



International  
Competition  
Network

# CHARTS SUMMARISING INFORMATION SHARING MECHANISMS

CARTEL WORKING GROUP  
Subgroup 2: Enforcement Techniques

European Union  
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QUESTION	EUROPEAN COMMISSION
<p><b>GENERAL COMMENT: THERE ARE NO DEFINITIONS OF THE DIFFERENT NOTIONS USED IN THE QUESTIONNAIRE, WHICH MAKES IT SOMETIMES DIFFICULT TO PROVIDE CLEAR ANSWERS. THEREFORE WHENEVER RELEVANT IN REPLYING TO THE QUESTIONS WE HAVE MADE A DIFFERENTIATION BETWEEN TWO SITUATIONS WHICH DEMAND DIFFERENT APPROACHES, NAMELY WHETHER THE CASE HAS BEEN INITIATED EX OFFICIO OR FOLLOWING A LENIENCY APPLICATION. INFORMATION THAT COULD BE EXCHANGED IN THE FRAMEWORK OF THE EUROPEAN COMPETITION NETWORK (ECN) IS DEALT WITH IN QUESTION 31 a)</b></p>	
<p><b>1</b> <b>Mechanisms for information sharing:</b> <b>Details of the relevant point of contact at your agency for information requests</b></p>	<p>Depending on the circumstances - from case manager upwards. There is no pre-established central contact. For the purposes of this questionnaire, we consider it appropriate to give the contact details of the Cartels Director's secretariat, which will identify the relevant person within our organisation.</p>
<p>1.a) Position</p>	<p>Cartel's Director - Eric Van Ginderachter Head of Unit in charge - Kris Dekeyser</p>
<p>1.b) Branch or office</p>	
<p>1.c) e-mail address (please include a general email address for a group inbox if possible)</p>	<p><a href="mailto:COMP-ICN-CARTELS@ec.europa.eu">COMP-ICN-CARTELS@ec.europa.eu</a></p>
<p>1.d) Telephone number (please include a general branch or office telephone number if possible)</p>	<p>(00) 3222954427</p>
<p><b>2</b> <b>What formal and informal mechanisms does your agency make available to alert other competition agencies to matters currently being investigated by your agency?</b> (Please put a cross next to all those that apply.)</p>	
<p>2.a) Markets or conduct that the agency has identified as investigation priorities are listed on the official agency website</p>	
<p>2.b) Obligations under bi-lateral competition agreements to notify agencies in jurisdictions that may be affected by the investigation</p>	<p>Yes, only after the initiation of proceedings - (statement of objections)</p>
<p>2.c) Obligations under multi-lateral cooperation agreements</p>	<p>Yes, but only in the framework of European Competition Network (ECN)</p>
<p>2.d) Public announcement of cartel investigations on agency website</p>	<p>Yes, but only after initiation of proceedings. Before the opening of proceedings, if requested by a third party, the Commission may also confirm on its website the taking place of inspections.</p>
<p>2.e) Formal/informal internal obligations</p>	
<p>2.f) Other (please specify)</p>	
<p>2.g) None</p>	
<p><b>3</b> <b>Do you currently have any cooperation agreements relating to information sharing (bilateral and/or multilateral) [Y/N]</b></p>	<p>Yes</p>
<p><b>4</b> <b>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.)</b></p>	
<p>4.a) Provides for a specific section on information exchanges</p>	<p>Yes, the ECN. Bilateral agreements with Korea, US, Canada, Japan provide for specific provision on sharing of non-confidential information only.</p>
<p>4.b) Provides for a general section on cooperation in enforcement</p>	<p>Yes, in the framework of bi-lateral agreements</p>

4.c)	Other (please specify)	
5	Has your agency established any other cooperation agreements? [Y/N]	No
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	Yes
7.b)	Annual reports and/or other reports	Yes
7.c)	Other (please specify).	Yes, certain information in Official Journal of the European Union
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.	Within the ECN, national competition authorities can carry out inspections upon request of the European Commission or on behalf of another national authority and assist the EC with its inspections. Informal discussions take place with foreign agencies in order to prepare inspections together. These discussions concern the timing and scope of the inspections (target, product, geographic area). In leniency cases, exchanging information before dawn-raids takes place only if a waiver has been given by the leniency applicant.
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</u> cooperation mechanism? [Y/N] If Y, the type of information requested and/or shared was:	Yes in ex officio cases - European Commission would discuss in general terms the scope of the product and the market; never in investigations triggered by leniency.
14.a)	Product and market information	
14.b)	Agency internal information	
14.c)	Confidential information	
14.d)	Case-specific information	
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, only in the framework of the ECN
15.a)	Mutual Legal Assistance Treaty (MLAT) – bilateral	

