



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

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

Serbia

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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

1. Information on the law relating to cartels

A. Law(s) covering cartels:	Law on Protection of Competition of the Republic of Serbia Website is under preparation at the time of completion of this template Law on General Administrative Procedure Misdemeanour Law
B. Implementing regulation(s) (if any):	None
C. Interpretative guideline(s) (if any):	None
D. Other relevant materials (if any):	None

2. Scope and nature of prohibition on cartels

A. Does your law or case law define the term	Our Law defines cartel as: Acts, the object or effect of which is or may be to considerably
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<p>“cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead.</p>	<p>prevent, restrict or distort competition on relevant market are agreements, contracts, single provisions of agreements, explicit or tacit agreements, concerted practices, decisions on the associations of undertakings (agreements).</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>None</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]</p>	<p>There is no any exceptions for hard core cartels The Commission may grant an exemption from prohibition to particular restrictive agreement or to the part of such agreement (hereinafter: individual exemption) in case such agreement or part of such agreement contribute to improvement of the production or distribution i.e. to promotion of technical or economic progress, while allowing consumers a fair share of resulting benefit, and which impose only such restrictions which are necessary for the attainment of these objectives, and do not afford the possibility of eliminating competition in respect of the substantial part of subject goods or services.</p> <p>The burden of proof concerning the existence of terms for individual exemptions contained in paragraph 1 of this Article shall be borne by applicant.</p> <p>The Government regulates in more details the content of notification for individual exemption.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>?</p>	<p>It is not explicitly stated that hard core cartels are illegal <i>per se</i>, but they are treated as such.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>Administrative offence</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels:</p>	<p>COMISSION FOR PROTECTION OF COMPETITION</p>
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¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

B. Contact details of the agency:	Setting up of the Commission is underway at the time of the completion of this template. Website is also under preparation at the time of the completion of this template.
C. Information point for potential complainants:	See 3/B
D. Contact point where complaints can be lodged:	See 3/B
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	In case of need, the assistance of the police can be requested for down raids

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

A. Name of the agency making decisions in cartel cases:	COMMISSION FOR PROTECTION OF COMPETITION Council of the Commission is a decision-making body responsible for making all decisions and other acts within the competency of the Commission.
B. Contact details of the agency:	See 3 /A and 3/B
C. Contact point for questions and consultations:	
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	An employee appointed by the Head of Service shall carry out inquiry within the time set in resolution on instituting proceedings and submit the report to Council. In carrying out enquiries an employee appointed by the Head of Service shall request documentation containing data which may contribute to solve the issue, conduct inspection and other necessary acts in order to establish legal grounds; in carrying out enquiries an employee is entitled to request statements from parties, witnesses and experts, and responsible persons or persons who were responsible previously, employees and previously employed persons of the undertaking against which the proceedings is conducted, as well as from all other persons disposing of the facts relevant to the procedure but it shall not be entitled to hold oral hearing.

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

	<p>Decisions made by the Commission (Council within the Commission) shall be final.</p> <p>An infringement procedure shall be performed before Magistrate under the request of the Commission - it has never happened yet).</p>
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	It does not belong under criminal proceedings!

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	Investigation are commenced on the basis of a complaint or ex officio.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	A specific form is not prescribed.
C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]	Any person may make a complaint or an informal complaint to the Authority.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]	<p>Yes.</p> <p>The President of Council is obliged to issue a resolution on initiation of proceedings upon request within the period of 8 days from the date of submission of request by the party.</p> <p>Within the period set in above para, the President of the Council shall make resolution on dismissal of request if the practice stated in the request is not the practice restricting, preventing or distorting competition</p>
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	See 5/D.
F. Is there a time limit	See 5/D.

<p>counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</p>	
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6. Leniency policy³

<p>A. What is the official name of your leniency policy (if any)?</p>	<p>Only one paragraph of the Law deals with leniency.</p> <p>An undertaking-party to the agreement, referred to in Article 7 paragraph 1 of the Law, as well as a responsible person of legal person, may be exempted from penalty, provided that it brings to the attention of the Commission the existence of such agreement and its participants prior to the making of the resolution on instituting the proceedings against the said undertaking.</p> <p>The Law does not provide for bylaws concerning this issue.</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>There are no any detailed rules for the leniency regime.</p>
<p>C. Who is eligible for full leniency?</p>	<p>See 6/ A</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>See 6/A</p>

³ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

E. Who can be a beneficiary of the leniency program (individual / businesses)?	See 6/A
F. What are the conditions of availability of full leniency:	See 6/A
G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):	See 6/A
H. Obligations for the beneficiary after the leniency application has been accepted:	See 6/A
I. Are there formal requirements to make a leniency application?	See 6/A
J. Are there distinct procedural steps within the leniency program?	See 6/A
K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?	See 6/A
L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?	See 6/A
M. Does your legislation have a marker system? If yes, please describe it.	See 6/A
N. Does the system provide for any extra credit⁴ for disclosing additional violations?	See 6/A

⁴ Also known as: “leniency plus”, “amnesty plus” or “immunity plus”. This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	See 6/A
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	See 6/A
Q. Contact point where a leniency application can be lodged:	See 6/A
R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?	See 6/A
S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?	See 6/A

