



International
Competition
Network

CHARTS SUMMARISING
INFORMATION SHARING
MECHANISMS

CARTEL WORKING GROUP
Subgroup 2: Enforcement Techniques

Australia
July 2012

QUESTION		
MECHANISMS FOR INFORMATION SHARING		
1	Details of the relevant point of contact at your agency for information requests	
a)	Position	Director International Unit (currently Mr. Tim Lear)
b)	Branch or office	International Unit, Intelligence, Infocentre and Policy Liaison Branch, ACCC, Canberra Office
c)	E-mail address (please include a general e-mail address for a group inbox, if possible)	international@acc.gov.au
d)	Telephone number (please include a general branch or office telephone number, if possible)	(61) 2 6243 1251
2	What formal and informal mechanisms does your agency make available to alert other competition agencies to matters currently being investigated by your agency? (Please put a cross next to all those that apply)	
a)	Markets or conduct that the agency has identified as investigative priorities are listed on the official agency website	
b)	Obligations under bilateral competition agreements to notify agencies in jurisdictions that may be affected by the investigation	X
c)	Obligations under multilateral cooperation agreements	X
d)	Public announcement of cartel investigations on agency website	X (Media releases)
e)	Formal/informal internal obligations	X (If the ACCC has a relationship with an agency that it considers may be interested in a particular investigation or there may be an opportunity to cooperate on an investigation, the ACCC may discuss agency internal information relating to the case with that agency.)

f)	Other (please specify)	X (Informal request process)
g)	None	
3	Do you currently have any cooperation agreements relating to information sharing (bilateral and/or multilateral)? Y/N	Y
4	If you answered Y to Question 3 above, please indicate the scope of the cooperation agreement. (Please put a cross next to all those that apply)	
a)	Provides for a specific section on information exchanges	X
b)	Provides for a general section on cooperation in enforcement	X
c)	Other (please specify)	Notification, avoidance of conflicts, meetings, confidentiality, contacts.
5	Has your agency established any other cooperation agreements? Y/N	Y
6	Has your agency tried to establish a cooperation agreement with another agency and been unsuccessful? Y/N	N
7	Does your agency publish information about its past cartel investigations? Y/N. If Y, where?	Y (where enforcement action has been taken)
a)	Website	X
b)	Annual reports and/or other reports	X
c)	Other (please specify)	
8	Which of the following types of anti-cartel enforcement regimes does your agency operate? (Please put a cross next to the most appropriate answer)	
a)	Criminal	

b)	Civil/Administrative	
c)	Hybrid	X
9	Do your answers vary depending on the anti-cartel enforcement regime in which you operate and the anti-cartel enforcement regime of the agency with which you are cooperating/sharing information? Y/N. If Y, please provide a brief explanation.	N
10	Does your agency have a leniency policy? Y/N	<p>The ACCC has an immunity policy and an enforcement cooperation policy. These are available from the ACCC website: www.accc.gov.au Immunity Policy: http://www.accc.gov.au/content/index.phtml/itemId/879795</p> <p>Cooperation Policy for Enforcement Matters: http://www.accc.gov.au/content/index.phtml/itemId/459482</p> <p>Competition and Consumer Act 2010: http://www.comlaw.gov.au/Details/C2011C00894.</p>
11	Does your agency have a marker system? Y/N	Y
12	Are applicants required to provide a waiver? Y/N	N - but sought as a matter of course.
a)	If N, does your agency seek waivers (either general or specific) from leniency applicants to allow nominated agencies to share information contained in leniency applications? Y/N	Y
13	Does your agency have experience in requesting/sharing information with a foreign competition agency? Y/N	Y

14	<p>During the last 3 years, has your agency provided information to or requested information from another agency in relation to a cartel case using an <u>informal</u> cooperation mechanism? Y/N</p> <p>If Y, the type of information requested and/or shared was:</p>	Y
a)	Product and market information	X
b)	Agency internal information	X
c)	Confidential information	X - confidential ACCC information and information of others, ordinarily by consent.
d)	Case specific information	X
15	<p>Does your agency have formal powers to obtain evidence in relation to a cartel case on behalf of a foreign agency? Y/N</p> <p>If Y, which of the following is the legal basis for obtaining such evidence:</p>	Y
a)	Mutual Legal Assistance Treaty (MLAT) – bilateral	X
b)	MLAT – multilateral	X
c)	Cooperation Arrangement	N
d)	Other (please specify)	The ACCC may receive information on behalf of the New Zealand Commerce Commission (see section 155B of the Competition and Consumer Act 2010).
16	<p>If you have provided information in relation to a cartel investigation to foreign competition agencies, have you received any feedback from that agency regarding the utility of the information? Y/N</p>	Y
17	<p>For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been:</p>	
a)	Information cooperation	

