



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

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

UEMOA/WAEMU

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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.

THIS IS A TEMPLATE FOR THE UNION ECONOMIQUE ET MONÉTAIRE OUEST AFRICAINE (UEMOA – WEST AFRICAN ECONOMIC AND MONETARY UNION – WAEMU). THE MEMBER STATES OF THIS CO-OPERATION ARE, AND AS A CONSEQUENCE THE REPLIES COVER THE CARTEL REGIME OF: SENEGAL, IVORY COAST, BURKINA FASO, MALI, TOGO, BENIN, THE GUINEA-BISSAU AND NIGER.

1. Information on the law relating to cartels

A. Law(s) covering cartels:	The Community legislation on competition governs the fight against the cartels It is available on the site: http://www.uemoa.int/actes/index_dec_concurrence.htm Homepage : www.uemoa.int It is available in French language
B. Implementing regulation(s) (if any):	It is the WAEMU Commission that implements the community legislation Phone : (226) 50 31 88 73 à 76 Homepage : www.uemoa.int Adress : 380, rue Agostino Neto - 01 BP 543 Ouagadougou 01 - BURKINA FASO Language used: French

C. Interpretative guideline(s) (if any):	NA
D. Other relevant materials (if any):	NA

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>The word "cartel" is not used in the Community Legislation. But this latter talks about horizontal agreements or illegal agreements.</p> <p>Reference is on the Article 3 of the Act. n° 02/2002/CM/UEMOA of may 23, 2002.</p> <p>This low prohibits anti-competitive agreements, concerted practices, company association decisions.</p> <p>On this subject, the Community legislation on competition speaks "about horizontal agreements" and defines them as agreements concluded in the same level from production or distribution.</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>The Community legislation does not provide for any difference between very serious cartel behaviour and other types of cartels. It sanctions, in a non restrictive way, the agreements limiting the access to the market or the free exercise of competition, those which aim at fixing directly or indirectly the prices, those which distribute the markets or the sources of provisioning, those which limit or control the production or the outlets.</p> <p>It is certain that the collusive tenders fall under the blow from law.</p>
<p>C. Scope of the prohibition of hardcore cartels:</p>	<p>Based on the preceding paragraph in particular on the use of the terms "hardcore trusts", it is prohibited for the Member States of the UEMOA to take measures which would harm competition (Article 6 above mentioned "Reglement" n° 02). The companies in charge of the management of service of general economic interest or presenting the character of a tax monopoly can profit from exemptions (Article 6.2) In general, individual exemptions or exemption by categories can be granted in the cases of:</p> <ul style="list-style-type: none"> - agreements or categories of agreements, decisions or categories of decision of associations of companies, of concerted practice or category of concerted practices which contribute to the improvement of the production, of the distribution, with technical or economic progress <p>exemptions by category are given for :</p> <ul style="list-style-type: none"> - agreements of specialization, search and development

¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

	<p>technology transfer.</p> <p>Negative attestations can be delivered or granted ex officio or on request.</p>
D. Is participation in a hardcore cartel illegal <i>per se</i>?	<p>Concerning fight against the anti-competitive practices, in particular against the great trusts, there does not exist yet, in the UEMOA an established jurisprudence. But the participation in "hardcore trusts" should be prohibited <i>per se</i>. In the appendix n° 1 of the "Reglement" n° 03/2002/CM/UEMOA, a distinction between "vertical agreements" and "horizontal agreements" is made, the latter being regarded as more restrictive for competition. The Commission of the UEMOA strongly prohibits the vertical agreements comprising an absolute territorial protection and those aiming at the fixing of the resale price and will be more so when it comes to hardcore cartels.</p>
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	<p>According to Article 22.4 of the "Reglement" n° 03/2002/CM/UEMOA:</p> <ul style="list-style-type: none"> - the decisions taken by the Commission of the UEMOA are not criminal in nature, - case can be brought in front of the national jurisdictions of the Member States of the UEMOA to obtain compensation for damages.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	<p>It is the Commission of the UEMOA which is charged to carry out the surveys in the fight against the trusts. It can be assisted by the national competition authorities of the UEMOA Member States. The national competition authorities of the UEMOA Member States can take the initiative of such investigations by informing the Commission of the UEMOA. Only the Commission of the UEMOA can make decisions.</p>
B. Contact details of the agency:	<p>1. Commission of the UEMOA</p> <p>Address : 380, rue Agostino Neto - 01 BP 543 Ouagadougou 01 - BURKINA FASO</p> <p>Phone : (226) 50 31 88 73 76</p> <p>Fax : (226) 50 31 88 72</p> <p>E-mail : Commission@uemoa.int</p> <p>Website address : www.uemoa.int</p> <p>Languages available</p> <p>On the website : French</p> <p>2. National competition authorities of the UEMOA Member States.</p>
C. Information point for	<p>Commission of the UEMOA</p>

potential complainants:	<p>Address : 380, rue Agostino Neto - 01 BP 543 Ouagadougou 01 - BURKINA FASO</p> <p>Phone : (226) 50 31 88 73 76</p> <p>Fax : (226) 50 31 88 72</p> <p>E-mail : Commission@uemoa.int Website address : www.uemoa.int</p> <p>If the facts take place in one of the UEMOA Member States via the national competition authority.</p>
D. Contact point where complaints can be lodged:	See: 3/D
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	The agents of the UEMOA can be assisted by the relevant authorities of the Member States in which the investigations take place.

