rules. The authority can also use the help of the police for the performance of the procedural acts (for instance conducting searches) and especially when there is a need to collect evidence by surveillance activities.
European Commission	<p>The new Regulation 1/2003 conferred new investigative powers, including the power to take statements, broader power to ask questions on documents but also facts during inspections, the power to impose seals, and new powers to conduct inspections in other premises.</p> <p>Regulation 1/2003 implementing the rules on competition laid down by Articles 81 and 82 of the EC Treaty improved the investigative powers, in particular by the following means:</p> <ul style="list-style-type: none"> i) The practice of notifying business agreements to the Commission was abolished. This enabled the Commission to focus its resources on the fight against cartels and other serious violations of the antitrust rules; ii) National competition authorities and courts were empowered to apply EC anti trust rules in their entirety. This meant multiple enforcers and a wider application of the EC antitrust rules. iii) A close cooperation between the Commission and national competition authorities was established in the European Competition Network (the ECN). <p>The European Commission has also adopted provisions introducing a settlement procedure which should free resources to deal with other cases, increasing the detection rate and overall efficiency of the anti-trust enforcement.</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT

B. CHANGES IN INVESTIGATIVE POWERS

Competition Authority	Supplemental Excerpts
France	<p>The last decade witnessed a comprehensive modernization of the anti-cartel investigative powers of the Autorité. The review, which occurred in different steps, was aimed at making these powers more effective in various respect:</p> <ol style="list-style-type: none"> (1) <u>transfer of investigative powers to the independent agency</u>: the two sorts of investigative powers provided by French law (“standard” powers [e.g. information requests, on-the-ground visits] to which undertakings are not obliged to defer but that do not require a judicial authorization, and “enhanced” powers [e.g. dawn raids in business or private premises] to which undertakings must defer pursuant to a judicial authorization) were exercised by the Ministry of Economy until 2008; they were transferred in 2009 to the Autorité, which now benefits from full vertical integration (investigation, prosecution, adjudication); (2) <u>broadening of investigative powers in line with European standards</u>: investigative powers were substantially enlarged as a result of gradual European convergence, in particular with the possibility to seal business premises in the course of a “dawn raid”; (3) <u>modernization of investigative powers in order to keep up with technological developments</u>: the texts were modified in order to allow e.g. to copy, seize and detain business documents regardless of their support or format, including digital documents; (4) <u>compulsion</u>: compliance with investigative measures was increased via the power granted to the Autorité to sanction obstruction (refusal to grant access to premises, destruction of evidence, submission of misleading data, and so on) via periodic penalties and fines.
Germany	<p>The last ten years were not so much marked by creation of new powers but rather by an increase of the effectiveness of the existing powers.</p>
Greece	<p>Since 2005, the HCC has had the power to enter non-business premises, but the new power has not been used thus far. Since 2009, the law explicitly provides for HCC powers to seize company books, excerpts or other information, as well as electronic data contained in computers and company servers. These powers have been used in investigations.</p>
Hungary	<p>2000 amendments authorized the search of private homes and cars with judicial authorization. Amendments in 2005 allowed the Hungarian Competition Authority to require inspection of digital evidence and allowed seizure of materials indicative of competition violations unrelated to investigation pursuant to which search authorized, with subsequent judicial authorization.</p>
Ireland	<p>Investigative Powers: With the increase in the length of imprisonment allowed under the Act, cartel offences became arrestable offences which could be undertaken by a member of An Garda Síochána (Irish Police.) A member of the Garda Síochána (Irish Police) Bureau of Fraud Investigation is seconded to the Cartels Division on a full time basis to assist in cartel investigations.</p>
Israel	<p>Following the introduction of the "aggravating circumstances" clause and the extension of the maximum jail time to 5 years, the IAA is empowered to use additional investigative tools such as wire tapping.</p>
Japan	<p>The 2005 amendments gave JFTC compulsory investigative powers to handle serious and vicious violations in a more strict and effective manner.</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
B. CHANGES IN INVESTIGATIVE POWERS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Jersey	The Competition (Jersey) Law 2005 introduced investigative powers regarding the provision of information and documents, including information stored on a computer, and the entry and search of premises.
Mexico	<p>The CFC received with the amendments in 2006 the power to conduct on-site inspections while conducting its investigations, in order to obtain on its own the necessary documents and information regarding any particular investigation. However, these inspections have several procedural locks that do not meet best international standards.</p> <p>Due to the aforementioned formalities, inspections within the CFC were not used as a tool for investigations until very recently. The first inspection was carried out in February 2008. However, and in spite of the formalities, the few inspections that have been made have actually been very successful as tools for discovering important information for cartel investigations in which agents denied having relevant information which was later provided during the inspection.</p> <p>For that reason CFC is looking forward to a new amendment to the LFCE in order to turn inspections into real raid powers, as its relevance on cartel deterrence have been proved by many other jurisdictions.</p>
Netherlands	In 2001, a Dutch court approved the Netherlands Competition Authority’s (NMa’s) method on digital evidence gathering (forensic imaging). The 2007 amendments introduced the power to search homes in addition to the existing power to conduct dawn raids in business premises. In 2009, a Dutch court approved of the transfer of wire tap reports by the justice department to the NMa and the use of the reports in evidence by the NMa.
Pakistan	The Ordinance authorizes the Commission to conduct searches and inspections. Forcible entry under special circumstances is also allowed. The Commission can also compel businesses, government offices, and agencies to provide any necessary information.
Peru	The Law establishes a new procedure for requesting judicial authorization. Legislative Decree 1034 establishes a new and more expeditious procedure for requesting judicial authorization to proceed with the forcible unlocking of the premises of the companies, if there is any opposition to entry or if they were closed, and to obtain private mail or email that may be contained in physical or electronic files.
Poland	The Act regulates inspections of businesses, as well as searches of businesses, private homes, any means of transportation, and any object where information is kept, including electronic data carriers. The President of the Office for Competition and Consumer Protection may authorize inspections or inspections with searches of businesses, but a judicial order is required for inspections with searches and police-conducted searches.
Romania	<p>2003 amendments gave the President of the Competition Council the power to authorize inspectors to: inspect business premises, business grounds, or vehicles of business use; review or obtain documents and other business-related evidence, regardless of the location in which they are stored; to apply seals; and to request statements pertaining to relevant facts and documents. Any other premises, including means of transport and private homes, can be inspected with judicial authorization.</p> <p>Until 2004 the powers of inspection were never used. However, after the amendment of the Law and recommendations from the European Commission the Competition Council started conducting inspections in 2005. Today, this instrument is used in almost every cartel case and also in cases regarding other infringements of the Law.</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
B. CHANGES IN INVESTIGATIVE POWERS

Competition Authority	Supplemental Excerpts
Russia	2009 legislation provided FAS with the power to search business premises, obtain digital evidence, and request documents of the person under investigation.
South Africa	The Act entitles the Commission to enter and search any premises based on a reasonable suspicion of a prohibited practice taking place, or having taken place, or because there is something connected to an investigation that is in the possession or control of a person on the premises. Investigators may examine documents, request further information and explanations, take extracts from and copies of all documents that are relevant to the investigation, and attach and remove evidence, including reproducing electronically stored information.
Spain	The Competition Act of 2007 increases the power of the Spanish Competition Commission (CNC) to conduct searches, providing for searches not only of premises, but also land, private homes, and means of transport. The legislation also provides the CNC with the power to seal business premises, books or records and other business assets to the extent necessary to the dawn-raid. Refusals to, or obstruction of, an inspection are now minor infringements that may be fined with a fine up to 1% of the turnover of the undertaking. In addition, refusals and obstruction to a dawn-raid are also considered aggravating circumstances and will be taken into account to calculate the amount of the fine.
Sweden	Since 2005, the Competition Act has explicitly provided the Swedish Competition Authority with the authority to search homes.
Switzerland	Before 2004, the Comco's major investigative powers consisted of issuing questionnaires to parties and conducting hearings. Experience abroad has demonstrated that tools such as wire tapping, seizures and dawn raids (including at an executive's home) are necessary to effectively find and prosecute cartels. Therefore, the Comco was given the power to initiate dawn raids and to seize evidence.
Turkey	2003 amendments authorized the professional staff of the competition authority to ask for the decision of a criminal magistrate in case on-the-spot inspections are hindered or likely to be hindered.
United Kingdom	The Office of Fair Trading (OFT) was authorized to search businesses in 2000 and authorized to search private homes, run informants and use surveillance in 2003.
United States	In March 2006, the Division gained the ability to use wiretaps in its cartel investigations when the Sherman Antitrust Act was added to the list of predicate crimes for applications to intercept wire or oral communications under 18 U.S.C. § 2516(1)(r).
Vietnam	Investigative Powers: In the process of carrying out competition procedures, investigators, the head of the competition-managing agency and Competition Council must, within the scope of their respective tasks and power, keep confidential business secrets of enterprises, respect legitimate rights and interest of the related organizations and individuals. Compulsory Process for Documents/Information: A warning or a fine of from five hundred thousand (500,000) VND to 3 million VND depend on each breach. Powers to Interrogate or Obtain Statements from Witnesses: Investigation skill is improved practically from other international institutions.

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
C. NEW VIOLATION PROVISIONS/NEW DEFINITION OF WHAT CONSTITUTES CARTEL CONDUCT

Competition Authority	Supplemental Excerpts
Australia	<p>In 2009, the Trade Practices Act was amended to contain new criminal offences and civil prohibitions for cartel conduct. The following forms of cartel conduct are prohibited:</p> <ul style="list-style-type: none"> • price fixing • restricting outputs in production or supply chains • allocating customers, suppliers or territories • bid-rigging <p>Points of difference between the cartel offence and the civil prohibition include the need to establish fault elements (mens rea) under the cartel offence, to prove the matter beyond reasonable doubt and to obtain a unanimous verdict of the jury.</p>
Canada	<p>In March, 2009, the Parliament of Canada passed amendments to the Competition Act that are regarded as the most significant reforms to Canada’s competition laws since the mid 1980s.</p> <p>Amendments to the conspiracy provisions will come into force in March, 2010, repealing the existing criminal offence of conspiracy and replacing it with a new per se criminal provision that prohibits agreements between competitors and/or potential competitors to fix prices, allocate markets and restrict output. As such, the current requirement of proving an undue anti-competitive effect to the criminal burden of proof will disappear. Penalties for violations of the conspiracy provisions will also increase: the maximum fine will increase from \$10 to \$25 million per count, while the maximum term of imprisonment will increase from five to 14 years. 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. These amendments were designed to create a more effective criminal enforcement regime for the most egregious forms of cartel agreements, while at the same time removing the threat of criminal sanctions for legitimate collaborations between competitors so as to avoid discouraging firms from engaging in potentially beneficial alliances.</p> <p>The bid-rigging provisions have also been strengthened. The maximum jail term for individuals convicted of bid-rigging has increased from five to 14 years. There is no maximum fine for a bid-rigging offence (fines are at the discretion of the court). As well, agreements to withdraw a bid now constitute an offence under the provision. The amendments to the bid-rigging provisions have been in force since March, 2009.</p>
Czech Republic	According to the new Criminal Code cartel is explicitly mentioned as a criminal offense
Egypt	Production Limitation in 2008 to encompass other forms of production limitation other than “manufacturing” limitation
Estonia	The Penal Code came into effect in 2002, making cartel activity a criminal offense.
France	No new violation provision was introduced in the last decade, apart from the power granted to the Autorité to apply the EU violation provision on cartels (article 101 of the Treaty on the Functioning of the EU) in addition to the French provision when trade between EU Member States is affected by the case. This change has triggered tremendous convergence with European standards on substantive issues (for instance liability of undertakings).

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
C. NEW VIOLATION PROVISIONS/NEW DEFINITION OF WHAT CONSTITUTES CARTEL CONDUCT

Competition Authority	Supplemental Excerpts
Hungary	2000 amendments eliminated the “de minimis” exception for cartel offences; 2005 amendments made cartel activity on public procurement and concession procedures a criminal offence. In order to secure the effective functioning of the leniency policy of the GVH, no sanctions can be imposed on the first person notifying this offence to the authorities, including the GVH.
Korea	In 2007, bid rigging was added to the types of improper concerted acts.
Mexico	2006 amendments introduced regulation of “buyers’ cartels”.
Netherlands	The 2007 amendments made violations by individuals actionable.
Pakistan	The Monopolies and Restrictive Trade Practices Ordinance, 1970 was replaced with the Competition Ordinance, 2007 (2 October 2007). The Ordinance was re-promulgated in November 2009 and is awaiting the approval of the Parliament to become the Competition Act, 2010. The Ordinance sets out new cartel offense provisions.
Panama	2007 amendments moved from per se standard to considering efficiency aspects.
Peru	The Law includes: <ul style="list-style-type: none"> • Vertical agreements • New examples of anticompetitive conducts: exclusive dealing, abuse of legal process, refusal to the entry to an association or organization of intermediation, unilateral boycott (Abuse of dominant position); exclusive agreements, concerted refusal to the entry to an association or organization of intermediation (Horizontal agreements). • Per se rule to analyze hard core cartels • Abuse of dominant position: necessarily requires an exclusionary effect
Poland	<p>According to the Act on the Protection of Competition and Consumers agreements which have as their object or effect elimination, restriction or any other infringement of competition in the relevant market shall be prohibited, in particular those consisting in:</p> <ol style="list-style-type: none"> 1) fixing, directly or indirectly, prices and other trading conditions; 2) limiting or controlling production or sale as well as technical development or investments; 3) dividing markets of sale or purchase; 4) applying to equivalent transactions with third parties onerous or not homogenous agreement terms and conditions, thus creating for these parties diversified conditions of competition; 5) making conclusion of an agreement subject to acceptance or fulfilment by the other party of another performance, having neither substantial nor customary relation with the subject of such agreement; 6) limiting access to the market or eliminating from the market undertakings which are not parties to the agreement; 7) collusion between undertakings entering a tender, or by those undertakings and the undertaking being the tender organiser, of the terms and conditions of bids to be proposed, particularly as regards the scope of works and the price. <p>The prohibition of agreements referred above shall not apply to agreements concluded between:</p> <ol style="list-style-type: none"> 1) competitors whose combined market share in the calendar year preceding the conclusion of the agreement does not exceed 5%; 2) undertakings which are not competitors, if the market share of any of them in the calendar year preceding the conclusion of the agreement does not exceed 10%.

