



International  
Competition  
Network

# CHARTS SUMMARISING INFORMATION SHARING MECHANISMS

CARTEL WORKING GROUP  
Subgroup 2: Enforcement Techniques

United Kingdom  
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QUESTION		UNITED KINGDOM OFFICE OF FAIR TRADING (UK OFT)
<b>1</b>	<b>Mechanisms for information sharing: Details of the relevant point of contact at your agency for information requests</b>	
1.a)	Position	For cartel-specific issues: Pdraig Sheerin, Principal Case Officer  For broader competition issues: OFT International Team
1.b)	Branch or office	For cartel-specific issues: Cartels and Criminal Enforcement Group, Office of Fair Trading  For broader competition issues: International Team, Office of Fair Trading
1.c)	e-mail address (please include a general email address for a group inbox if possible)	<a href="mailto:Pdraig.Sheerin@oft.gsi.gov.uk">Pdraig.Sheerin@oft.gsi.gov.uk</a> <a href="mailto:international@oft.gsi.gov.uk">international@oft.gsi.gov.uk</a>
1.d)	Telephone number (please include a general branch or office telephone number if possible)	Padraig Sheerin: 0044 20 7211 8382 International Team: 0044 20 7211 8000
<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? (Please put a cross next to all those that apply.)</b>	
2.a)	Markets or conduct that the agency has identified as investigation priorities are listed on the official agency website	X - only where those investigations are in the public domain
2.b)	Obligations under bi-lateral competition agreements to notify agencies in jurisdictions that may be affected by the investigation	
2.c)	Obligations under multi-lateral cooperation agreements	X - European Commission Notice on co-operation within the network of European competition authorities (2004/C 101/03)
2.d)	Public announcement of cartel investigations on agency website	X - OFT website has investigation project pages for those investigations in the public domain.
2.e)	Formal/informal internal obligations	X - the OFT is committed to transparency and issued its Transparency Statement in June 2010 committing its project teams to provide better information on our website relating to project and case work (where they are in the public domain).
2.f)	Other (please specify)	
2.g)	None	
<b>3</b>	<b>Do you currently have any cooperation agreements relating to information sharing (bilateral and/or multilateral) [Y/N]</b>	Y
<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>	
4.a)	Provides for a specific section on information exchanges	Y - European Commission Notice on co-operation within the network of European competition authorities (2004/C 101/03)
4.b)	Provides for a general section on cooperation in enforcement	Y - EC Regulation 1/2003 Article 22
4.c)	Other (please specify)	

5	Has your agency established any other cooperation agreements? [Y/N]	Y - the OFT has co-operation agreements with Australia (Australian Competition and Consumer Commission), Canada (Commissioner of Competition)
6	Has your agency tried to establish a cooperation agreement with another agency and been unsuccessful? [Y/N]	
7	Does your agency publish information about its past cartel investigations?[Y/N] If YES, where?:	Y
7.a)	Website	Y (the OFT publishes infringement and non-infringement decisions on its website, and provides details of cases closed on prioritisation grounds)
7.b)	Annual reports and/or other reports	Y - the OFT 's Annual Report provides details of cases closed in the preceding year.
7.c)	Other (please specify).	N
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	X
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.	Y - information transferred between civil investigations on the basis of either EC Regulation 1/2003 Article 22 or s243 of the Enterprise Act 2002 the European Commission Notice on co-operation within the network of European competition authorities (2004/C 101/03) is well established, however transfers of information gathered under the OFT's criminal investigatory powers to another enforcement agency would be managed on a case-by-case basis.
10	Does your agency have a leniency policy? [Y/N]	Y
10.a)	Does your agency encourage leniency applicants to seek leniency in other jurisdictions affected by the conduct? [Y/N] If Y, please explain.	N - but is does not discourage such action either.
11	Does your agency have a marker system? [Y/N]	Y
12	Are applicants required to provide a waiver? [Y/N]	N
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]	Y
13	Does your agency have experience in requesting/sharing information with a foreign competition authority? [Y/N]	Y
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]	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>	<p>N - the UK's Enterprise Act 2002 contains strict legal safeguards governing the disclosure of information. Confidential information may only be disclosed through the appropriate formal information gateway.</p>
14.a)	Product and market information	
14.b)	Agency internal information	
14.c)	Confidential information	
14.d)	Case-specific information	
15	<p>Does your agency have formal powers to obtain evidence in relation to a cartel case on behalf of foreign agency [Y/N]?</p> <p>If Y, which of the following is the legal basis for obtaining such evidence:</p>	
15.a)	Mutual Legal Assistance Treaty (MLAT) – bilateral	N
15.b)	MLAT – multilateral	Y - EC Regulation 1/2003 Article 22
15.c)	Cooperation Arrangement	Y - EC Regulation 1/2003 Article 22
15.d)	Other (please specify)	
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>	
17.a)	Informal cooperation	N
17.b)	Formal cooperation	Y
17.c)	Both	N
17.d)	Neither	N
17.e)	Not applicable	
18	<p>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]</p>	N
19	<p>Terms and conditions under which information is provided to foreign competition authorities</p>	
19.a)	Publically available information:	
19.a)(i)	Upon formal request	Y
19.a)(ii)	Upon informal request	Y
19.a)(iii)	Available through the competition agency website and/or other publications	Y
19.a)(iv)	Other (Please specify.)	N
19.b)	Agency internal information:	N
19.b)(i)	Upon formal request	Y
19.b)(ii)	Upon informal request	N
19.b)(iii)	Upon grant of judicial or administrative authorisation (different from the competition agency) (Please specify.)	N