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

A. Name of the agency making decisions in cartel cases:	The Commission of the UEMOA has the capacities of investigations and decisions. If the survey is carried out by a national structure of competition, it submits the results to the Commission of the UEMOA.
B. Contact details of the agency:	See: 3/B
C. Contact point for questions and consultations:	See 3/B
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	See: 3/A and 4/A
E. What is the role of the investigating agency if cartel cases belong under criminal	NA

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

proceedings?	
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5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases:	The investigations into the trusts can be initiated ex officio, on request, for notification or on complaint.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	The complaint can be either verbal or written Some information are provider in the case of written request (name of complainant, subject of complaint...).
C. Legal requirements for lodging a complaint against a cartel:	Article 12 of the "Reglement" n° 03 which regulates the question says that a "complaint against an agreement, decision or practice can be submitted to the Commission by any person or entity".
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	The Community legislation on competition does not give precise information on this point, i.e. acting on complaint
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 counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	See: 5/D

6. Leniency policy³

A. What is the official name of your leniency policy (if	The UEMOA competition regime does not have a leniency policy.
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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.

any)?	
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	NA
C. Who is eligible for full leniency?	NA
D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation? In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?	NA
E. Who can be a beneficiary of the leniency program (individual / businesses)?	NA
F. What are the conditions of availability of full leniency:	NA
G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):	NA
H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]	NA
I. Are there formal requirements to make a leniency application?	NA
J. Are there distinct	NA

procedural steps within the leniency program?	
K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?	NA
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?	NA
M. Does your legislation have a marker system? If yes, please describe it.	NA
N. Does the system provide for any extra credit⁴ for disclosing additional violations?	NA
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	NA
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	NA
Q. Contact point where a leniency application can be lodged:	NA
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?	NA
S. Does your policy allow	NA

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.

for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?	
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7. Investigative powers of the enforcing institution(s)⁵

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>The Commission of the UEMOA designates agents who duly sworn and who have the capacity to collect and check all the information they believe useful and necessary for the investigation, in particular they are entitled to:</p> <ul style="list-style-type: none"> - control the professional books and other documents, - take copy or extracted the professional books and documents (the Commission can take possession of these documents for a period of maximum ten days), - ask oral explanations on the spot, - reach all buildings, grounds and means of transport of the companies. <p>The designated agents act on the basis of a written mandate "delivered by the proper authority of the Member State on the territory of which the checking must be carried out".</p>
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	The Community legislation does not contain these investigatory tools.
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)?	Information (evidence) can be used only with an aim for which those were obtained.
D. Have there been significant legal challenges to your use of investigative measures authorized by the	NA

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.

courts? If yes, please briefly describe them.	
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8. Procedural rights of businesses / individuals

A. Key rights of defence in cartel cases:	<p>The rights of defence are respected in the case of a contradictory procedure as it follows:</p> <ul style="list-style-type: none"> - written communication of the objections raised against the companies which, within the time limit, may take their written answers, - parties can be heard (they may take their oral observations), - the parties can be assisted by legal advisor, - in its decisions the Commission may address only objections on the subject of which the parties had the occasion to make known their position (Article 16 and following "Reglement" n° 03/2002/CM/UEMOA).
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>As a general rule: "it is held account of the legitimate interest of the companies so that their secrecies of businesses and another confidential information are not revealed" (article 17.6 D, 30 of the above mentioned "Reglement")</p>

9. Limitation periods and deadlines

A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?	<p>The terms of limitation are:</p> <ul style="list-style-type: none"> - five years for the adoption of sanction, - five years for the execution of the decisions pronouncing of the sanctions.
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?	NA

<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>NA</p>
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10. Types of decisions

<p>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</p>	<p>The Commission of the UEMOA can force the violators to put an end of the noted infringement.</p> <p>The Commission can impose a fine or pronounce obligations</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>See: 10/A</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>As soon as it is informed of an infringement, the Commission can force the parties to that conduct to put an end of their practice. In the same way provisional measures can be taken when "the denounced practice conflicts seriously, irrevocable and immediate with the economy as a whole or that of the interested sector, or with the interest of the consumers or competitors"</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:	The base of the sanctions is determined by the Community legislation on competition (Article 22 and following "Reglement" n° 03/2002/CM/UEMOA).
B. Type and nature of the sanction (civil, administrative, criminal, combined):	The sanctions have an administrative nature
C. On whom can procedural sanctions be imposed?	The sanctions are imposed on the companies and associations of companies.
D. Criteria for determining the sanction / fine:	
E. Are there maximum and / or minimum sanctions / fines?	The law fixes fines of a maximum amount of 500.000 F CFA

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be imposed?	The sanction is of administrative or civil nature. The sanction is inflicted on the companies and associations of companies.
B. Criteria for determining the sanction / fine:	To determine the amount of the fine, the gravity and the duration of the infringement are taken into account.
C. Are there maximum and / or minimum sanctions / fines?	The sanction minimum: 500.000 F CFA, the maximum sanction: 100.000.000 F CFA, this latter can be brought up to 10% of the sales turnover carried out during the preceding accounting period by each company having taken part in the infringement or 10% of the credits of these companies.
D. Guideline(s) on calculation of fines: [name and reference]	NA

⁹ In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

<p>number, availability (homepage address) and indication of the languages in which these materials are available]</p>	
<p>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	<p>The recourse bring against the decisions of the Commission of the UEMOA does not have a suspensory effect (Article 18 of the additional protocol n° 1 relating to the bodies of control of the UEMOA).</p> <p>The same Article says: "the Court of Justice can order to the stay of execution of the acts disputed in front of it" the applicant must justify urgency to take such a measure and to present its means in fact and right.</p>

13. Possibilities of appeal

<p>A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>The appeal is possible against the decisions returned by the Commission of the UEMOA in the form as well as in the content.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</p>	<p>The challenge is to be addressed to the Court of Justice of the UEMOA.</p>