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
C. NEW VIOLATION PROVISIONS/NEW DEFINITION OF WHAT CONSTITUTES CARTEL CONDUCT

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Poland (continued)	<p>The provisions mentioned above shall not apply to hardcore restrictions like price fixing, allocate markets or restrict the quantities of goods or services to be produced.</p> <p>The prohibition of agreements shall also not apply to agreements which at the same time:</p> <ol style="list-style-type: none"> 1) contribute to improvement of the production, distribution of goods or to technical or economic progress; 2) allow the buyer or user a fair share of benefits resulting thereof; 3) do not impose upon the undertakings concerned impediments which are not indispensable to the attainment of these objectives; 4) do not afford these undertakings the possibility to eliminate competition in the relevant market in respect of a substantial part of the goods in question. <p>The burden of providing evidence to circumstances referred above shall rest upon the undertaking concerned.</p>
Portugal	The new competition law introduced in 2003 redefined cartel offenses by including an effects test. Collusive practices are now prohibited if they result in an <i>appreciable affectation of competition</i> .
Russia	2005 legislation confirmed the per se illegality of cartel agreements and introduced bid rigging provisions; courts have also clarified the standard of proof for cartel violations.
Spain	The Competition Act of 2007 introduced a clear definition of “cartel,” and authorizes fines on individuals for infringements. The legislation also introduced some developments and changes concerning the level of fines and graduation of cartel infringements (cartels are classified as very serious infringements), increasing the transparency of the legislation and its deterrence effect.
Turkey	Fines Regulation and Leniency Regulation adopted in 2009 define cartels as competition-restrictive agreements and/or concerted practices between competitors for fixing prices; allocation of customers, providers territories or trade channels; restricting the amount of supply or imposing quotes, and bid rigging.
United Kingdom	Outright prohibition of cartels only started in 2000 with the coming into force of the Competition Act 1998. At that time, only economic undertakings were affected. In 2003, a criminal violation was introduced for “dishonest” cartel behaviour.
Vietnam	Competition restriction acts mean acts performed by enterprises to reduce, distort and prevent competition on the market, including acts of competition restriction agreement.

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
D. OTHER SIGNIFICANT CHANGES OR DEVELOPMENTS

Competition Authority	Supplemental Excerpts
Argentina	<p>Though the CNDC assumed a more active role during the nineties, this was not specifically in cases related with cartels. There have been several cases that involved horizontal restrictions in healthcare sector. Associations of medical services providers, which controlled the access to the market through exclusivity agreements, were under the analysis of the CNDC and Secretary of Commerce. In various cases there were orders to modify the exclusivity regime and fines were also applied. Other cases included price fixing between these associations, all which conducted the CNDC to make a deeper analysis of the Healthcare market and to deliver a series of lineaments which would be applied to competition in this industry. During the ten year period (2000/2009) about 20 cases were resolved implying horizontal agreements which were not related to healthcare sector, of which 7 concluded in the application of a sanction. Two price fixing agreements were sanctioned during 2003. In July 2005 two very important cartel cases were resolved: one was the cement industry and the other one liquid oxygen for medical uses.</p> <p>The “settlement provisions” do not include a declaration of culpability. It is a statement that the investigated firm or person presents promising to behave in a specific manner and the investigation stands by as long as the party fulfills the compromise.</p>
Australia	<p><u>Information sharing and protection:</u> The Trade Practices Act now expressly provides the ACCC with a capacity to share information obtained under its compulsory evidence powers with foreign antitrust regulators. Further, there is now enhanced statutory protection, in appropriate circumstances, for information given in confidence to the ACCC where it relates to a potential breach of the new cartel prohibitions.</p>
Bulgaria	<p>In order to avoid problems concerning simultaneous inspections of undertakings with seats in different district courts, the judicial authorization now is issued by a judge from the Administrative court – Sofia. (Under the repealed LPC, inspections were conducted after an authorisation by a judge in the competent District court at the seat of the undertaking.) The authorization is subject to appeal before the Supreme Administrative Court, which does not suspend the execution.</p> <p>Another major alteration to the existing legal framework is the strengthening the rights of defence and guaranteeing due process and procedural fairness. The parties and constituted third parties in cartel proceedings have the right to familiarise themselves with the Commission’s statement of objections against them, have the right to be heard at an open sitting of the CPC, can submit opinion in the course of the proceeding as well as to have access to all materials collected in the course of investigation with the exception of those containing production, trade or other secret, protected by law.</p> <p>In order to stimulate effective compensation and deterrence through private competition law enforcement, the new Law introduces the right of all natural persons and legal entities who have suffered damages even where the infringement has not been directed against them to seek damages resulting from the breach of competition law. In order to facilitate private enforcement by saving the costs of victims to re-prove the existence of infringement, the law introduces a binding effect of the CPC’s decisions on national courts.</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
D. OTHER SIGNIFICANT CHANGES OR DEVELOPMENTS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Bulgaria (continued)	<p><u>New enforcement powers:</u></p> <p>The 2008 LPC increased the enforcement powers of the CPC by introducing the possibility to impose interim measures and to approve commitments offered by the undertakings. Interim measures can be ordered for a specified period of time (3 months) in urgent cases for the purpose of avoiding the risk of serious and irreparable damage to competition.</p> <p>In practice, no interim decision has been adopted by the CPC nor has it been sought in cartel cases. This new power of the CPC probably would not be an effective tool in cartel enforcement since the condition of urgency would not normally be fulfilled in the context of a cartel which has been secretly implemented for several years before detected by the CPC.</p> <p>For the purpose of terminating any conduct which endangers competition, the CPC may approve by a decision the undertaking of commitments by an undertaking accused of having committed an infringement of the LPC. With the aim of ensuring that the respective undertakings will implement the commitments they have undertaken in a timely and effective manner, the CPC may set additional conditions to commitments in its decision.</p> <p>However, the commitment procedure would not be applicable to cartel cases since it would be contradictory for the CPC to accept to close a cartel investigation without imposing a fine because the undertakings would have agreed to terminate the infringement.</p>
Canada	<p><u>Memorandum of Understanding with the DPP</u></p> <p>Given Canada's bifurcated system (described above), a Memorandum of Understanding is being developed between the Competition Bureau and the PPSC to provide clarity with respect to the investigative and prosecution process for competition law matters and working relationship between the Bureau and the PPSC.</p> <p><u>Competitor Collaboration Guidelines</u></p> <p>The Bureau issued Competitor Collaboration Guidelines in December, 2009, following public consultation. The document sets out the Bureau's interpretation of the new cartel provisions (described above) and discusses how the Bureau will exercise its enforcement discretion. The Guidelines also contain a detailed description of how a variety of strategic alliances, including commercialization agreements, research and development agreements and production joint ventures, will be addressed under the new civil agreements provision of the <i>Competition Act</i>.</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
D. OTHER SIGNIFICANT CHANGES OR DEVELOPMENTS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
El Salvador	<p>On January 1st, 2006 the Competition Law entered into force in El Salvador. With it, El Salvador started the implementation of a true competition policy in order to prevent and prohibit anticompetitive behaviors.</p> <p>Article 25 of the Competition Law prohibits certain agreements among competitors providing a description of the conducts that are considered illegal. It is important to mention that the infractions mentioned on said article of the Competition Law are the ones that are widely considered anticompetitive by the rest of the world and hard core infractions by the United States. They are: price fixing, output limitations, bid rigging and market division.</p> <p>To this date, the Competition Superintendence –hereinafter called CS– has concluded four cartel investigations in different markets. In the month of March 2010, the CS started a fifth investigation. In the following paragraphs we will provide a brief summary of the investigations mentioned above that have been concluded by the CS.</p> <p>1. Gasoline and diesel cartel</p> <p>In the year 2006, the CS started an investigation over the conduct of three gasoline and diesel producers and distributors in El Salvador. The case concluded with a sanction for anticompetitive behavior but only regarding an abuse of dominant position, which was the only infraction that was demonstrated during the procedure (no evidence was found to determine the existence of cartel conduct which was also being investigated).</p> <p>2. Stock broker cartel</p> <p>On May 21st, 2007 the CS started an investigation over the conduct of six stock broker companies. On the case, the CS wanted to determine if the stock brokers had agreed to fix the commissions charged to their clients.</p> <p>On October 18th, 2007 the CS decided and concluded the case. The authority examined the testimonies and documents incorporated in the procedure and stated that: <i>“GRACONSA, LAFISE, SBS, LATIN TRADE, NEAGRO and INTERPRODUCTOS are competitors among them in the stock broker market, and they had agreed to fix a minimum commission’s rate to charge to their clients for their stock broker services”</i>. As a result the CS imposed a fine of US\$5,112.00 to each of the companies involved in the agreement.</p> <p>The most important evidence in this case was the minimum commission’s rate published by the stock brokers on a local newspaper. Such announcement and the testimonies of executives of the companies revealed that they had arranged the agreement and published it ignoring that such behavior was illicit. Therefore, this case is considered to be a naïve cartel and its investigation did not represent major difficulties to the CS.</p> <p>3. Wheat flour case</p> <p>On April 1st, 2008 the CS initiated a complex investigation against the two wheat flour producers in El Salvador: HARISA and MOLSA. The investigation started in order to verify if the companies had arranged an agreement to fix prices, restrict output or allocate the market.</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
D. OTHER SIGNIFICANT CHANGES OR DEVELOPMENTS

Competition Authority	Supplemental Excerpts
El Salvador (continued)	<p>On September 4th, 2008 the CS issued the final decision on the case, in which it declared that: “<i>HARISA and MOLSA agreed to allocate the wheat flour market in El Salvador, assigning among them a market share of 45% for HARISA and 55% for MOLSA</i>”. As well, the CS discovered that, in order to guarantee the accomplishment of the agreement, the two wheat flour producers had: “<i>exchanged periodically among them information of sales, market shares, and calculations of adjustments and differences of compensations</i>”. Also, the CS found that HARISA and MOLSA: “<i>created a compensation mechanism whereby the party that did not reach the assigned market share, was compensated by the other party with a payment corresponding to the amount of ‘quintales’ that it needed to reach the assigned market share times US\$5.00</i>”.</p> <p>The CS imposed to the defendants a fine equivalent to a 3% of their annual sales on 2007: US\$2,061,406.20 to HARISA, and US\$1,971,015.16 to MOLSA because their conduct was considered very serious and harmful to consumers.</p> <p>It is important to mention that on this procedure the CS conducted its first dawn raid in the offices of both defendants simultaneously and thanks to this tool, most of the evidence was gathered.</p> <p>4. Travel agencies case</p> <p>On February 2nd, 2009 the CS started a procedure against five travel agencies. The agency investigated if they had rigged on certain bids opened by different governmental agencies.</p> <p>On July 7th, 2009 the CS decided and concluded the case, stating that four of the agencies had: “<i>made an agreement in order to fix the commissions offered in the bid DR-CAFTA LA No. 03-2008 at the Ministry of Economy</i>”, and three of the travel agencies had: “<i>made an agreement in order to fix the commissions offered in the bid LP No. 02/2008 at CORSATUR</i>”. Therefore, the CS imposed fines of US\$3,046.50 to the travel agencies for each of the anticompetitive agreements in which they had participated.</p> <p>It is relevant to mention that the analysis made by the CS on this case is not the same made on the previous cases. On the travel agencies case the CS did not analyzed direct proof and based the decision on economic evidence.</p>
Netherlands	<p>Prior to the 2007 amendments the statute of limitations for competition infringements was 5 years and was not stayed by the authority’s own investigative measures. The 2007 amendments introduced a provision under which investigative measures stay the statute of limitations.</p> <p>The 2007 amendments introduced the power to impose fines (up to 1% of turnover for undertakings and 450.000 euro for individuals) for breaking seals. Prior to the amendments the NMa could report to the police the breaking of a seal as an offence. The new amendments appear to be more effective in practice.</p>

