



International
Competition
Network

CHARTS SUMMARISING
INFORMATION SHARING
MECHANISMS

CARTEL WORKING GROUP
Subgroup 2: Enforcement Techniques

Brazil
July 2012

QUESTION		Administrative Council of Economic Defense (CADE)
1	Mechanisms for information sharing: Details of the relevant point of contact at your agency for information requests	
1.a)	Position	International Unit
1.b)	Branch or office	Administrative Council of Economic Defense (CADE)
1.c)	e-mail address (please include a general email address for a group inbox if possible)	international@cade.gov.br
1.d)	Telephone number (please include a general branch or office telephone number if possible)	+55 61 3221 8425
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.)	
2.a)	Markets or conduct that the agency has identified as investigation priorities are listed on the official agency website	Cartel is identified as priority, but no markets are specified
2.b)	Obligations under bi-lateral competition agreements to notify agencies in jurisdictions that may be affected by the investigation	x
2.c)	Obligations under multi-lateral cooperation agreements	x
2.d)	Public announcement of cartel investigations on agency website	x
2.e)	Formal/informal internal obligations	
2.f)	Other (please specify)	Informal communications via phone calls and e-mails.
2.g)	None	
3	Do you currently have any cooperation agreements relating to information sharing (bilateral and/or multilateral) [Y/N]	yes
4	If you answered Y to Question 3 above, please indicate the scope of the cooperation agreement below (Please put a cross next to all those that apply.)	
4.a)	Provides for a specific section on information exchanges	x
4.b)	Provides for a general section on cooperation in enforcement	x
4.c)	Other (please specify)	
5	Has your agency established any other cooperation agreements? [Y/N]	yes
6	Has your agency tried to establish a cooperation agreement with another agency and been unsuccessful? [Y/N]	no
7	Does your agency publish information about its past cartel investigations?[Y/N] If YES where?:-	Yes.
7.a)	Website	x
7.b)	Annual reports and/or other reports	x
7.c)	Other (please specify).	Brochures
8	Which of the following types of cartel enforcement regimes does your agency operate? (Please put a cross next to the most appropriate answer)	
8.a)	Criminal	
8.b)	Civil/administrative	x
8.c)	Hybrid	

9	Do your answers vary depending on the cartel enforcement regime in which you operate and the cartel enforcement regime of the agency with which you are cooperating/sharing information? [Y/N] If Y, Please provide a brief explanation.	yes - information exchanged with criminal inforcement regimes is more restricted.
10	Does your agency have a leniency policy? [Y/N]	yes
10.a)	Does your agency encourage leniency applicants to seek leniency in other jurisdictions affected by the conduct? [Y/N] If Y, please explain.	no
11	Does your agency have a marker system? [Y/N]	yes
12	Are applicants required to provide a waiver? [Y/N]	no
12.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]	yes
13	Does your agency have experience in requesting/sharing information with a foreign competition authority? [Y/N]	yes
13.a)	If you answered Y to Question 13 above, was your overall experience of the information sharing mechanisms available to your agency positive? [Y/N/NA]	yes
14	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 cooperation mechanism</u> ? [Y/N] If Y, the <u>type of information requested and/or shared</u> was:	yes
14.a)	Product and market information	x
14.b)	Agency internal information	x
14.c)	Confidential information	
14.d)	Case-specific information	x
15	Does your agency have formal powers to obtain evidence in relation to a cartel case on behalf of foreign agency [Y/N]? If Y, which of the following is the legal basis for obtaining such evidence:	yes (request via central authority)
15.a)	Mutual Legal Assistance Treaty (MLAT) – bilateral	x
15.b)	MLAT – multilateral	x
15.c)	Cooperation Arrangement	x
15.d)	Other (please specify)	letters rogatory
16	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]	yes
17	For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been:	
17.a)	Informal cooperation	
17.b)	Formal cooperation	
17.c)	Both	x
17.d)	Neither	
17.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]	yes