15.b)	MLAT – multilateral	
15.c)	Cooperation Arrangement	
15.d)	Other (please specify)	In the framework of the ECN on the basis of a Council Regulation
16	<b>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]</b>	Yes in ex officio cases; In the framework in leniency investigations, this question is n/a.
17	<b>For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been:</b>	
17.a)	Informal cooperation	
17.b)	Formal cooperation	
17.c)	Both	X
17.d)	Neither	
17.e)	Not applicable	
18	<b>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]</b>	Yes in the framework of ex-officio cases
19	<b>Terms and conditions under which information is provided to foreign competition authorities</b>	In EC, 'information covered by professional secrecy' covers 'agency internal information', 'confidential information' and 'information with other public authorities'. Therefore, we will only deal with 19.c)
19.a)	<b>Publicly available information:</b>	Yes
19.a)(i)	Upon formal request	Yes
19.a)(ii)	Upon informal request	Yes
19.a)(iii)	Available through the competition agency website and/or other publications	Yes
19.a)(iv)	Other (Please specify.)	
19.b)	<b>Agency internal information:</b>	To the extent that agency information means information about an investigation but NOT including information gathered through investigations
19.b)(i)	Upon formal request	YES
19.b)(ii)	Upon informal request	YES
19.b)(iii)	Upon grant of judicial or administrative authorisation (different from the competition agency) (Please specify.)	NA
19.b)(iv)	Under an international agency-to-agency cooperation agreement (see references to the agreement, where available)	
19.b)(v)	Other (Please specify)	
19.c)	<b>Information covered by professional secrecy:</b>	
19.c)(i)	Under no conditions	Yes (foreign agencies outside the ECN)
19.c)(ii)	If confidentiality waiver is granted by the parties under investigation	Yes
19.c)(iii)	If waiver is granted by the party, the agency will evaluate the risks and benefits of	
19.c)(iv)	If a judicial or administrative authorization is granted	NA
19.c)(v)	Under an international agency-to-agency cooperation agreement. (See references to the	Yes, in the framework of ECN
19.c)(vi)	Other (please specify)	
19.d)	<b>Confidential information can be shared:</b>	
19.d)(i)	Under no conditions	
19.d)(ii)	If confidentiality waiver is granted by the parties under investigation	

19.d)(iii)	If waiver is granted by the party, the agency will evaluate the risks and benefits of sharing the information	
19.d)(iv)	If a judicial or administrative authorization is granted	
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)	
<b>20</b>	<b>Investigation stage at which publically available information can be shared</b>	
20.a)	Pre-investigation	X
20.b)	Investigation	X
20.c)	When the investigation is completed	N/A
20.d)	When no investigation is conducted	X
20.e)	During litigation	X
<b>21</b>	<b>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)</b>	Any information in the public domain is considered publicly available. All other types of information are considered as covered by professional secrecy.
21.a)	Factual information (e.g. evidence obtained by the national competition authority in the course of investigation)	
21.b)	Information provided voluntarily to foreign competition authority by a party under investigation and/or a leniency applicant	
21.c)	Methodology of anti-cartel investigations (without indication of particular parties involved) – i.e. foreign “know-how” of the cartel investigations	
21.d)	Results of market studies conducted by the foreign competition authority into markets where cartel violations are suspected	N/A
21.e)	Legal information	
21.f)	Information on sanctions	
21.g)	Information on timing of the case	
21.h)	Other (please specify)	
<b>22</b>	<b>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.)</b>	Any information in the public domain can be exchanged.  In 'leniency investigations': EC will not share information received from the applicant unless in possession of a waiver.  In 'ex-officio' investigations, EC will discuss in general terms, the market, the product and scope of the case.  In both cases, general discussion about the theories of harm and the timing of the case can take place
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	

23	<b>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.)</b>	
23.a)	Keep the information provided confidential	
23.b)	Keep the information provided confidential unless subject to a court order	
23.c)	Use best endeavours to keep the information confidential	
23.d)	Use this information only for the originally intended purpose	
23.e)	Other (please specify)	
24	<b>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]</b>	Yes
25	<b>Is there any law or situation that may require information received from another agency to be divulged? [Y/N] If Y, please specify.</b>	
26	<b>If your agency maintains the relevant statistics, please assess what is the average time required for the agency to:</b>	
26.a)	Assess the possibility of responding to the information request	
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).	
27	<b>Nature of information requested</b> <b>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.)</b>	Any information in the public domain can be exchanged.  In 'leniency investigations': EC will not share information received from the applicant unless in possession of a waiver.  In 'ex-officio' investigations, EC will discuss in general terms, the market, the product and scope of the case.  In both cases, general discussion about the theories of harm and the timing of the case can take place
27.a)	Factual information, e.g. evidence obtained by the national competition authority in the course of investigation	
27.b)	Information provided voluntarily by a party under investigation/leniency applicant to foreign competition authority	
27.c)	Methodology of anti-cartel investigations (without indication of particular parties involved) – foreign "know-how" in relation to cartel investigations.	
27.d)	Results of a foreign authority's market studies into markets potentially affected by cartelisation	
27.e)	General legal information	
27.f)	General information on sanctions	
27.g)	Information on timing of the case	
27.h)	Other (please specify)	

28	<b>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):</b>	N/A
28.a)	Request confidential information in relation to cartel investigations?	N/A
28.b)	Provide confidential information in relation to cartel investigations?	N/A
28.c)	Request publically available information or internal agency information?	N/A
28.d)	Provide publically available information or internal agency information?	N/A
29	<b>Does your agency have formal information sharing powers? [Y/N]</b>	
30	<b>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.</b>	draft agreement with Switzerland ("second generation agreement" foreseeing i.a. sharing of confidential information under specific conditions)
31	<b>Competition agencies often exchange information through regional competition networks such as the European Competition Network (ECN).</b>	
		<p>Yes, ECN.</p> <p>In this framework, EC can exchange information informally and formally within the ECN. The idea behind the ECN is to have a free flow of information.</p> <p>However, when it comes to the use of the information some restrictions apply depending on the enforcement system (criminal or administrative) of the cooperating authorities.</p> <p>In case of leniency, information is exchanged:</p> <ul style="list-style-type: none"> <li>- in cases when the leniency applicant gives its consent.</li> <li>- in cases of no consent: written commitment by receiving CA not to use the received information or information obtained after the transmission to sanction the leniency applicant (and earlier leniency applicants).</li> </ul>
31.a)	Is your agency part of a regional competition network? [Y/N] If Y, please list.	
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.	
31.c)	Are there types of information that your agency can share in the absence of the network? [Y/N] If Y, please list.	