I. SIGNIFICANT CHANGES IN COMPETITION LAW IMPACTING CARTEL ENFORCEMENT
D. OTHER SIGNIFICANT CHANGES OR DEVELOPMENTS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
New Zealand	Other Measures in 2001 Amendments to the Commerce Act: (a) the prohibition of corporations indemnifying directors, servants or agents against pecuniary penalties imposed by the Court. (b) the introduction of banning orders of up to five years for directors involved in collusive conduct. (c) the widening of the limitation period for commencing proceedings under the Commerce Act. (d) provision for the appointment of two Cease and Desist Commissioners to the Commerce Commission. They can make orders to restrain anti-competitive conduct or to require a person to do something to restore competition or the potential for competition in a market.
Portugal	Creation of the Portuguese Competition Authority (PCA): The most notable development in the past ten years was the creation of an independent competition authority in 2003.
United States	Multiple obstruction of justice statutes were created or amended in the criminal code, providing greater abilities to prosecute a wider variety of obstructive conduct and stiffer penalties for obstruction. See 18 U.S.C. §§ 1510, 1512, 1513, 1514, 1519, and 1520.
Vietnam	Remedial Provisions: Compulsory removal of illegal terms and conditions from the contract or business transaction Settlement Provisions: Compliance with decision dealing with competition case or decision dealing with breach of other provisions of laws on competition

II. CHANGES IN LENIENCY PROGRAMS

Competition Authority	Supplemental Excerpts
Argentina	A leniency program is in the agenda of the National Commission. Over the last year a project has been developed to modify the law, in order to include this measures in the existing one.
Australia	<p>The ACCC’s leniency policy was introduced in 2003, revised and reformulated as an immunity policy in 2005, and revised in 2009 to bring into effect changes necessary to reflect the operation of a criminal cartel environment.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Changes related to criminalization • Introduction of amnesty plus provisions • The public prosecutor for federal offences in Australia, the Commonwealth Director of Public Prosecutions (CDPP), may now be involved in the immunity process. By an application to the ACCC, an eligible immunity applicant will be able to obtain upfront civil immunity from the ACCC and criminal immunity from CDPP at the same time. The key issue for the ACCC and CDPP in making their respective decisions is whether the applicant satisfies the ACCC’s immunity policy for cartel conduct.
Austria	A leniency program was introduced to the Austrian competition law and has been effective since 1st January 2006. The handbook on the leniency program (which describes the procedure of the BWB for the implementation of the leniency program regulated in the Competition Act) is being evaluated.
Brazil	<p>In 2000, the Brazilian Congress amended the Law 8.884/94 (Brazilian Antitrust Law) to include the possibility of leniency. Leniency program introduced in 2000.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency <p>The first leniency applicant came before SDE in 2003 after two dawn raids had taken place during that year and the Secretariat had already amassed some positive reputation on its ability to uncover anticompetitive behavior. At that point, in addition to search and seizure procedures, the agency had intensified its cooperation with the criminal authorities. Since that year, SDE has been developing the leniency program, in order to provide more transparency and certainty to the program. In 2008 SDE published a <i>Model Annotated Leniency Agreement</i> and <i>Leniency Policy Interpretation Guidelines</i> and the BCPS published a full colour booklet for public consumption, <i>Fighting Cartels: Brazil’s Leniency Program</i>. Approximately 15 agreements have been signed up to December 2009 and others are currently being negotiated, mostly of them with members to international cartels.</p>

II. CHANGES IN LENIENCY PROGRAMS

Competition Authority	Supplemental Excerpts
<p>Bulgaria</p>	<p>The amendments made to the LPC in 2003 introduced the possibility for reducing fines and exemption from liability of undertakings which cooperate with the Commission in uncovering and proving the existence of cartel agreements (Leniency). The new 2008 law includes more precise provisions regarding Leniency. The CPC adopted Leniency Programme and Rules on its application, which is in line with the ECN Model Leniency Programme.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Clarifications of, or changes to, penalty reductions for applicants • Revisions based on ECN model • Provisions for summary or simplified applications <p>The Law on Protection of Competition of 1998 after the amendment in 2003 provided for the reduction and exemption from sanctions. A reduction of sanction was granted where the undertaking voluntarily provides in the course of the investigation, evidence, which is essential for establishment. The reduction was defined at the rate of 30 to 50% for the first undertaking, of 20 to 30% for the second undertaking and of 10 to 20% for any subsequent undertaking. Exemption from sanction was granted where an undertaking provides, before the other participants, evidence, which constitutes sufficient grounds for the institution of proceedings. A Leniency programme to set out rules in detail has never been introduced. Nor the law provisions have been applied in practice. Similar rules on Immunity or reduction of sanctions for undertakings participating in secret cartels are prescribed for in the new Law on Protection of competition.</p> <p>The new law makes a step further in improving competition legislation in that it provides an undertaking which has participated in a secret cartel with the opportunity to be granted immunity from fines or reducing the amount of fines, if such undertaking voluntarily provides evidence which has significant added value for revealing and/ or proving the infringement. It specifically spells out some of the requirements that a cartel member needs to satisfy in order to qualify for exemption nor a reduction of fines. Pursuant to the obligation of the CPC to adopt acts provided for in the new law, the authority adopted Leniency Programme and rules for its application, regulating in detail the conditions and the procedure for granting immunity from fines or reduction of fines on a participant in a cartel. The Programme has been prepared in accordance with the ECN Model Leniency Programme.</p> <p>Under Point 1 of Article 101 the Commission may, upon an application of undertaking, grant immunity from pecuniary sanction on condition that such undertaking provides, prior to any other participant in the cartel, <u>evidence on the basis of which the Commission may either carry out an inspection</u> where up to that moment the Commission did not already have sufficient data and evidence in order to file an application for issuance of court authorization or <u>prove the alleged infringement</u> where up to that moment the Commission did not already have granted to another undertaking a conditional immunity from sanctions prior to making the inspection or prior to having sufficient data in order to file an application for issuance of court authorization and did not already have sufficient evidence in order to adopt a decision for finding of an infringement. Point 2 of Article 101 excludes the possibility to grant immunity to an <u>undertaking that took steps to coerce</u> other undertakings to join the cartel. Under Point 3 the Commission may reduce the amount of the pecuniary sanctions if the undertaking provides before the conclusion of the proceedings, <u>evidence which has significant added value for proving the infringement</u>. Point 4 set up the condition for all applicants <u>to stop participation</u> in the cartel except where the Commission has decided that the continuation of this participation is</p>

II. CHANGES IN LENIENCY PROGRAMS

Competition Authority	Supplemental Excerpts
<p>Bulgaria (continued)</p>	<p>necessary for the investigation. The grant of immunity or reduction of sanction is subject to the fulfilment of all conditions set out in a Leniency Programme and the Rules on its application, adopted by a decision of the Commission (Point 5).</p> <p><i>In 2009 the CPC drafted its first Leniency programme and detailed rules on its application.</i> The CPC also adopted an application form for immunity or reduction of sanctions, a marker application form and a summary application form. All the application forms are accompanied by detailed instructions on their fulfilment and are available for applicants on the web site of the CPC, http://www.cpc.bg/storage/file/Leniency%20Decision%20EN.doc. The new LPC provisions as well as the Leniency Programme and the Rules on its application introduce and fully reflect the principles of the ECN model programme.</p> <p>Introduction of a marker system: Under the Leniency Programme and Rules the “marker” is called “period of time for the completion of the application for immunity from fines with information and evidence”. The undertaking is required to provide the CPC with strictly enumerated minimum information as well as the reasons making it necessary to request a marker and the goals that it intends to attain during that period of time. A marker might be provided only to immunity applicants and the decision to grant or not a marker is subject to the CPC discretionary assessment.</p> <p>Improved transparency in thresholds to be met in order to qualify for leniency: Under the 1998 LPC, as amended in 2003, the threshold for an exemption to be granted was the provision of evidence that constitutes sufficient ground to open a case and for reduction it was the provision of essential evidence to prove the infringement. Different levels of reduction of sanction have been provided. After the introduction of a Leniency Programme provided for in the new 2008 Law CPC shall assess applications relating to one and the same cartel in the consecutive order of their receipt and according to detailed and more transparent rules.</p> <p>The threshold for immunity from fines might be <u>an evidence, on the basis of which CPC may carry out inspection in connection with the alleged cartel or evidence that will enable CPC to prove the alleged infringement</u>. The second immunity case is introduced for the first time and the evidence required for it to be granted shall be distinguished from the <u>evidence of significant importance to prove the infringement</u> required for a reduction of a fine to be granted.</p> <p>After a preliminary assessment conditional immunity shall be granted if the evidences are sufficient to meet the requirements. Conditional reduction shall be granted if the evidence is established to be of significant importance according to the Programme.</p> <p>The transparency is improved too by the prescription of a detailed procedure to assess the applications in the consecutive order of their receipt. The Programme does not give an exact definition of the second concept but provides that the assessment shall be made relative to the evidences already collected in the procedure and according to the extent to which the evidence strengthens by its type, nature, quality, level of detail and time of submission, the Commission’s ability to prove the alleged infringement. Detailed principles to be taken in account are set out in the Rules.</p> <p>The Programme enumerates requirements under the form of information to be provided to the CPC. Those requirements are further developed in the Rules and apply for immunity applications as well as for application for reduction of fines.</p>

II. CHANGES IN LENIENCY PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Bulgaria (continued)	<p>Furthermore the undertaking shall fulfill the obligation to stop participation in the cartel unless the CPC estimates that the continuation of its involvement will be necessary for the investigation and the obligation to cooperate fully, genuinely and voluntarily with the CPC throughout the entire procedure. The extent of the obligation is described in details in the Programme. The undertaking shall not be coerced in order for immunity from sanctions to be granted.</p> <p>Reductions in penalties for subsequent applicants defined in more detail: The range of reduction of fine contained in the provisions of the 1998 Law, as amended in 2003, is now set out in details in the Programme and the rules. A new requirement is that the reduction of the fines may be <i>of maximum up to 50 % of the fines</i>. It shall be determined by CPC on the case-by-case basis and taking into account the significance and the time of provision of the evidence. Three ranges of reductions are set out: 30 % to 50 % for the first undertaking, 20 % to 30 % for the second, 10 % to 20 % for any subsequent applicant.</p> <p>The Programme introduces <i>the concept of partial immunity</i> or the provision of compelling evidence which is directly related to the establishment of additional facts relevant for the determination of the amount of the fines. Such facts shall not be taken into consideration in setting the fines to be imposed to that undertaking.</p> <p>If one applicant do not fulfill the conditions the next one benefits of a superior range of reduction if he does so. The eliminated applicant cannot submit for another band of reduction.</p> <p>Revisions based on ECN model: The Bulgarian legal provisions on leniency, the Programme and the Rules on its applications <i>fully reflect all the principles</i> set out in the ECN Model Programme, i.e. it prescribes two cases where immunity from fines might be granted and a case for reduction, a reduction of fine up to 50 %, the concept of significant added value in order to qualify for reduction of fines, the concept of "de facto partial immunity", the condition of genuine cooperation, anonymous approaches, marker system for immunity applicants, summary applications, oral statements.</p> <p>Provisions for summary or simplified applications: Summary applications are introduced with the new Programme. The Rules enumerate minimum information to be provided by the applicant. A SA shall not constitute grounds for CPC to initiate proceedings. If CPC decides to investigate the case, it shall grant the undertaking a time period to submit all evidence and information required for granting immunity from fines. If the undertaking provides such information and evidence within the set period, they shall be considered submitted on the date of submission of the summary application. Following the completion with the required information and evidence, the application shall serve as grounds to initiate proceedings.</p>

II. CHANGES IN LENIENCY PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
<p>Canada</p>	<p>The Competition Bureau formally implemented its Immunity Program in September, 2000, and revised it in 2007. The Bureau issued a revised Draft Bulletin on Sentencing and Leniency in Cartel Cases for public consultation in March, 2009. The Bureau expects to issue a final Bulletin early in 2010.</p> <p><u>Changes in Immunity Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Clarification/changes in penalty reductions • Introduction of amnesty plus provisions • Provisions for summary or simplified applications <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Clarification/Changes in penalty reductions <p><i>Introduction/Changes to Immunity Program:</i> The Competition Bureau’s single most effective tool for the detection and investigation of cartels is the Immunity Program. The Program was formally implemented in September, 2000, and revised in 2007, following a public consultation process and extensive international benchmarking. Under the Immunity Program, the first party to disclose to the Competition Bureau an offence not yet detected or to provide evidence leading to the filing of charges may receive immunity from prosecution if the party cooperates with the Bureau’s investigation.</p> <p>Canada has a bifurcated approach to criminal cartel enforcement that separates investigative and prosecutorial functions. The Competition Bureau investigates complaints and conducts formal inquiries into alleged offences. Once sufficient evidence has been secured, the matter is referred to the Director of Public Prosecutions (the “DPP”) who, through the Public Prosecution Service of Canada (the “PPSC”), fulfills the responsibilities of the Attorney General of Canada by prosecuting criminal offences under federal jurisdiction. In practice, there is significant cooperation between the Competition Bureau and the Prosecutor’s office at both the investigative and prosecution stages.</p> <p>If the Bureau is satisfied that the applicant meets the conditions of the Immunity Program, it makes a recommendation to the DPP to grant immunity. Ultimately, the DPP decides whether to grant immunity. However, owing to the cooperative working relationship between the Bureau and the DPP, there is a high degree of predictability in the Program. Over a period of almost a decade, all of the recommendations of the Bureau to grant immunity have been accepted by the DPP.</p> <p>Where a party does not qualify for immunity under the Bureau’s Immunity Program, but the party cooperates with the investigation, the Bureau may recommend that the DPP consider some form of leniency.</p>