b)	Formal cooperation	
c)	Both	X
d)	Neither	
e)	Not applicable	
18	Has your agency taken any steps to improve or increase the sharing of information in relation to cartel investigations with other agencies in the last 3 years? Y/N	Y
TERMS AND CONDITIONS UNDER WHICH INFORMATION IS PROVIDED TO FOREIGN COMPETITION AGENCIES		
19	Publicly available information	
a)	Upon formal request	X
b)	Upon informal request	X
c)	Available through the competition agency website and/or other publications	X
d)	Other (please specify)	
20	Agency internal information	
a)	Upon formal request	X
b)	Upon informal request	X
c)	Upon grant of judicial or administrative authorization (please specify)	X - if required by a court
d)	Under an international agency-to-agency cooperation agreement	X - please see http://www.accc.gov.au/content/index.phtml/itemId/564911
e)	Other (please specify)	
21	Information covered by professional secrecy	
a)	Under no conditions	
b)	If a confidentiality waiver is granted by the parties under investigation	
c)	If a waiver is granted by the party, the agency will evaluate the risks and benefits of sharing the information	X

d)	Upon grant of judicial or administrative authorization	X
e)	Under an international agency-to-agency cooperation agreement	X
f)	Other (please specify)	
22	Confidential information	
a)	Under no conditions	
b)	If a confidentiality waiver is granted by the parties under investigation	
c)	If a waiver is granted by the party, the agency will evaluate the risks and benefits of sharing the information	X
d)	Upon grant of judicial or administrative authorization	X
e)	Under an international agency-to-agency cooperation agreement	X
f)	Only at certain stages of the investigative process (please specify)	
g)	Other (please specify)	
20	Investigation stage at which publicly available information can be shared	
a)	Pre-investigation	X
b)	Investigation	X
c)	When the investigation is completed	X
d)	When no investigation is conducted	X
e)	During litigation	X
21	Are the following types of information generally treated by the jurisdiction as: (i) publicly available; (ii) agency internal information; (iii) information covered by professional secrecy; (iv) privileged information; or (v) confidential? (Please select the most appropriate answer)	
a)	Factual information (e.g. evidence obtained by the agency during an	(v)

	investigation)	
b)	Information provided voluntarily	(v)
c)	Investigative methodology (without indication of parties under investigation)	(ii)
d)	Results of market studies into markets where cartel behaviour is suspected	(ii)
e)	Legal information	(iv)
f)	Information on sanctions	(i)
g)	Information on the timing of a case	(i) or (ii), depending on the circumstances
h)	Other (please specify)	
22	In the absence of an information sharing agreement or formal information sharing powers, your agency is likely to respond to an information sharing request in the following manner: (please put a cross next to all those that apply)	
a)	Will not share information except that which is open to the public	
b)	May share information provided that certain conditions are met	X
23	If you put a cross next to Question 22(b) above, which of the following conditions (if any) must a foreign agency requesting information meet before your agency will share confidential or agency internal information? (please put a cross next to all those that apply)	
a)	Keep the information confidential	
b)	Keep the information confidential unless subject to a court order	X
c)	Use best endeavours to keep the information confidential	X
d)	Use the information only for its originally intended purpose	X
e)	Other (please specify)	
24	If another agency provides your agency with information on a confidential basis, will it be treated as confidential, subject to the	Y

	relevant laws of the recipient agency's jurisdiction? Y/N	
25	Is there any law or situation that may require information received from another agency to be divulged? Y/N. If Y, please specify.	Y - if the ACCC is involved in court proceedings, other parties may request access to protected cartel information under provisions of the Competition and Consumer Act 2010, however the ACCC will make every effort to keep information protected. The ACCC will only disclose protected cartel information if compelled to do so by a court.
26	If your agency maintains the relevant statistics, please assess the average time required for your agency to:	
a)	Assess the possibility of responding to the information request	For minor information, 2 days. For important information: 2 weeks
b)	Respond to the information request	For minor information: 2 weeks. For major information: this will depend on the circumstances
c)	The timing required to process information requests from foreign agencies is not tracked	
NATURE OF INFORMATION REQUESTED		
27	Please rank in order of importance to your agency (rank 1 being the highest and 8 the lowest) the following types of information about current/completed cartel investigations that may be requested from foreign agencies.	
a)	Factual information (e.g. evidence obtained by the agency during an investigation)	
b)	Information provided voluntarily	
c)	Investigative methodology (without indication of parties under	

	investigation)	
d)	Results of market studies into markets where cartel behaviour is suspected	
e)	Legal information	
f)	Information on sanctions	
g)	Information on the timing of a case	
h)	Other (please specify)	
28	On average, how many times per year does your agency: (please provide NA answer if you have difficulties with assessing frequency of sharing/receiving information from foreign agencies as described below)	
a)	Request confidential information in relation to cartel investigations	
b)	Provide confidential information in relation to cartel investigations	
c)	Request publicly available information or internal agency information	
d)	Provide publicly	
29	Does your agency have formal information sharing powers? Y/N	Y
30	Are you aware of any imminent legislation or policy changes regarding information sharing in your jurisdiction? Y/N. If Y, please provide a brief explanation and/or a link to further information.	N
REGIONAL COOPERATION NETWORKS		
31	Is your agency part of a regional competition network? Y/N. If Y, please list.	Not a formal network - only informal arrangements such as the recently established Australian New Zealand Singapore Sharing Arrangement, for sharing general information in relation to cartel matters and agency developments.
32	Are there types of information that your agency can share with other	N

	members of the regional competition network, which would not be able to be shared in the absence of the network? Y/N. If Y, please provide a brief explanation.	
33	Are there types of information that your agency can share in the absence of the network? Y/N. If Y, please list.	Y, all information that could be provided to other agencies via an informal information request.