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

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>Commission is authorized to request from the parties to the proceeding and any other undertakings to provide the Commission with the data necessary to define state of facts for particular case, including data relating to state, military, official or business secret. Collected data representing state, military, official or business secret cannot be made public or disclosed to third persons, unless a written approval has been obtained from the persons to whom the relevant data refer to.</p> <p>An employee appointed by the Head of Service shall carry out inquiry within the time set in resolution on instituting proceedings and submit the report to Council.</p> <p>In carrying out enquiries an employee appointed by the Head of Service shall request documentation containing data which may contribute to solve the issue, conduct inspection and other necessary acts in order to establish legal grounds; in carrying out enquiries an employee is entitled to request statements</p>
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⁵ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

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

	<p>from parties, witnesses and experts, and responsible persons or persons who were responsible previously, employees and previously employed persons of the undertaking against which the proceedings is conducted, as well as from all other persons disposing of the facts relevant to the procedure but it shall not be entitled to hold oral hearing.</p> <p>Such measures do not require a court warrant.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>If there is a reasonable doubt that party to the proceeding or any other parties involved hold documents or other instruments relevant to the establishment of material facts in the proceedings, the Commission may request the competent authority to issue a warrant ordering the search of business or any other premises of the party to the proceeding or any other parties involved and for temporary confiscation of documents and objects relevant to the establishment of material facts and the assistance of the police has to be requested.</p>
<p>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>The Law does not provide it explicitly but taking into consideration whole legal framework the post-search court warrant is needed.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>Authority does not have any experience concerning the question, due to the recente adoption of the new Law and fact that there were no any such cartel cases.</p>

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<p>When the proceedings before the Commission involves the parties with contrary interest, the Commission is obliged to provide the party against which the proceeding is conducted, with the request and resolution on the initiation of proceeding.</p> <p>The party is entitled to supply its own response to the request within the period set by Commission, which cannot be shorter than 8 days.</p> <p>One article of the Law is "Right to Access to Files and Disclosure of Information within the Procedure". The request for access to the file shall be submitted in writing or orally, and the record of it made. The party can request that the other interested persons may not be allowed to inspect certain notes on the cases or information contained in them, if such notes and information are considered to be state, military, official or</p>
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	<p>business secret. The President of the Council or the member appointed by him shall make resolution on the request or access or the request not to allow the access to the file.</p> <p>Resolution denying access to the file can also contain order to the party to prepare the documents without information considered as business secret, in order to make them accessible. Persons notifying Commission of the conduct preventing, restricting or distorting competition are entitled to information on the proceedings and have a right for access to file within the period of 15 days from the date of announcement of Decision of Commission on case the notification refers to.</p> <p>Finally, there is an oral hearing. The Council is obliged to hold the oral hearing in following cases:</p> <ol style="list-style-type: none"> 1) two or more parties of contrary interests are involved in case, 2) a witness or an expert are to be summoned to give their statements. <p>Commission may decide to hold oral hearing upon the request of the party or upon its own initiative in case when it deems useful for clearing of disputable facts. Oral hearing may be held when more than half of the members of Council are present.</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</p>	<p>See 7/A and 8/A</p> <p>There is no difference depending on the way of obtaining of information.</p>

9. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</p>	<p>A time limit set by the statute of limitations for infringements referred to</p> <ol style="list-style-type: none"> 1) concludes or applies agreement which is null and void (Article 7); 2) fails to act in accordance with the decision proclaiming the agreement null and void or abuse of dominant position (Articles 8 and 19); 3) abuses dominant position on relevant market (Article 18); 4) pursues the activities relating to the implementation of the concentration without authorization for concentration (Article 23); 5) pursues the activities relating to the implementation of the concentration pursuant to the authorisation for concentration issued on the basis of incorrect or untrue
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	<p>information i.e. deceit Article 29, para 1);</p> <p>6) fails to act in accordance with the decision referred to in Article 63, para 2;</p> <p>7) fails to act in accordance with the decision referred to in Article 68</p> <p>of the Law shall come into force upon the expiry of 5 years from the date the infringement was committed.</p> <p>A time limit set by the statute of limitations for infringements referred to 1) fails to notify agreement which may be exempted from prohibition (Article 15);</p> <p>2) fails to act in accordance with the request made by the Commission to submit to or inform the Commission of the requested data or provides incorrect, incomplete or false information (Article 55)</p> <p>of the Law shall come into force upon the expiry of 3 years from the date the infringement was committed.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>The Commission shall make a decision establishing violations referred to in Article 8, paragraph 1 and Article 19, paragraph 1 of this Law, when the agreement or some of its provisions considerably prevent, restrict or distort competition, or when dominant position is abused, as well as a decision on exemption from prohibition of the agreement referred to in Article 9, paragraph 1 of this Law, within the period not exceeding:</p> <p>1) four months following the day of the submission of request, in proceedings instituted at the request of the party,</p> <p>2) six months following the day of the resolution on institution of the proceedings conducted ex officio.</p> <p>The Commission is obliged to make decision upon to request for the authorisation of concentration within the period of four months following the day of submission of request.</p> <p>The Commission is obliged to make decision authorising concentration within the period of one month following the day of submission of request (summary procedure).</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</p>	<p>None</p>