II. CHANGES IN LENIENCY PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Canada (continued)	<i>Draft Sentencing and Leniency Bulletin:</i> In April, 2008, the Competition Bureau issued a Draft Bulletin on Sentencing and Leniency in Cartel Cases for public consultation, followed by a revised draft in March, 2009, for a second round of public consultations. The revised Draft Bulletin outlines the factors the Bureau considers when making sentencing recommendations to the PPSC and the process for seeking a recommendation for a lenient sentence (the bifurcated system is described above). The leniency (penalty reduction) program is an effort to improve the timeliness of cooperation from leniency applicants and facilitate efficient information sharing and timely resolution of cases. To this end, it creates incentives for parties to apply for leniency and resolve their cases by offering reduced penalties and by providing transparency so that applicants can predict with a high degree of certainty how they will be treated if they report the conduct and cooperate, and what the consequences will be if they do not. It also allows for a shorter time frame between leniency applications and plea agreements, quicker access to evidence by Bureau investigators, and creates greater cohesion between the Bureau’s investigative process and the PPSC in the case resolution process. The Bureau expects to issue a final Bulletin on Sentencing and Leniency in Cartel Cases early in 2010.
Chile	Amendments in 2009 incorporated leniency provisions, and leniency program introduced in 2009. Law Nr. 20.361/2009 incorporates exemptions (immunity) and reductions of fines for those coming forward and confessing their involvement in a cartel, with the sole exclusion of who organized and coerced others into the cartel.
Croatia	Leniency program authorized in 2009, by adoption of the new Competition Act, which will be implemented from October 2010. The 2009 amendments to the Competition Act establish a leniency program where transparent rules will provide for immunity from or reduction of fines for whistleblowers in cartel cases.
Cyprus	Adoption of the legal basis for leniency. A new Leniency Program is being drafted, in line with the ECN Leniency programme which will be adopted as secondary legislation. <u>Changes in Leniency Program:</u> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Clarifications of, or changes to, penalty reductions for applicants • Revisions based on ECN model • Provisions for summary or simplified applications
Czech Republic	Leniency program introduced in 2001; revised in 2007. <u>Changes in Leniency Program:</u> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Reductions in penalties for subsequent applicants defined in more detail • Revisions based on ECN model • Provisions for summary applications • Right to immunity after conditions are met (no longer discretionary power in this respect)
Denmark	Leniency program introduced in 2007 based on the ECN model. The program has not yet been revised.

II. CHANGES IN LENIENCY PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Egypt	<p>Leniency program introduced in 2008.</p> <p>The Egyptian Parliament adopted a partial leniency program in 2008 whereby such Leniency is granted by the Court under its sole discretion. On the other hand, the Competition Commission is currently preparing a bill in order to adopt a full leniency program which will be automatically awarded to violators who confess before an investigation is underway and provided that they will fully cooperate with the Competition Commission.</p>
Estonia	<p>No current clear leniency policy, although the Code of Criminal Procedure contains provisions that enable the Prosecutors' Office or the court to terminate criminal proceedings if certain conditions are met. These provisions are of a general nature and allow lenient treatment for any kind of criminal offence, including participation in a cartel.</p>
European Commission	<p>Leniency program introduced in 1996, revised in 2002 and 2006.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency
Finland	<p>Leniency program was introduced in 2004. No changes have been made yet, although the programme see some amendments in the new Competition Act due to be in force 2011 at the latest.</p>
France	<p>Leniency is perhaps the single most important achievement implemented in the last decade in order to boost anti-cartel enforcement in France. Corporate leniency was introduced by the Parliament in the French law in 2001, but it only took speed when the Conseil de la concurrence (replaced by the Autorité de la concurrence in March 2009) made public its leniency policy via a procedural notice adopted in 2006. This guidance paper, which anticipated on the ECN's model leniency program adopted a few months later, was revised in 2007 in order to foster greater consistency with other programs in Europe. The notice covers all practical and procedural aspects of the Autorité's leniency program (contact details, scope, timing, process, evidential threshold, etc.).</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Reductions in penalties for subsequent applicants defined in more detail • Revisions based on ECN model • Provisions for summary or simplified applications • The French leniency program is fully compliant with the ECN model program; the Autorité has the opportunity to further reward type 2 leniency applicants where they provide evidence of additional infringements ("leniency plus"); the French leniency program provides applicants with a transparent process, in particular with an upfront conditional opinion being issued by the Board at the earliest stage possible.

II. CHANGES IN LENIENCY PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Germany	<p>Leniency program introduced in 2000, revised in 2006.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Clarification of, or changes to, penalty reductions for applicants • Revisions based on ECN model
Greece	<p>Leniency programme introduced in 2006. The 2006 Leniency Programme echoes the 2002 EU Leniency Programme but there has been to date no application by the HCC of the programme to a particular case.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Changes related to criminalization • Provisions for summary or simplified applications
Hungary	<p>Leniency program authorized in 2001, implemented in 2003, revised in 2006 and 2009.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Clarification of, or changes to, penalty reductions for applicants • Changes related to criminalization • Revisions based on ECN model • Other: 2004 Notice temporarily relaxed the conditions of the leniency programme announced in 2003. 2000 amendments established the basis of a possible leniency policy by incorporating “the effective co-operation by the undertaking” among the factors to be contemplated when the Competition Council of the GVH is determining fines. A 2003 notice introduced a leniency policy. In 2004, GVH issued a Notice temporarily relaxed the conditions of its leniency programme announced in 2003. The GVH expected undertakings to be ready to reconsider their activities and restrictive practices pursued before Hungary’s accession to the EU in order to enable them to start with a clean sheet. The temporary relaxation of the conditions therefore only concerned agreements concluded before 1 May 2004 and revealed before 1 October 2004. <p>Since 2005 in order to secure the effective functioning of the leniency policy of the GVH, no sanctions can be imposed on the first person notifying a cartel activity on public procurement and concession procedures, which is a criminal offence, to the authorities, including the GVH. Furthermore due to the amendment of the Act on Public Procurement (contrary to its previous provisions, according to which the mere finding of the infringement was enough) only those undertakings may be excluded from a tender, on which fines were imposed for the infringement of the Competition Act. This amendment served to reduce further the negative consequences for whistleblowers. The 2006 amendment of the leniency policy reflects those amendments of the Criminal Code and the Act on Public Procurement. In 2009 the leniency program, which between 2003 and mid 2009 took the form of a notice of the GVH was incorporated into the Competition Act with a few additional characteristics (e.g. introduction of a marker system). This way now the Hungarian leniency policy is regulated on the level of an Act.</p>

II. CHANGES IN LENIENCY PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Ireland	<p>In 2001 the Director of Public Prosecution (DPP) and the Competition Authority instituted a joint Cartel Immunity Programme. The Programme provides a means for self-reporting of cartel offences by undertakings and individuals and cooperation with authorities in exchange for a grant of immunity from prosecution by the DPP. The Programme does not offer a leniency option.</p> <p>In 2006, the Competition Authority became a signatory to the EU Model Leniency Programme. The Competition Authority is currently involved in a process of reviewing the Immunity Programme, in consultation with the DPP.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Improved transparency/clarification of thresholds to be met to qualify for leniency • Revisions based on ECN model
Israel	<p>In 2003 a leniency program was published by the IAA. To date there are no convictions deriving from leniency applications.</p>
Japan	<p>Leniency program introduced in 2006, revised in 2010.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Expansion of the number of leniency applicants to be granted reduction of surcharge, • Introduction of joint application for leniency by group enterprises. <p>The 2005 amendments introduced a leniency system, which has been one of the most significant tools in terms of realization of more effective investigation. In the past, we had to rely on confession at interrogation and submission of evidence through the administrative investigation from the parties which alleges involvement in the violation. As the sanctions against cartel activities are strengthened and the society's attitude is more critical towards cartel activities, they became more devious and covert. Thus, we had great difficulty in obtaining voluntary cooperation of the parties concerned. The 2009 amendments, which take effect in 2010, expanded the number of leniency applicants to be granted reduction of surcharge and introduced joint application for leniency by group enterprises.</p> <p>The leniency program has produced significant results since its introduction in January 2006. We have already received 264 leniency applications since then as of end-March in 2009. Based on information submitted in these leniency applications, the JFTC took legal measures (Cease and Desist Orders and Surcharge Payment Orders) on 43 cases and lenient treatment was granted to a total of 92 companies in the same period, whose names along with their applied immunity or reduction of surcharges were, upon their admission, made public on the JFTC's webpage.</p>
Jersey	<p>The JCRA introduced a leniency policy simultaneous with the coming into force of the Competition (Jersey) Law in 2005. The JCRA introduced a leniency policy simultaneous with the coming into force of the Competition (Jersey) Law 2005. There have been no revisions but interpretations have benefited from ICN work.</p>
Korea	<p>Leniency program introduced in 2001, revised in 2005, 2006, 2007 and 2009.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Clarification of, or changes to, penalty reductions for applicants • Introduction of amnesty plus provisions • Provisions for summary or simplified applications

II. CHANGES IN LENIENCY PROGRAMS

Competition Authority	Supplemental Excerpts
Mexico	2006 amendments implemented a leniency program. The program has had a marker system since its introduction in 2006.
Netherlands	<p>The NMA introduced a leniency program in July 2002. Initially the program had a modest impact in relation to the cartel enforcement program, mainly due to the fact that the authority had chosen to mainly focus on granting individual exemptions in its early years of existence. In early 2004, shortly before the abolition of the power to grant individual exemptions, the authority was flooded by the large construction cases which were conducting in large part with the help of a hundreds of leniency applications.</p> <p>After the authority dealt with the large construction cartels the leniency program has continued to provide the authority with a significant and steady number of applications and corresponding cartel investigations.</p>
New Zealand	<p>A general leniency program (applicable to all Commission enforcement, and not specifically to cartels) was introduced in 2000. A new leniency policy, applicable solely to cartels, was introduced in November 2004, and was supplemented by a general policy on co-operation with Commission investigations. These policies have been highly effective, and the availability of leniency for cartel participants has been the single most significant advance in the Commission’s ability to identify and investigate cartels.</p> <p>In 2009 a draft revised leniency policy was issued for public consultation. The revised policy, which will be released in the first quarter of 2010, includes several changes that the Commission considers will further increase the policy’s effectiveness. Following the policy’s release, the Commission will conduct workshops for law firms and industry sectors.</p>
Norway	Leniency program introduced in 2004. Full and partial leniency (from fines) can be granted under the 2004 NCA.
Pakistan	<p>Both the Competition Ordinance and the leniency programme, which, in themselves, are major changes in the competition law in the country, were introduced in 2007. The Ordinance adopts a ‘carrot and stick’ approach - the law provides for higher fines combined with imprisonment for non-compliance; on the other hand, the “carrot” pertains to leniency provisions that may could, in some cases, lead to no fines, subject to certain conditions.”</p> <p><u>Features of Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Provisions for summary or simplified applications
Panama	2007 amendments introduced a leniency program, and the agency is developing the structure to implement the program.
Peru	<p>Leniency program introduced in 1996; revised in 2008. The Law includes a new procedure for leniency applications.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Reductions in penalties for subsequent applicants defined in more detail • Provisions for summary or simplified applications • Confidentiality of the identity of the leniency program applicants.

II. CHANGES IN LENIENCY PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Poland	<p>Leniency program introduced in 2004; law with revisions in 2007 Act, from January 2009 guidelines on the leniency programme.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Revisions based on ECN model • Provisions for summary or simplified applications <p>A leniency program was introduced to Polish legal system in 2004; leniency policy was incorporated into legislation in the Act on the Protection of Competition and Consumers of 16 February 2007. A procedural description of what must be included in a leniency application is set out in the leniency regulation January 2009, which replaced leniency regulation of July 2007. The leniency regulation from 2009 provide several new developments like marker system, summary application and hypothetical. In January 2009 President of the OCCP have issued guidelines on the leniency programme. The aim of the guidelines is to increase the transparency of the provisions of the both the Act on the Protection of Competition and Consumers and leniency regulation. From January 2009 leniency telephone number is available to obtain information on leniency programme (in particular the enterprise may present “hypothetical” circumstances of the case for preliminary assessment of its eligibility for the programme).</p>
Portugal	<p>Leniency program introduced in 2006, administrative procedures implemented in 2007. In 2006, Law No. 38/2006 was passed creating a leniency regime in Portugal. The Portuguese Competition Authority set out administrative procedures required for leniency applications in 2007.</p>
Romania	<p>Leniency program introduced in 2004, revised in 2009.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Provisions for summary or simplified applications
Russia	<p>Leniency program introduced in 2007, revised in 2009. 2009 legislation provides that only the first applicant for leniency program will get immunity from the legal responsibility. Other participants of the cartel agreement will be subject to turnover-based fines and criminal sanctions.</p> <p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Clarification of, or changes to, penalty reductions for applicants • Changes related to criminalization