19	Terms and conditions under which information is provided to foreign competition authorities	
19.a)	Publically available information:	
19.a)(i)	Upon formal request	x
19.a)(ii)	Upon informal request	x
19.a)(iii)	Available through the competition agency website and/or other publications	x
19.a)(iv)	Other (Please specify.)	
19.b)	Agency internal information:	
19.b)(i)	Upon formal request	x
19.b)(ii)	Upon informal request	x
19.b)(iii)	Upon grant of judicial or administrative authorisation (different from the competition agency) (Please specify.)	x (judicial authorization)
19.b)(iv)	Under an international agency-to-agency cooperation agreement (see references to the agreement, where available)	x
19.b)(v)	Other (Please specify)	
19.c)	Information covered by professional secrecy:	
19.c)(i)	Under no conditions	
19.c)(ii)	If confidentiality waiver is granted by the parties under investigation	x
19.c)(iii)	If waiver is granted by the party, the agency will evaluate the risks and benefits of	x
19.c)(iv)	If a judicial or administrative authorization is granted	x
19.c)(v)	Under an international agency-to-agency cooperation agreement. (See references to the	
19.c)(vi)	Other (please specify)	
19.d)	Confidential information can be shared:	
19.d)(i)	Under no conditions	
19.d)(ii)	If confidentiality waiver is granted by the parties under investigation	x
19.d)(iii)	If waiver is granted by the party, the agency will evaluate the risks and benefits of sharing the information	x
19.d)(iv)	If a judicial or administrative authorization is granted	x
19.d)(v)	Under an international agency-to-agency cooperation agreement. (See references to the agreement when available)	
19.d)(vi)	Only at certain stages of the investigation process (pre-investigation, during investigation, after completion of investigation, when no investigation is conducted,	
19.d)(vii)	Other (please specify)	
20	Investigation stage at which publically available information can be shared	
20.a)	Pre-investigation	x
20.b)	Investigation	x
20.c)	When the investigation is completed	x
20.d)	When no investigation is conducted	x
20.e)	During litigation	x
21	Are the following types of information generally treated by the jurisdiction as:	

	(i) publically available; (ii) agency internal information; (iii) information covered by professional secrecy; (iv) privileged information; or (v) confidential? (Please select the most appropriate answer)	
21.a)	Factual information (e.g. evidence obtained by the national competition authority in the course of investigation)	i or v (depending on the type of the information)
21.b)	Information provided voluntarily to foreign competition authority by a party under investigation and/or a leniency applicant	i or v (depending on the type of information and reciprocity)
21.c)	Methodology of anti-cartel investigations (without indication of particular parties involved) – i.e. foreign “know-how” of the cartel investigations	ii
21.d)	Results of market studies conducted by the foreign competition authority into markets where cartel violations are suspected	i or v
21.e)	Legal information	i
21.f)	Information on sanctions	i (once sanction is applied)
21.g)	Information on timing of the case	ii
21.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 your choice of answer.)	
22.a)	Will not share information except that which is open to the public	
22.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 that apply.)	
23.a)	Keep the information provided confidential	x
23.b)	Keep the information provided confidential unless subject to a court order	
23.c)	Use best endeavours to keep the information confidential	x
23.d)	Use this information only for the originally intended purpose	x
23.e)	Other (please specify)	reciprocity
24	If another agency provides your agency with information on a confidential basis, will it be treated as confidential, subject to the relevant laws of the recipient agency's jurisdiction (such as freedom of information laws)? [Y/N]	yes
25	Is there any law or situation that may require information received from another agency to be divulged? [Y/N] If Y, please specify.	no
26	If your agency maintains the relevant statistics, please assess what is the average time required for the agency to:	
26.a)	Assess the possibility of responding to the information request	na
26.b)	Respond to the information request NOTE: If your agency does not record the timing required to process information requests from foreign agencies, please indicate NA for in response to Questions 24. a) and 24. b).	na
27	Nature of information requested	

	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. (We note that the order of these items may change on a case by case basis. If this is the case for your agency, please indicate this. If you believe that different types of the information below may have equal importance for your agency please assign them the same rank.)	
27.a)	Factual information, e.g. evidence obtained by the national competition authority in the course of investigation	1
27.b)	Information provided voluntarily by a party under investigation/leniency applicant to foreign competition authority	3
27.c)	Methodology of anti-cartel investigations (without indication of particular parties involved) – foreign “know-how” in relation to cartel investigations.	4
27.d)	Results of a foreign authority’s market studies into markets potentially affected by cartelisation	2
27.e)	General legal information	8
27.f)	General information on sanctions	3
27.g)	Information on timing of the case	4
27.h)	Other (please specify)	name and location of investigated people - 1
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):	
28.a)	Request confidential information in relation to cartel investigations?	na
28.b)	Provide confidential information in relation to cartel investigations?	na
28.c)	Request publically available information or internal agency information?	na
28.d)	Provide publically available information or internal agency information?	na
29	Does your agency have formal information sharing powers? [Y/N]	no
30	Are you aware of any imminent legislation or policy changes regarding information sharing in your jurisdiction? [Y/N] If Y, please provide a very brief description or a link to further information if possible.	Yes. Law 12,527/2011, which will enter into force in May, establishes time limits for confidential treatment of information by the government. There are different limits for different categories of information.
31	Competition agencies often exchange information through regional competition networks such as the European Competition Network (ECN).	
31.a)	Is your agency part of a regional competition network? [Y/N] If Y, please list.	Mercosul not regional - Brics.
31.b)	Are there types of information that your agency can share with other 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 description.	no
31.c)	Are there types of information that your agency can share in the absence of the network? [Y/N] If Y, please list.	Yes. Investigated markets and companies; markets studies; general legal information