10. Types of decisions

<p>A. Please list which types of decisions on the merits of the case can be made in cartel cases</p>	<p>If the Commission, ex officio or at the request of interested party establishes that the agreement, or some of its provisions considerably prevent, restrict or distort competition, it shall make a decision establishing violation from Article 7</p>
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<p>under the laws listed under Section 1.</p>	<p>paragraphs 1 and 2 of the Law. Decision shall contain measures obligatory for the parties to the agreement as well as the time limits for their fulfilment enabling the establishment of competition on relevant market and elimination of harmful consequences of the prohibited agreement.</p> <p>In case the undertaking fails to act pursuant to measures and time limits contained in decision, Commission is obliged to make a decision imposing on the relevant undertaking following administrative measures:</p> <ol style="list-style-type: none"> 1) temporary prohibition of trade of particular type of goods and/or services on relevant market, not exceeding the period of three months; 2) temporary prohibition of operations not exceeding the period of four months, if, in spite of prohibition referred to in item 1) of this Article, the undertaking continues with the trade of goods and/or services on relevant market. <p>The Commission shall submit to relevant infringement authority the request for initiation of infringement procedure against undertakings performing acts relating to prevention, restriction or distortion of competition.</p> <p>For the infringement referred to in Article 71 paragraph 1 of the Law, the following protective measures shall be applied to the undertaking concerned: confiscation of the subject matter involved and prohibition to perform certain economic activities.</p> <p>For the infringement referred to in Article 71 paragraph 1 of the Law, the following protective measure shall be applied to the responsible person of the legal person in question: prohibition to perform certain duties.</p>
<p>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</p>	<p>There is no difference in the Law between cartel and hard core cartel cases.</p>
<p>C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>Where there is a danger of significant restraint of competition or it is necessary for protection of interests of the parties to the proceedings, party to the proceeding and other parties involved are entitled to submit to Commission the proposal containing the establishment of interim measures.</p> <p>Pursuant to the proposal referred to in paragraph 1 of this Article, the Commission shall, on the basis of its decision, suspend all actions harmful to competition and impose measures to eliminate their harmful effects.</p> <p>Interim measures referred to in paragraph 2 of this Article may be in effect until the making of the final administrative act.</p>

⁷ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

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

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

A. Grounds for the imposition of procedural sanctions / fines:	For the infringement committed, the undertaking and the responsible person of the legal person shall be fined if it: 1) fails to notify agreement which may be exempted from prohibition (Article 15); 2) fails to act in accordance with the request made by the Commission to submit to or inform the Commission of the requested data or provides incorrect, incomplete or false information (Article 55).
B. Type and nature of the sanction (civil, administrative, criminal, combined):	administrative
C. On whom can procedural sanctions be imposed?	For the infringement committed, the undertaking and the responsible person of the legal person shall be fined.
D. Criteria for determining the sanction / fine:	Pursuant to the Misdemeanour Law criteria for determining the sanctions are the following: gravity and effects of infringement, circumstances in which the infringement has been committed, level of responsibility of offender, financial position of offender and his behaviour during the procedure.
E. Are there maximum and / or minimum sanctions / fines?	For the infringement committed, the undertaking shall be fined an amount from 1% to 3% of the total annual income realised in the precedent financial year. For the infringement committed, the responsible person of the legal person shall be fined an amount from 1% to 3% of the total annual income calculated pursuant to the regulations on income taxes of citizens for the precedent financial year.

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):	See 10/A If the agreement concluded or applied by the association of undertakings, shall cause considerable prevention, restriction or distortion of competition, total annual income realised in the
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⁹ In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

On whom can sanctions be imposed?	<p>precedent financial year of all undertakings members of association shall be taken into account when assessing the amount of fine to be imposed.</p> <p>The fines imposed on association of undertakings may be jointly and severely paid by the members of association in case the association is unable to effect payment or it does not possess its own capital.</p> <p>For the infringement referred to in paragraph 1 of this Article, the responsible person of legal person concerned shall be fined.</p>
B. Criteria for determining the sanction / fine:	The criteria for setting procedural sanctions (see 11/D) and sanctions in the merits are the same.
C. Are there maximum and / or minimum sanctions / fines?	<p>For the infringement committed, the undertaking shall be fined an amount from 1% to 10% of the total annual income realised in the precedent financial year.</p> <p>For the infringement committed, the responsible person of the legal person shall be fined an amount from 1% to 10% of the total annual income calculated pursuant to the regulations on income taxes of citizens for the precedent financial year.</p>
D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	None
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	A challenge to a decision imposing a sanction has a suspensory effect

13. Possibilities of appeal

A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	<p>Decisions made by the Commission shall be final.</p> <p>Against the final decision of the Commission, an administrative dispute may be initiated before the competent court. At present that Court is Supreme Court of Serbia.</p> <p>Question of law and breaches of procedural requirement can be grounds of appeal.</p>
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B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]	Suprime Court of Serbia
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