II. CHANGES IN LENIENCY PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
South Africa	<p>The Commission adopted in February 2004 the CLP in an effort to increase efforts to detect and prosecute cartel conduct. The CLP offers a cartel member immunity from fines and prosecution in return for being “first to the door” to fully disclose information on a cartel and cooperate with the Commission in the prosecution of the cartel. The CLP was amended in May 2008 to add greater legal certainty and effectiveness to the CLP process, in particular through the introduction of a marker procedure and an oral statements procedure and by removing the discretion of the Commission in granting immunity to an applicant meeting the conditions set out in the CLP.</p> <p>The Commission has sharply stepped up in recent years its enforcement activities against cartels and has uncovered widespread collusive activity beyond what might have been expected. There are two reasons for the recent successes. The first is the Commission’s CLP. The second is a move to more proactive investigations to identify likely cartel activity, associated with rooting out anti-competitive conduct in the Commission’s priority sectors (see below under (c) on the Commission’s prioritization framework). The high number of leniency applications filed with the Commission in sectors where the Commission has initiated proactively investigations show that cartel members are aware of the risk that fellow members filing for leniency is higher when an investigation is already under way. The pending criminalization of cartels is also contributing to the number of CLPs being made as companies are conducting compliance audits.</p> <p>The [Competition] Act was recently amended on 28 August 2009 by the Competition Amendment Act of 2009 (the “CAA”). The CAA expressly empowers the Competition Commission to certify a firm or a person as deserving of leniency. The CLP has therefore received, through the CAA, express statutory underpinning. The CLP is in the process of being amended, in particular to reflect the provisions of the CAA granting the Commission the discretion to certify persons as deserving of leniency.</p>
Spain	<p>The Competition Act of 2007 introduced a leniency program that came into force the 28th February 2008. The entry into force of the leniency program was very successful, and the first day 6 applications were filed.</p>
Sweden	<p>Leniency program introduced in 2002, revised in 2008.</p> <p><u>Changes Made in Leniency Program:</u></p> <ul style="list-style-type: none"> • Improved transparency/clarification of thresholds to be met to qualify for leniency <p>The possibility for leniency was introduced in Sweden in 2002. The new 2008 Competition Act provided some clarifications regarding disqualification from full immunity, and a new notice for leniency was adopted later the same year. The Act provides both full immunity from fines and reduction of fines. The rules only apply to companies.</p>
Switzerland	<p>The 2004 amendments introduced a leniency program.</p>

II. CHANGES IN LENIENCY PROGRAMS

Competition Authority	Supplemental Excerpts
<p>Turkey</p>	<p>Leniency program with the possibility for full immunity was authorized in 2008, and implemented in 2009 via Leniency Regulation. The 2008 amendments introduced the possibility of full immunity for the undertakings and association of undertakings from the substantive fine which was not legally possible previously. Before the amendment only partial immunity was possible. Moreover, executives and employees may also benefit from full and partial immunity. A Leniency Regulation was adopted in February 2009.</p> <p><u>Changes Made in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Clarification of, or changes to, penalty reductions for applicants • Introduction of amnesty plus provisions • Provisions for summary or simplified applications • Full and partial immunity for individuals and full immunity for the undertakings and association of undertakings in addition to previous partial immunity valid for them.
<p>United Kingdom</p>	<p>Leniency program introduced in 2000, revised in 2005.</p> <p><u>Changes Made in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency • Changes related to criminalization • Provisions for summary or simplified applications
<p>United States</p>	<p><u>Changes in Leniency Program:</u></p> <ul style="list-style-type: none"> • Introduction of a marker system • Improved transparency/clarification of thresholds to be met to qualify for leniency <p>There was no change to the Division’s Corporate and Individual Leniency Policies over the last 10 years, but there were developments or refinements in the implementation of the leniency program that increased the incentives for applicants and the transparency of the program, most importantly the introduction of the marker system and the issuance of the FAQs and new model conditional leniency letters.</p> <p>Introduction of a marker system: Consistent with the Division's message that guilty parties should come forward as soon as possible in order to obtain leniency, the Division adopted a policy that allows a company to secure its place at the front of the line by reporting the criminal antitrust conduct and putting down a "marker." The company will then be given a certain period of time to complete its internal investigation, report its findings to the Division, and perfect its leniency application. While the company has a marker, no other company will be permitted to jump over the leniency applicant at the front of the line, even one prepared to perfect its leniency application immediately. If the company holding the marker fails to perfect its application within the allotted time frame, it will lose its place in line and other companies will then be considered for leniency in the order in which they came forward.</p>

II. CHANGES IN LENIENCY PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
United States (continued)	<p>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. When corporate counsel first obtains indications of a possible criminal antitrust violation, authoritative personnel for the company may not have sufficient information to enable them to admit definitively to such a violation. While confirmation of a criminal antitrust violation is not required at the marker stage, in order to receive a marker counsel must report that he or she has uncovered information or evidence suggesting a possible criminal antitrust violation, e.g. price fixing, bid rigging, capacity restriction, or allocation of markets, customers, or sales or production volumes.</p> <p>A marker is provided for a finite period. The length of time an applicant is given to perfect its leniency application is based on factors such as the location and number of company employees counsel needs to interview, the amount and location of documents counsel needs to review, and whether the Division already has an ongoing investigation at the time the marker is requested. A 30-day period for an initial marker is common, particularly in situations where the Division is not yet investigating the wrongdoing. If necessary, the marker may be extended at the Division's discretion for an additional finite period as long as the applicant demonstrates it is making a good-faith effort to complete its application in a timely manner.</p> <p>Improved transparency in thresholds to be met in order to qualify for leniency: In November 2008, the Division published a paper entitled “Frequently Asked Questions Regarding the Antitrust Division’s Leniency Program and Model Leniency Letters” (“FAQs”) and issued new model leniency letters. The Division also developed a leniency webpage (http://www.justice.gov/atr/public/criminal/leniency.htm) containing the FAQs, its Corporate and Individual Leniency policies, its new model leniency letters, application information, and leniency policy speeches.</p> <p>The FAQs were meant to be a comprehensive and updated resource to provide guidance on common leniency issues. The Division consolidated information from prior speeches about its leniency program and added information regarding issues that had arisen since prior speeches, such as the use and requirements of the marker system.</p> <p>The revised model letters were issued to avoid any possible ambiguity or uncertainty in letters. The revisions are clarifications, not changes in the requirements of the Division’s program, and they reflect the practice of the Division in the implementation of the program over the last few years. For example, the conditions that underlay the conditional nature of the leniency letter and that are necessary for getting a final letter were clarified or stated more expressly. The representations paragraph was renamed the eligibility paragraph because the representations must be true in order for the applicant to be eligible for leniency. The letter now expressly states that the applicant bears the burden of proving its eligibility to receive leniency, which has always been the Division’s position. The letter also reflects the practice of the Division in requiring that the applicant admit to participation in a criminal antitrust violation before a conditional leniency letter is given. With the use of the marker process, which allows counsel to investigate the conduct much more thoroughly, an applicant should be in a position to admit to a criminal antitrust violation before it receives a conditional leniency letter. Also, as discussed in FAQs, there is now a trend in the Division to interview key executives before issuing conditional leniency letter to confirm they will admit to an agreement to fix prices, rig bids, or allocate markets. In practice, this admission has not decreased leniency applications, but rather has improved the quality of leniency</p>

II. CHANGES IN LENIENCY PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
United States (continued)	<p>applications and prevents applicants from trying to game the system by getting conditional leniency but protecting themselves in civil litigation.</p> <p>In addition, a leniency applicant may be the subject, target, or defendant in an additional investigation. Thus, the Division issued a new model leniency letter to provide clarity of treatment for such applicants and their employees in each investigation. In that case, the model corporate conditional leniency letter has a paragraph 5 added to it which acknowledges the separateness of the leniency matter and the additional investigation. The paragraph makes clear that the protections and obligations of the leniency letter extend only to the leniency matter and not to the separate investigation. The Division posted this letter on its leniency webpage under the title Model Dual Investigations Leniency Letter. Also, the Division developed a separate letter for directors, officers and employees of the applicant who are subjects, targets, or defendants in the separate investigation and who are interviewed by the Division in connection with the employer’s leniency application. In that letter, the individual will acknowledge his status in the separate investigation and acknowledge that the leniency letter governs the conditions of the individual’s eligibility for leniency protection with respect to the anticompetitive activity being reported pursuant to the leniency letter. The Division also posted this letter on its leniency webpage under the title Model Dual Investigations Acknowledgement Letter for Employees.</p>

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

Competition Authority	Supplemental Excerpts
Argentina	Mainly the imposition of big fines, which was not known only by the business community but also by the media and then the public.
Australia	<p>Strong enforcement of antitrust laws is critical to the reputation of an antitrust agency and the regard in which antitrust law is held in the economy. The successful prosecution of individuals and firms through the courts by the ACCC has assisted to increase community support for competition law. The action of the ACCC against one domestic cartel reverberated throughout Australian society and added weight to calls to criminalise cartel conduct.</p> <p>The ACCC has released a range of publications to inform the public about cartels. These include the <i>Guide for Government Procurement Officers on Cartels: deterrence and detection</i> (April 2009), <i>Small Business Guide on Cartel Conduct: how it affects you and your business</i> (April 2007) and <i>Guide for Consumers on Cartel Conduct</i> (March 2006).</p>
Austria	Increased enforcement actions (increased number of cartel cases and of penalties), media coverage, increased public awareness building.
Brazil	<p>In 2008, a Presidential Decree created a ‘National Anti-Cartel Day’ (October 8th) to raise public awareness that included an economic crimes workshop with prosecutors. Also, starting in 2008, Brazil’s Ministry of Justice annually conducts a national campaign, which distributes thousands of brochures on competition in different regions of Brazil and places advertisements in weekly magazines. The results of SDE’s investigations and CADE’s imposition of severe fines have been constantly on the media and has raised public awareness.</p> <p>CADE and SDE have a solid program to improve the communication with other regulatory agencies, such as National Health Agency, Civil Aviation Agency, Electric Energy National Agency.</p>
Bulgaria	<p>Over the past 10 years the CPC has significantly strengthened its role in ensuring the functioning of the markets in conditions of effective competition and has made the fight against cartels a top priority in its antitrust agenda. CPC has realized the importance of the public attitude towards different collusion practices for having a successful cartel enforcement policy. Therefore, CPC started to take proactive steps to influence the corporate values and the public perception of hardcore cartels by building a competition culture.</p> <p>First, the CPC started to revise its sanctioning policy and gradually started to impose heavier sanctions. The second revision of the Methodology for setting fines is expected to result in even larger fines in particular for repeat offenders and cartels of long duration. The significant escalation of the level of fines has been largely reported and in this way CPC advocates a strong anti-cartel deterrent message to the media and the business community. The adoption of the Leniency programme has also been an important step for raising the public awareness of the harmful effects of collusion and the importance of the cartel enforcement.</p> <p>On the November, 9th 2006 the CPC hosted the first Competition Day in Bulgaria. The conference was attended by chairpersons of 16 national competition authorities, national institutions, business and consumer organizations, defense bar and university representatives.</p>

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

Competition Authority	Supplemental Excerpts
<p>Bulgaria (continued)</p>	<p>In 2007 the CPC realized in cooperation with the Italian National Competition Authority a Twining project in the framework of the EC PHARE program called: “<i>The preparation of CPC for the direct application of EC competition law and cooperation with the European Commission</i>”. Many seminars and education projects have been organized with representatives of national administrative and judicial institutions as well as with public. The draft of the new Law on protection of competition has been presented at the conference closing the project.</p> <p>In 2005 the CPC in cooperation with the German competition authority /Bundeskartellamt/ successfully completed a Twining light project in the framework of the EC PHARE program called: “Establishing a comprehensive internal CPC system for conducting Investigations on cartel cases”. The main objective of the project to enable the CPC case handlers applying effectively the anti-cartel rules and carrying out autonomously investigation on cartel cases, incl. on-site inspections, was reported to be fully implemented.</p> <p>On May 5th, 2009 the CPC presented before business representatives in the face of Bulgarian confederation of employers and industrialists its new Programme on immunity from fines and reduction of fines and the Rules on its application. The public meeting was accompanied by discussion on the problems of the business and the signature of a cooperation agreement between CPC and the Confederation.</p> <p>CPC has also organized meetings with private sector representatives to present the different forms of prohibited collusive behavior and its Leniency programme.</p> <p>A handbook representing the Leniency programme and brochures to explain cartels as the most serious infringement of antitrust law, the increased sanctions for antitrust infringements and the Leniency programme as a possible decision for undertakings’ participation in a cartel have been presented and subsequently sent by mail to business and defense bar representatives.</p> <p>At the same time it is important that consumers are made aware of possible antitrust violations so they may be able to challenge or inform about practices existing in the various markets. Therefore, to make information more accessible, CPC has published and distributed informational fact-sheets on cartel enforcement.</p>
<p>Canada</p>	<p>As described in question 1(a), Canada recently strengthened its cartel provisions and has been increasingly recommending that the Director of Public Prosecutions charge individuals and seek jail sentences, where warranted. In addition, pursuant to the Bureau’s arrangement with the Royal Canadian Mounted Police, a record of individuals’ charges and convictions are registered in the Canadian Police Information Centre (“CPIC”) Database. CPIC is responsible for the storage, retrieval and communication of shared operational police information to all accredited criminal justice and other agencies involved with the detection, investigation and prevention of crime. The registration of Competition Act offenders in CPIC underscores the seriousness of such offences and heightens the personal consequences for those involved. A criminal record may impose restrictions on a person’s ability to travel outside of Canada and compromise their employment opportunities and their ability to participate in social and educational organizations.</p>

