



International
Competition
Network

CHARTS SUMMARISING INFORMATION SHARING MECHANISMS

CARTEL WORKING GROUP
Subgroup 2: Enforcement Techniques

Spain
July 2012

COMISIÓN NACIONAL DE LA COMPETENCIA (CNC) (SPAIN)		
MECHANISMS FOR INFORMATION SHARING		
1	Details of the relevant point of contact at your agency for information requests	
a)	Position	Deputy Director
b)	Branch or office	Cartels and Leniency Unit, Investigations Division
c)	E-mail address (please include a general e-mail address for a group inbox, if possible)	DI.CartelesClemencia@cncompetencia.es
d)	Telephone number (please include a general branch or office telephone number, if possible)	34915369058
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	X
b)	Obligations under bilateral competition agreements to notify agencies in jurisdictions that may be affected by the investigation	
c)	Obligations under multilateral cooperation agreements	X
d)	Public announcement of cartel investigations on agency website	X
e)	Formal/informal internal obligations	See 2c
f)	Other (please specify)	
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)	
5	Has your agency established any other cooperation agreements? Y/N	N
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
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	X
c)	Hybrid	
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	Y
a)	Does your agency encourage leniency applicants to seek leniency in other jurisdictions affected by the conduct? Y/N. If Y, please explain.	Y: We suggest to the leniency applicants to seek leniency in other jurisdictions affected by the conduct.
11	Does your agency have a marker system? Y/N	N: Under the Spanish programme, the immunity applicant must submit to the Directorate for Investigation a formal leniency application providing all information and evidence. Nevertheless, the Directorate for Investigation may grant as an exception, upon prior and reasoned request from the immunity applicant, an additional period of time for submitting evidence relating to the cartel, in the possession of the immunity applicant or available to it, in particular, contemporaneous evidence of the cartel.
12	Are applicants required to provide a waiver? Y/N	Y
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	
13	Does your agency have experience in requesting/sharing information with a foreign competition agency? Y/N	Y
a)	If Y, was your overall experience of the information sharing mechanisms available to your agency positive? Y/N	Y
14	During the last 3 years, has your agency provided information to or requested	Y

	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:	
a)	Product and market information	X
b)	Agency internal information	
c)	Confidential information	
d)	Case specific information	X
15	Does your agency have formal powers to obtain evidence in relation to a cartel case on behalf of a foreign agency? Y/N	Y
	If Y, which of the following is the legal basis for obtaining such evidence:	
a)	Mutual Legal Assistance Treaty (MLAT) – bilateral	
b)	MLAT – multilateral	Y
c)	Cooperation Arrangement	
d)	Other (please specify)	
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	Y
17	For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been:	
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	
b)	Upon informal request	X
c)	Upon grant of judicial or administrative authorization (please specify)	
d)	Under an international agency-to-agency cooperation agreement	
e)	Other (please specify)	According to the Regulation 1/2003 (Art 12), For the purpose of applying Articles 101 and 102 of the TFEU the Commission and the competition authorities of the Member States shall have the power to provide one another with and use in evidence any matter of fact or of law, including confidential information.
21	Information covered by professional secrecy	
a)	Under no conditions	X
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	
d)	Upon grant of judicial or administrative authorization	
e)	Under an international agency-to-agency cooperation agreement	
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	
d)	Upon grant of judicial or administrative authorization	
e)	Under an international agency-to-agency cooperation agreement	
f)	Only at certain stages of the investigative process (please specify)	
g)	Other (please specify)	X: According to the Regulation 1/2003 (Art 12), For the purpose of applying Articles 101 and 102 of the TFEU the Commission and the competition authorities of the Member States shall have the power to provide one another with and use in evidence any matter of fact or of law, including confidential information.
23	Investigation stage at which publicly available information can be shared	
a)	Pre-investigation	
b)	Investigation	X
c)	When the investigation is completed	X
d)	When no investigation is conducted	
e)	During litigation	X
24	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 investigation)	Agency internal information / Confidential
b)	Information provided voluntarily	Confidential
c)	Investigative methodology (without indication of parties under investigation)	Agency internal information
d)	Results of market studies into markets where cartel behaviour is suspected	Publicly available
e)	Legal information	Publicly available
f)	Information on sanctions	Publicly available
g)	Information on the timing of a case	Agency internal information
h)	Other (please specify)	
25	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	X
b)	May share information provided that certain conditions are met	
26	If you put a cross next to Question 25(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	
c)	Use best endeavours to keep the information confidential	
d)	Use the information only for its originally intended purpose	
e)	Other (please specify)	

27	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? Y/N	Y
28	Is there any law or situation that may require information received from another agency to be divulged? Y/N. If Y, please specify.	Y: This information could be revealed if a judge decides so.
29	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	
b)	Respond to the information request	
c)	The timing required to process information requests from foreign agencies is not tracked	X
NATURE OF INFORMATION REQUESTED		
30	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.	The order of these items may change on a case by case basis but:
a)	Factual information (e.g. evidence obtained by the agency during an investigation)	2
b)	Information provided voluntarily	1
c)	Investigative methodology (without indication of parties under investigation)	3
d)	Results of market studies into markets where cartel behaviour is suspected	5
e)	Legal information	5
f)	Information on sanctions	5
g)	Information on the timing of a case	4
h)	Other (please specify)	
31	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	N/A
b)	Provide confidential information in relation to cartel investigations	N/A
c)	Request publicly available information or internal agency information	150
d)	Provide publicly available information or internal agency information	150
32	Does your agency have formal information sharing powers? Y/N	Y
33	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		
34	Is your agency part of a regional competition network? Y/N. If Y, please list.	Y
35	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 explanation.	Y
36	Are there types of information that your agency can share in the absence of the network? Y/N. If Y, please list.	N