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Canada (continued)	<p>The perception of the importance of cartel enforcement has also been enhanced by the reporting of high profile cases by the media. This has increased the general public’s awareness of the Bureau’s activities and reporting of jail sentences imposed by the courts has likely had a deterrent effect. Some notable examples are:</p> <p>Carbonless Paper Sheets In January, 2006, three paper merchants operating in Canada - Cascades Fine Papers Group Inc. and Domtar Inc. (Canadian corporations) and Unisource Canada Inc. (an American corporation) - pleaded guilty to two counts of conspiring to unduly lessen competition in the carbonless sheet markets in Ontario and Quebec. Commercial printers use carbonless sheets in the manufacturing of forms and receipts. The Superior Court of Justice in Toronto sentenced each company to record fines of \$12.5 million for taking part in the domestic conspiracy and also issued a prohibition order against the companies. Key personnel involved in the conspiracy were removed from their positions in the paper merchant business.</p> <p>Chocolate In late 2007, it was widely reported that the Competition Bureau is investigating alleged anti-competitive practices in the chocolate confectionary industry and had executed search warrants. The Superior Court of Justice of Ontario granted search warrants based on evidence that there were reasonable grounds to believe that a number of suppliers in the chocolate confectionary industry had engaged in activities contrary to the conspiracy provisions of the Competition Act. The investigation is ongoing and the Bureau will refer the case to the Director of Public Prosecutions if appropriate. There is no conclusion of wrong-doing at this time and no charges have been laid. However, the investigation received widespread attention in domestic and international newsmedia, as illustrated by the editorial cartoon at the following link: http://mackaycartoons.net/2007/huh2007-12-01.html.</p> <p>Gasoline In June, 2008, charges were laid against 13 individuals and 11 companies accused of fixing the retail price of gasoline in three local markets in Québec. To date, eight individuals and five companies have pleaded guilty to conspiracy charges, and fines totaling over \$2.7 million have been imposed. Four individuals have been sentenced to terms of imprisonment totaling 44 months. Investigators conducted surveillance of retail gasoline prices, used wiretaps, conducted searches and engaged the immunity and leniency programs to gather evidence during the two year investigation. Charges remain outstanding against the other accused. The Bureau’s laying of charges in June, 2008 generated the most media coverage ever for a Bureau announcement.</p> <p>Information Technology In February, 2009, charges were laid against 14 individuals and seven companies accused of rigging bids to obtain Government of Canada contracts for information technology services. To date, two individuals have pleaded guilty in this case. Charges remain outstanding against the other 12 individuals and seven companies and the matter is proceeding to trial.</p>

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Canada (continued)	One of the Bureau’s most important non-enforcement activities is educating tendering authorities and others involved in procurement to detect and prevent bid-rigging. Educating potential victims is a very cost effective strategy to deter this type of crime. Bureau investigators give dozens of bid-rigging outreach presentations every year and we have an impressive multimedia bid-rigging presentation on our website. Outreach presentations are also a fertile source of leads on new cases. Last year, we submitted our bid-rigging program to an audit by an independent consultant, and we are following up on recommendations to build stronger outreach collaborations with government departments, domestic and foreign law enforcement agencies and private sector procurement associations to further deter bid-rigging, while ensuring that we become more strategic in our approach to outreach.
Chile	<p>Changes in perception can be seen in public reactions towards news on competition cases. It is worth mentioning, for instance, some recent milestones, namely</p> <ul style="list-style-type: none"> i) the sanctions sought by the FNE against the three main pharmaceutical retail chains in Chile for price fixing; ii) the settlement reached with one of these chains, upheld by the Supreme Court, which in this way ascertained the legitimacy of reaching settlements in cartel enforcement procedures; and iii) the passing of Law N° 20.361. <p>These matters have also become one of the government’s priorities. In fact, the President of the Republic sent a bill this year to the Congress seeking criminalization of serious cartel conduct, which again, received great media coverage and attention throughout the country. Due to these recent milestones and their media coverage the term “collusion” has become popular, and is currently applied to different areas (politics, sports, etc.) in a pejorative form, reflecting the importance and country wide assertion of cartel enforcement and oversight of collusive behaviour in the marketplace in general.</p>
Croatia	In the last 10 years through its practice but mostly due to the competition advocacy activities including expert opinions, trainings, conferences and publications of Agency’s decisions on the web site of the Agency, the awareness of harm done to the competition and consumers by prohibited agreements rose significantly. However, the overall level of knowledge is still low, so in the coming period Agency will put additional efforts to emphasize more importance of cartel enforcement among different stakeholders.
Cyprus	Issuance of informative leaflets, organization of seminars on competition policy, monthly press releases, publication of a yearly report on the activities of the Commission and wide media coverage of important Commission decisions.
Czech Republic	<ul style="list-style-type: none"> • Effective Enforcement Actions • Media Coverage • Increased Business Awareness • Outreach to Competition Bar • Increase in Leniency Applicants/ Complaints • Increase in Penalties
Egypt	<ul style="list-style-type: none"> • The sentence against the cartel of cement producers; and • Dawn raids against Trade & Industrial Associations.

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
El Salvador	<p>Even though the CS has not decided many cartel cases, the ones that have concluded illustrate an evolution on the analysis made by the Salvadorian agency.</p> <p>When the Competition Law was recently in force, many people assumed that it was normal and legal to be involved on cartel conduct, which made the first case easy to decide and demonstrate. Afterwards, the companies involved on such anticompetitive agreements were more careful and therefore, the CS had to utilize the new investigative tools provided by the law (such as the dawn raid) to gather evidence. Finally, to this date, the CS has assumed that the analysis of cartels cannot be restricted to direct proof only. Therefore, the travel agencies case took a step forward and gave relevance to economic evidence.</p>
Estonia	<p>Since the beginning of the year 2008, when Competition Board was united with Communications Board and Energy Market Inspectorate into Estonian Competition Authority, the media and business community has become more interested in the work of the authority and have started to monitor more closely the activities of the authority.</p>
European Commission	<p>The prioritization of cartel enforcement and increased number of decisions and level of fines imposed attracts more public visibility and discussions, thus raising awareness on efficiency of the cartel enforcement and increasing significantly the deterrence factor. In fact, since 2000 the overall amount of fines imposed grew from 119.832.000 euro to 2.271.232.900 euro in 2008 (and 1.366.274.000 euro already imposed this year). It is important to note that Commission decisions can be appealed to the European Court of First Instance and further appealed to the European Court of Justice. The Commission has built up a solid track record in those cases as well.</p>
Finland	<p>Based on more effective enforcement actions, the awareness of the harmful effects of cartels have increased especially among the public and media.</p>
France	<p>Three factors have been particularly influential upon the perception of the public regarding the importance of cartel enforcement:</p> <ol style="list-style-type: none"> (1) <u>the increased level of fines</u>, in line with the doctrine on the harm caused by cartels to consumers, SMEs and, more widely, the general economy; (2) <u>the boom in leniency applications</u>: this trend was at first triggered by foreign firms and then spread to French-based firms; (3) <u>the coming into force of the ECN</u>: the European Competition Network has made anti-cartel enforcement much more consistent, efficient and visible in the public eye, thanks to the 27 NCAs joining forces with the EU Commission on this priority.
Germany	<p>The pressure of enforcement has increased in the last years; this process was supported by intensive advocacy. It can be noted that against this background the companies are stepping up their compliance programs. Furthermore searches conducted and fines imposed by the Bundeskartellamt generally receive a wide press coverage.</p>
Greece	<p>The most important tool for increasing competition law awareness, with specific regard to cartel enforcement, has been the imposition of increased fines on serious offenders, notably in cartel cases.</p>

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Hungary	<p>The GVH lays great emphasis on the proper information of the public. For this purpose the GVH regularly publishes press releases on its activities.</p> <p>Within the framework of competition advocacy, the GVH tries to influence state decisions in favour of competition. In these efforts the GVH makes use of the powers granted to it by the Competition Act, it may rely on constitutional guarantees attached to competition, and it may address the public. State decisions in this context include the shaping and implementation of public policies and the individual decisions and interventions of the government and other state bodies.</p> <p>One of the most important forms of competition advocacy is the opining of draft pieces of legislation. However, other tools are also available; e.g. the GVH may also submit proposals and make comments on its own motion (“signal-giving”) and its role is not restricted to mere reactions to others’ initiatives. According to the Competition Act all draft pieces of legislation that might affect the scope of duties of the GVH have to be submitted for opining to the President of the GVH. When elaborating its opinion, the GVH examines the competitive situation on the market concerned by the given regulation and in the event that there will be changes in that situation, it assesses whether the objective to be attained by the regulation is in accordance with the regulatory means applied, whether the restrictive effect of the latter is or is not excessive in comparison to the said objective.</p> <p>The development of the competition culture in Hungary is also very important for the GVH. For this purpose the Competition Culture Centre (CCC) of the GVH was established in 2006. The CCC’s activities include translating and publishing technical books, preparing information publications, organising and supporting professional programmes; and raising interest for competition policy among the young generation through essay-competitions and sponsoring the Hungarian National Student Conference.</p>
Ireland	<p><u>Number of Successful Convictions on Indictment</u></p> <p>Cartel offences have since 2002 been prosecuted in the Central Criminal Court, the highest criminal court in Ireland. This change in the law, which made cartel offences punishable by up to five years in prison and placed the prosecution of such cases in the Central Criminal Court raised the perception of cartels among the media, business community and Bar.</p> <p>The number of successful criminal prosecutions and convictions on indictment since 2006, which number 33 companies and individuals, has raised awareness of the serious nature of cartel offences and the substantial penalties associated with them. To date, 17 companies and 16 individuals have been convicted of cartel offenses.</p> <p><u>Increased Fines</u></p> <p>In 2008 the Competition Authority organised a conference on the topic of sanctions for competition offences that was moderated by judges from the Supreme Court and High Court, and featured comments from the Attorney General. Together with an array of international enforcement officials, they brought home a very salient point – the need for serious and consistent sanctions for cartel offences.</p> <p>Since 2005 the fines imposed on undertakings and individuals have increased from €1500 for a single offence of price fixing to €50,000. Total fines imposed by the courts to date are over €599 700.</p>

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Ireland (continued)	<p data-bbox="514 269 1333 297"><u>Statements by the Court At Sentencing Concerning Imprisonment for Cartels</u></p> <p data-bbox="514 302 1858 391">10 individuals have been sentenced to periods of incarceration, although each of those custodial sentences has been suspended. Although the sentences have been suspended, the magnitude of the suspended sentences – up to one year in prison – have increased the perception of the seriousness with which the Courts regard cartel infringements.</p> <p data-bbox="514 423 1906 540">Additionally, statements made by the Central Criminal Court at the time of sentencing have increased the perception of the public about cartel offences. For example, the Judge principally involved in Competition Law matters, Mr. Justice McKechnie, had the following to say in his judgement of 23 March, 2009 in the matter of DPP vs Patrick Duffy and Duffy Motors (Newbridge) Limited:</p> <p data-bbox="606 573 1816 756"><i>I pointed out in Manning, more than two years ago, that this type of activity, of which price fixing is probably one of the more heinous examples, has been unlawful since 1991 (and potentially punishable by imprisonment since 1996), which is now almost 20 years. I warned that, because of the activity’s harmful effects on the public, those involved would have to take note that any lead in period for leniency could not be prolonged. I anticipated that the serving of a custodial sentence was near at hand. Two years on, I say once more that if the first generation of carteliers have escaped prison, the second and present generation almost certainly will not.”</i></p> <p data-bbox="514 789 1033 816"><u>Seriousness of Failure to Comply With Sentence</u></p> <p data-bbox="514 821 1906 938">To date all custodial sentences imposed have been suspended by the sentencing courts. Additionally, in conjunction with monetary penalties, the Central Criminal Court has imposed a period of incarceration for failure to pay the fine. On 30 November 2009, the Court imposed a prison sentence of 28 days for failure to pay the fine on another individual owner of a motor vehicle dealership who had been convicted of price fixing.</p> <p data-bbox="514 971 968 998"><u>Inability to Serve As A Company Director</u></p> <p data-bbox="514 1003 1896 1182">Section 160 of the Companies Act, 1990 provides for the automatic disqualification of a director of a company for a period of five years or greater upon the conviction on indictment for an offence in relation to a company or an offence involving fraud or dishonesty. This provision has been applied by the courts where a conviction is recorded against an individual director for a competition law offence and has been noted by the Court at sentencing. The Competition Authority has been told that the operation of section 160 in respect of cartel offences has further highlighted the serious implications of a conviction under the Competition Act, 2002.</p>

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

Competition Authority	Supplemental Excerpts
Israel	<p>Based on the IAA experience, the following factors could be viewed as most significant in influencing the perception of the public regarding the importance of cartel enforcement:</p> <p>Effective Enforcement Actions: During the last decade, the IAA was successful in bringing cartel cases to court, resulting in several jail sentences. In our opinion, the enforcement actions are the most effective tool to enhance public awareness to the importance of cartel enforcement.</p> <p>Media Coverage: The media and press in Israel cover Antitrust issues on a regular basis. Every indictment – without exception – receives wide coverage and considerable attention.</p> <p>Increased Business Awareness: Over the past years, the awareness of the business community to antitrust in general and cartel enforcement in particular has increased dramatically. This notion is reflected in the following statement of a suspect in participation in a cartel: "... there was a time until the year 2000 that the antitrust law was made a mockery, but nowadays one could go to jail, it is even worse than the United States. I dare not allocate the market. I don't want to go to jail at my age."</p> <p>Advocacy with Domestic Government Entities: The IAA regularly appears before the Economic and Finance committee in Knesset where it presents its view on competition issues. As the Israeli Government's sole antitrust agency, the IAA has long been playing an active in shaping and facilitating pro-competitive government reforms and privatizations in terms of advocacy. Based on its expertise, the IAA frequently renders antitrust advice and counsel to government ministries, other government entities and the Knesset Committees. In particular, the IAA joins forces and works closely with the Budget Division of the Ministry of Finance to enhance competition in various segments of the economy. For example, based on the enforcement activity in the LPG market, the IAA has been successful in passing a legislative reform, together with other ministries. The reform addressed the competitive problems of the market which suffered from a high level of concentration and a history of collusions and cartels.</p> <p>Advocacy with Procurement Officials: In the area of public procurement the IAA has recently embarked on a targeted awareness and advocacy campaign. In the first stage of the campaign the IAA's Director General and the Government's General Accountant which oversees and supervises the public procurement process, jointly issued a letter to all government procurers sending a strong message to enhance and strengthen competition. In addition to the letter, the OECD Anti-Bid-Rigging Guidelines were summarized in Hebrew and distributed to all the government procurers. The letter from the IAA's Director General and the Government's General Accountant underscored the importance of protecting competition in the public procurement process and emphasized the potential economic harm associated with bid rigging. It went on to say that from a legal perspective, bid rigging is an illicit restrictive arrangement prohibited by the Antitrust Law. The letter outlined that the IAA investigates bid rigging offences and handles criminal cases against undertakings and business people who are alleged offenders. According to the Antitrust Law the maximum penalty for bid rigging offences is a five year imprisonment. In addition to the government's efforts to fight bid rigging offences through enforcement, the government sees great importance in raising awareness about the topic especially to the public procurement officials. A greater awareness may</p>

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Israel (continued)	<p>help the procurement body to decrease the risk of bid rigging amongst suppliers, ex ante and increase the chances to detect illicit bid rigging activity, ex post. The letter stated that the OECD Anti-Bid Rigging Guidelines should be considered with relevant adjustments to the Israeli legal framework.</p> <p>The second stage of the campaign which began in March 2010 aims to raise awareness about bid rigging and collusion. The IAA has scheduled workshops which will be attended by public officials that deal with public procurement on different levels, from government offices to municipalities and other public institutions. The seminars are designed to inform those who are involved in the public procurement process of the potential risks involved with bid rigging and their legal implications. In addition, these seminars will provide the public officials with the necessary tools to detect bid rigging attempts and instruct them how to respond to these situations.</p> <p>Outreach to Competition Bar: The IAA organizes seminars that focus on recent developments in Antitrust. These lectures are aimed specifically for lawyers and economists that practice antitrust.</p> <p>Increase in Penalties: In 2001 The Law was amended and an "aggravating circumstances" clause was introduced. The law states that aggravating circumstances are, inter alia, duration and scope of the cartel and its impact on the market. Also, under aggravating circumstances the maximum jail-time is extended from 3 years to 5 years.</p>
Japan	<p>The 2005 amendment aimed at strengthening the JFTC's enforcement power and at developing sufficient deterrence against cartels. By this amendment, the surcharge rates imposed on cartel participants were increased and the leniency program was introduced.</p> <p>In addition, the JFTC have acted strictly and vigorously against violations of the Antimonopoly Act especially bid-rigging and price-fixing cartels. As a result of these efforts, legal measures (bid-rigging and price-fixing cartels) were taken in 196 cases during the past 10 years.</p> <p>The JFTC also had requested the Ministry of Land, Infrastructure, Transport and Tourism to lengthen the period of nomination outage for entrepreneurs involved in bid-rigging, during which such entrepreneurs cannot, in principle, participate in any public tenders. The said period is made clear in the model composed by the liaison council that consists of construction procurement agencies in the government. As a result of the JFTC's request, the period of nomination outage was lengthened in 2004.</p> <p>The above factors have most significantly influenced media, business community in Japan over the past 10 years regarding the importance of cartel enforcement.</p>
Korea	KFTC holds anti-cartel demonstration annually and explains cartel regulation and its enforcement to companies since 2006.

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Mexico	<p>The CFC is in constant coordination with other public authorities in order to ensure the full application of the LFCE and competition principles. In particular, the Commission works jointly with the Ministry of Economics and the Office of the Federal Attorney for Consumer Protection (PROFECO).</p> <p>In order to inform of the harm that cartel activity causes, and to broaden beyond a sector of specialists all knowledge related to the enforcement of competition policies, the CFC is working tirelessly to promote its actions and the impact of its investigations, particularly by publishing the start of their investigations and also, by publishing the results of all successful investigations that are considered of special relevance for the country.</p> <p>Therefore, CFC has been working recently in developing a ‘competition culture’ by having several symposiums, lectures and discussion tables in academic and specialized forums, both public and private, in order to broaden and expand the general knowledge about competition within the country.</p>
Netherlands	<p>In the last 10 years the public perception of the importance of cartel enforcement in the Netherlands has increased very significantly. One reason for the increase is the coming into existence of the competition authority and the entry into force of the competition act as such. The authority is generally perceived to have been given effective enforcement tools, closely modeled to those of the European Commission. The authority is well known by the public at large. The authority’s ‘brand name’ was strong from the outset. A second reason is the massive media attention, during a number of years, for the enforcement actions against the widespread construction cartels. A third reason has undoubtedly also been the increasingly tough actions against cartels, including cartels in the Netherlands, by the European Commission, as well as the figure of Ms Kroes who is a well-known and widely respected public figure in the Netherlands.</p> <p>Recently, the competition authority has stepped up its efforts to sensitize other national enforcement agencies on cartels. This has already yielded a number of very promising results, through information having been handed over to the competition authority by other national enforcement agencies.</p>
New Zealand	<p>Since the introduction of the Leniency Policy in 2004, the Commission’s cartel enforcement program has received wide media attention in New Zealand. This has been the result of some successful cartel prosecutions, and of advocacy by the former Chairperson of the Commission, Paula Rebstock. From 2004-2008, Ms Rebstock made a number of speeches that highlighted the Commission’s tough approach to cartels.</p>
Norway	<ul style="list-style-type: none"> • A number of ‘successful’ hard-core cartel cases prosecuted by the NCA have resulted in growing public awareness of the importance of cartel enforcement and, hopefully, in enhanced deterrence. • . . . but also in the professionalization of our ‘counterparts’! The cartels are now harder to uncover and the legal challenges brought forward by the defense bar are increasing. • Procurement officers are today much more aware of the possibility that they can be exposed to cartel activities and are more professional buyers. The NCA is actively advocating its guidelines for companies and government agencies to avoid bid-rigging. • Several companies have applied for damages as a result of cartel activities. The cases involving government agencies have been settled out of court.

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Pakistan	<p>The Commission has earned credibility by moving decisively and transparently.</p> <p>The general perception of Pakistan’s competition law has been positive among all the stakeholders (including general public, judiciary, business community, etc.) by the Commission’s actions, reinforced by an active advocacy campaign for increasing voluntary compliance.</p> <p>As a result of above efforts, awareness has grown about the enforcement of competition law. This is visible from the increasing number of complaints, both from the general public and businesses as well as the growing number of TV discussions and newspaper reports about the Commission.</p>
Panama	Media Coverage, Increased Business Awareness, Increase in Penalties
Peru	<ul style="list-style-type: none"> • Effective enforcement actions. • Public outreach. • Media coverage. • Increase in penalties.
Poland	<p>Amongst the initiatives helping us to promote interest in antitrust issues and convey the compliance message are educational campaigns, competition related information bulletins, publications, seminars, trainings, conferences, competitions for journalist publishing on competition law-related issues, workshops and competitions for students etc. Also, intensive contacts with the media play very important role in our effective advocacy actions. This is the reason only in 2008 14 thousand press articles and Internet publications and over 2 thousand pieces of radio and TV coverage related to decisions of the President of the OCCP and other activities taken by the OCCP were published. The Office prepared over 60 press releases devoted to antitrust issues and 8 thousand answers to ad hoc inquiries of journalists.</p> <p>Our activities can be evaluated on the basis of opinions obtained from public opinion polls, surveys, indirect contact with entrepreneurs/consumers which best prove success of our advocacy efforts. A recent survey carried out by “ARC Rynek i Opinia” shows that businesses value the information and educational initiatives run by the OCCP. . . . According to this study, the main source of information about competition law for Polish entrepreneurs are information and press releases issued by the Office. They poll carried out for the OCCP 3 years ago showed Polish entrepreneurs had still ‘learn’ a lot about how to compete: one in four Polish entrepreneurs would then be ready to conclude a price fixing agreement. The most recent poll in this respect shows that three in four of businesses acknowledge the fact that price fixing agreements are illegal.</p>
Portugal	<p>In the last ten years the competition culture in Portugal has been strengthened. This is due largely to the introduction of new competition laws, the creation of the PCA, development of an anti-cartel enforcement track record and increased media coverage of PCA activities. Public outreach has also changed perceptions of anti-cartel enforcement. The PCA regularly provides training courses in competition law for the judiciary, public prosecutors and consumer associations. Personnel from the PCA also teach at both undergraduate and graduate level competition law courses at local universities. As part of its outreach efforts the PCA also hosts international seminars, which are attended by members of academia, the judiciary, competition authorities and private practice. These events often receive significant media coverage. Recent conferences hosted by the PCA include the Lisbon Conference on Competition Law and Economics (held in 2005, 2007 and most recently in 2010), European Competition Day (held in Lisbon in 2000 and 2007), as well as the ICN Cartel Workshop and the Cracking Cartels Conference (both held in 2008).</p>

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Romania	<p>The increased efforts of the Competition Council in fighting cartels raised the level of awareness of the media and the business community. The increased profile of the NCA was due to considerable sanctions applied in recent years on cartels in sensitive industries, such as cement, pharmaceuticals, dental services etc.</p>
Russia	<p>Recently the interest of the Russian general public and media to the problem of increasing cartelization of the Russian economy has grown by times. The evidence of this evidence is provided by the growing number of requests to the FAS and its anti-cartel Department for interview to the media.</p> <p>The legal compliance of citizens, company and government officials has also increased. For example, since the introduction of the leniency program in Russia 500 companies applied for leniency and immunity from anti-cartel sanctions. Among these are largest financial institutions, leading producers of foodstuffs, largest trade networks, leaders of telecommunications market, regional oil companies, large bakeries in several regions, timber processing plants and producers of cash receipt equipment. According to the Note to Article 14.32 of the Code on the Administrative Violations the companies that have voluntarily declared to the antitrust authority that they have been involved in anticompetitive agreements, refused from further participation in such agreements and provided evidence of the existence of the cartel are completely released from administrative responsibility for participation in the cartel.</p>
South Africa	<p>The Commission has had significant successes in the recent past in uncovering cartels. Amongst the cartels uncovered by the Commission were the bread and milk cartels. These captured the nation’s attention and led to awareness of the damage cartels can cause to consumers. It has also led to a lot of CLPs. According to attorneys practicing competition law, surveyed by the Commission, the most important factor prompting firms to apply for leniency is the fear that other cartel members will apply first. The second factor is the more recent and growing awareness among firms that their activities contravene the Competition Act, suggesting that the Commission’s deterrence message is increasingly raising awareness. The third factor is the “domino effect” of cartel being uncovered in related product areas, suggesting that successful enforcement in the recent past and the CLP have been important in raising awareness. The fact that leniency applications have risen dramatically in the past year indicates that firms are becoming more aware of competition law and are putting more effort into establishing whether they are contravening the Act or not.</p> <p>The uncovering of cartels in key sectors of the economy led to a debate on whether the administrative fines limited to 10% of the firm’s annual turn have a sufficient deterrent effect. There were also call for the punitive measures against individuals involved in cartels, especially senior managers and directors. The government responded by passing a legislation criminalising cartel conduct as discussed above.</p>
Spain	<p>Beside the creation of the specific Leniency and Cartels Unit, with the new Competition Act there has been an important reinforcement of the Competition Authority and the creation of an Advocacy Directorate within the CNC (with a Competition Research Unit and a Relations with Public Administration Unit) has also contributed to increase the deterrence effect of the new regulation. This effect can also be achieved with a policy of transparency regarding CNC acts, making public in its web site (http://www.cncompetencia.es) all its decisions and resolutions and also, the dawn raids carried out by the CNC and a notice of the initiation of proceedings.</p>

III. FACTORS INFLUENCING PERCEPTION OF IMPORTANCE OF CARTEL ENFORCEMENT

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Sweden	The asphalt cartel case that was recently finally concluded by the Market Court has had a big impact, not only because the fines were the highest ever imposed in Sweden. This bid-rigging cartel case has clearly demonstrated the harm to consumers caused by illegal cooperation between competitors.
Switzerland	Based on the UK experience, the Swiss Competition Authority carried out an information campaign in order to spread the knowledge of the new [Act] and to help the business community to act in conformity with the law. Special attention was given to explaining the requirements to qualify for the Leniency Program.
Turkey	It is thought that perception of the importance of the cartel enforcement and Turkish Competition Authority's (TCA) effectiveness in conveying its deterrent message has increased as a result of; <ul style="list-style-type: none"> • Substantial increase in media coverage about the investigations conducted by the TCA, fines imposed and press releases issued by the TCA, • Training programs held for bar members (attorneys at law), • Joint activities with chambers of commerce, industry and other business associations, • '2009 Competition Letter' sent by the Chairman of the TCA, concerning competition law and policy, main competition issues such as cartels, unilateral conduct, mergers etc. to more than 10.000 undertakings, associations of undertakings, business communities and certain public authorities including President, Prime Minister, ministers, members of the Parliament and government officials. (It should be mentioned that the main message given by the letter was that 'crisis is temporary whereas competition is permanent').
United Kingdom	Profile of cartel enforcement has risen considerably in recent years following publicity arising from investigations such as British Airways/Virgin and construction industry investigation. Successes in cartel enforcement have stimulated other agencies, such as the Serious Fraud Office and Financial Services Authority, to consider new approaches, for example derivations of leniency policy for their areas, civil sanctions, fine levels and whistleblower policies. OFT deterrence survey (OFT962, November 2007) suggested that for every cartel unearthed 5 or more were deterred from continuing or starting.
United States	Effective enforcement actions, media coverage of enforcement actions, increased business awareness, public outreach, increase in penalties, advocacy with domestic government entities, advocacy with procurement officials, outreach to the competition bar, and increase in leniency applicants.
Vietnam	Effective enforcement actions: Training course on competition law; Workshop; Seminars on competition Public outreach: Cooperation with US FTC, AEGC, JFTC ... Media coverage: Website, Guidelines, Handbook Increased business awareness: play key role Advocacy with domestic government entities: law explanation Advocacy with procurement officials: by training investigation skills Outreach to competition bar: preventing enterprises from violated acts Increase in penalties: A fine up to 10% of the ten (1) per cent of the total revenue in the financial year in which the breach was committed.

IV. USE OF ANTI-CARTEL ENFORCEMENT MANUAL TO ADVANCE CARTEL ENFORCEMENT PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Argentina	<p>We usually use Chapter 4: Cartel Case Initiation, Chapter 5: Investigative strategy and interviewing, Chapter 1: Searches raids and inspections, Chapter 3: Digital Evidence Gathering and Chapter 6: Interviewing techniques.</p> <p>We have also used Chapter 2: Drafting and Implementing an Effective Leniency Program, for the design of our program.</p>
Australia	<p>The ACCC has benefited from participation in discussions and drafting best practice guidelines in relation to the following cartel-related issues:</p> <ul style="list-style-type: none"> • immunity policies • searches • digital evidence gathering, and • investigative techniques.
Austria	Searches/raid/inspections; investigative strategy
Brazil	<p>The early documents regarding leniency were of great help to shape Brazil’s Leniency Program. The following documents: Techniques Anti-Cartel Enforcement Manual, Searches/Raids/Inspections and Digital Evidence Gathering - Enforcement Techniques. Enforcement Techniques Manual have been used as guidelines to assist the agency’s staff in charge of the investigations. SDE have improved the analysis of digital evidence using ICN’s best practices.</p>
Bulgaria	<p>The new LPC [Law on Protection of Competition] contains detailed provisions on compulsory collection of evidence and especially on digital evidence. In this respect the Chapter “Digital Evidence Gathering” from the Manual was particularly useful for the precise formulation of the concepts “digital evidence” and “forensic evidence”. A Forensic Laboratory was created in 2007 and CPC used it for the first time.</p> <p>Since 2003 the CPC has the power for compulsory collection of evidence (known as “dawn raids”) which includes records on computer media information and data. It was clear from the Manual that the use of digital evidence gathering in cartel investigations has some important advantages and is becoming an increasingly powerful tool for agencies in their fight against cartels. So CPC decided to proceed on digital evidence gathering based upon its right to collect any documents – paper or digital – that are relevant to the investigation. The new hardware technology for coercive collection of evidence, used by the CPC since 2007, strengthens its capacity to investigate and prove the existence of collusive agreements and practices. Therefore the new 2008 LPC contains explicit legal provision for making forensic images of digital information. We have two specialists working in our information technology (IT) department which are trained to work with the Forensic Laboratory.</p> <p>From a practical point of view the Manual contains very helpful information about pre-search, raid or inspection intelligence, physical preparation about search, raid or inspection briefing. Using the detailed information contained therein the CPC updated its internal rules on conducting inspections.</p>

IV. USE OF ANTI-CARTEL ENFORCEMENT MANUAL TO ADVANCE CARTEL ENFORCEMENT PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Bulgaria (continued)	<p>Another very helpful Chapter for us is “Cartel case initiation”. So far the Bulgarian Leniency Programme has not been applied yet in practice. We continue to follow with interest and draw experience from other agencies in this area. Due to the fact that the CPC cannot take advantage yet of this reactive method of detection (and from whistleblower or informant also) it is forced to use more proactive methods of cartel detection instead to rely on an external event. Most commonly used methods are the economic market analyses of the relevant sector, the monitoring of industry activity, relevant trade press, the internet and the publicly visible activities of trade associations. Recently the CPC has taken active steps to trace out the potential of bid-rigging in public sector procurement.</p> <p>In its practice on conducting dawn raids the CPC has been using some best practices described in the “Searches, raids and inspections” Chapter.</p> <p>We always use the element of surprise by the execution of a search warrant to reduce the threat that documentary evidence will be destroyed. In the same time the Commission always assesses the cases in order to weight up the possibility to exercise its power to conduct a search with the use of less intrusive investigative tools.</p> <p>It was interesting for the CPC to get acquainted with various techniques of investigation and recently it conducted for the first time simultaneous interviews with managers of companies suspected of cartel behavior.</p> <p>Particularly useful for activities of the CPC is the experience in the planning process which includes identifying the premises to be searched, the type of evidence to be seized, the composition of search teams, and mapping out who will do what and when during the conduct of the search. Considering all factors described in this Chapter the CPC makes a significant progress by exercising its investigative power.</p> <p>The CPC is also interested in the topic of Legal Privilege. According to the CPC internal rules on dawn raids, the investigated undertaking can claim that documents are privileged and therefore could not be seized. At the moment, the assessment whether a certain document is protected by LPP is done by the rapporteur, assigned to the case and present at the investigation scene. All the discovered and collected items as well as any notes and objections as to the privileged nature of the documents shall be entered into a protocol, drafted on the spot, immediately after completing the procedural operations.</p> <p>Under the repealed Search and Seizure Procedural Rules of the CPC provided that the investigated undertaking can claim that documents are privileged and therefore could not be seized. If the claim could not be resolved on the spot, the contested items, documents and records of computer information data were shown to the independent witnesses and other attendees, and were duly packed and sealed at the very place of seizure.</p> <p>The valid Rules for conducting dawn raids do not provide for special rules in this regard, so the CPC intends to settle the issue in new rules on LPP and plans to amend the internal rules on dawn raids using the Manual.</p>

IV. USE OF ANTI-CARTEL ENFORCEMENT MANUAL TO ADVANCE CARTEL ENFORCEMENT PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Canada	The Anti-Cartel Enforcement Manual Chapters on cartel case initiation and searches, raids and inspections are used from time to time as reference materials by Criminal Matters Branch Officers. In addition, the Chapter on leniency was used as a benchmark when the Bureau reviewed its Immunity Program.
Chile	<p>The ICN recommendations regarding immunity and leniency programs have been an essential point of reference for the elaboration of the corresponding guidelines by the FNE.</p> <p>The FNE has also used the recommendations regarding searches, raids and inspections in order to elaborate its internal procedure for the performance of searches authorized pursuant to the Chilean Competition Act.</p>
Croatia	The ICN best practices in applying leniency program helped Croatian Competition Agency in introducing for the first time leniency in the new Competition Act.
Cyprus	The adoption of certain practices contained in the Anti-Cartel Enforcement Manual have helped in the achievement of increased efficiency in the organization and execution of search raids.
Czech Republic	The Czech NCA has been mostly inspired by European Commission and other European CAs such as NMa, OFT, BKA, TDc etc. in its cartel enforcement techniques development.
Egypt	The Competition Commission is scrutinizing the part related to “Drafting Effective Leniency Program” for its upcoming Law Amendments with respect to Leniency.
Estonia	In their work officials of the authority have used ICN Working Groups notes on Searches in Cartel cases, included in ANTI-CARTEL ENFORCEMENT MANUAL, where they find particularly useful tips are about search techniques and preparation.
France	Amongst the various chapters which have been useful in order to foster the cartel enforcement program of the Autorité de la concurrence, those related to searches/raids/inspections (especially in the course of the 2008/2009 reform), to leniency, to digital evidence gathering as well as to investigative strategy have been of significant interest. Indeed, they have proven to be of very insightful and useful influence in practical field operations, as well as to benchmark and upgrade our processes.
Germany	The Bundeskartellamt has a number of documents which reflect best practices on ICN level, e.g. digital evidence gathering guidelines for dawn raids, leniency guidelines.
Greece	On the whole, all relevant chapters have been useful for making our cartel enforcement programme more effective. Taking into account for example the Chapter concerning «Digital Gathering», our recently amended law explicitly provides for digital gathering by means of a search, raid or inspection. We also found it very useful to give special training to the agency’s staff who practice digital evidence gathering, so we are trying to update them with the latest technological developments and techniques (through participation in relevant seminars, etc.).

IV. USE OF ANTI-CARTEL ENFORCEMENT MANUAL TO ADVANCE CARTEL ENFORCEMENT PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Hungary	GVH has no written enforcement manual or enforcement program. However we are continuously using the chapters of the ICN Anti-cartel Enforcement Manual at the implementation of our cartel enforcement activities as a practical handbook, of course together with other information sources. And on the other hand, we are not only user, but we were and are quite active participants in the producing and updating the different chapters as a member of the editing team.
Ireland	We assisted in the drafting and revising of a number of Enforcement Chapters in the ICN Manual on Anti-Cartel Enforcement Techniques, such as Drafting and Implementing an Effective Leniency Program, Cartel Case Initiation, Searches/Raids/Inspections and Interviewing Techniques but many of the principals contained in those chapters have been implemented and/or used in our cartel investigations.
Israel	IAA has made extensive use of the Anti-Cartel Enforcement Manual, and the investigative techniques chapter has been particularly useful.
Japan	So far, the ICN work products including the Anti-cartel Enforcement Manual are very insightful for us to collect information on the practices in other jurisdictions and we refer to it in the process of consideration of new legislation.
Mexico	<p>In observance of the International Competition Network’s Anti-Cartel Enforcement Manual, the CFC drew up its regulations, as far as possible, and has been conducting its investigations, based on the following chapters (1) Searches, Raids, and Inspections; (2) Implementing an Effective Leniency Program; (4) Cartel Case Initiation; and (6) Interviewing Techniques.</p> <p>We see these materials as the cornerstones of best practices and how to improve both our enforcement and our laws and regulations. As an example, when we began receiving leniency applications regarding international cartels we immediately reviewed the Leniency program and the international cooperation guidelines produced by the ICN groups and used this as reference to what we discussed with the applicants. It has been a great guide and continued reference and we use the Manual to teach new employees.</p>
New Zealand	The ICN’s best practice for leniency policies continues to be a significant resource for the Commission, and was a major consideration in the Commission’s recent review of its Leniency Policy.
Norway	Best practices dealing with investigative practices and strategies and the working group dealing with forensics.
Pakistan	From ICN’s work-products, the CCP has used the anti-cartel enforcement manual, in particular chapters 1 and 2.
Peru	<ul style="list-style-type: none"> • Searches, raids and inspections. • Leniency program. • Case initiation. • Interviewing techniques.
Poland	Digital Evidence Gathering Chapter is very useful and helpful to advance cartel program in Poland.

IV. USE OF ANTI-CARTEL ENFORCEMENT MANUAL TO ADVANCE CARTEL ENFORCEMENT PROGRAMS

<u>Competition Authority</u>	<u>Supplemental Excerpts</u>
Portugal	During the last decade the PCA has used ICN work products as training and benchmarking tools. In particular, the PCA has consulted the ICN Anti-Cartel Enforcement Manual when developing its enforcement program. For example, when devising search procedures, the PCA consulted Chapter One of the manual and adopted practices relating to organizing the search and seizing evidence. When developing its leniency program, the PCA adopted several features discussed in Chapter Two of the Manual, most notably, a marker system and the use of amnesty plus. Finally, staff members have also made use of the Interview Techniques chapter as a training tool.
Romania	<p>The anti-cartel enforcement manual, especially Chapter 1, Searches/Raids/Inspections was used by the working group within the Competition Council when drafting our internal manual regarding inspections.</p> <p>All ICN work products are used as research and in-house training materials by our staff and in several instances were very helpful during the course of investigations or within advocacy actions. Moreover, the ICN surveys provide us with excellent benchmarks in measuring our activity against our peers, and in identifying areas in need of improvement or international trends.</p>
Russia	Actually all of the Chapters were translated into Russian and passed to the FAS Anti-Cartel Department that took the recommendations and techniques described in the Manual into consideration and applied them to its practices at significant extent. Recommendations on interviewing techniques were also passed to the Department of Struggle with Economic Crime of Ministry of Internal Affairs that cooperates with FAS in investigating cartel cases.
South Africa	The ICN’s biggest contribution to cartel enforcement in South Africa is the CLP.
Spain	Best practices on dawn-raids and on interviewing have been particularly useful.
Sweden	ICN Cartel Working Group, Subgroup 2: Enforcement Techniques, Searches/Raids/Inspections The ‘Best practices’ has helped the SCA identify possible problems in advance and given practical advice on how to act in different scenarios.
Switzerland	The amendment of 2004 were highly influenced by ICN’s work.
Turkey	There have been significant changes on the TCA’s cartel enforcement program over past ten years and some is still to come. Within this progress, the TCA has had major gains from ICN’s written materials like enforcement manuals, reports also from workshops and ICN Conferences. In this respect, the TCA especially has benefited from “best practices” produced by ICN working groups while introducing a leniency program.
United States	The Anti-Cartel Enforcement Manual, which is available on the ICN website, is used as an available resource for Division attorneys. The Leniency chapter, by setting forth good practices in the design and implementation of leniency programs, has contributed to our ability to work effectively with other agencies on leniency issues.