19.b)(iv)	Under an international agency-to-agency cooperation agreement (see references to the agreement, where available)	N
19.b)(v)	Other (Please specify)	Y - any specified information subject to s243 of the Enterprise Act 2002 or under EC Regulation 1/2003 Article 12
<b>19.c)</b>	<b>Information covered by professional secrecy:</b>	
19.c)(i)	Under no conditions	N
19.c)(ii)	If confidentiality waiver is granted by the parties under investigation	Y
19.c)(iii)	If waiver is granted by the party, the agency will evaluate the risks and benefits of	Y
19.c)(iv)	If a judicial or administrative authorization is granted	Y
19.c)(v)	Under an international agency-to-agency cooperation agreement. (See references to the agreement when available)	Y - European Commission Notice on co-operation within the network of European competition authorities (2004/C 101/03)
19.c)(vi)	Other (please specify)	Y - any specified information subject to s243 of the Enterprise Act 2002 or under EC Regulation 1/2003 Article 12
<b>19.d)</b>	<b>Confidential information can be shared:</b>	
19.d)(i)	Under no conditions	N
19.d)(ii)	If confidentiality waiver is granted by the parties under investigation	Y
19.d)(iii)	If waiver is granted by the party, the agency will evaluate the risks and benefits of sharing the information	Y
19.d)(iv)	If a judicial or administrative authorization is granted	Y
19.d)(v)	Under an international agency-to-agency cooperation agreement. (See references to the agreement when available)	Y - European Commission Notice on co-operation within the network of European competition authorities (2004/C 101/03)
19.d)(vi)	Only at certain stages of the investigation process (pre-investigation, during investigation, after completion of investigation, when no investigation is conducted, during litigation, other (please specify)).	Y - at any time but on a case-by-case basis but subject to s243 of the Enterprise Act 2002 or under EC Regulation 1/2003 Article 12
19.d)(vii)	Other (please specify)	Y - any specified information subject to s243 of the Enterprise Act 2002 or under EC Regulation 1/2003 Article 12
<b>20</b>	<b>Investigation stage at which publically available information can be shared</b>	
20.a)	Pre-investigation	Y
20.b)	Investigation	Y
20.c)	When the investigation is completed	Y
20.d)	When no investigation is conducted	Y
20.e)	During litigation	Y
<b>21</b>	<b>Are the following types of information generally treated by the jurisdiction as:</b>	

	<b>(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>	
21.a)	Factual information (e.g. evidence obtained by the national competition authority in the course of investigation)	(v)
21.b)	Information provided voluntarily to foreign competition authority by a party under investigation and/or a leniency applicant	(v)
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	(v)
21.e)	Legal information	(i)
21.f)	Information on sanctions	(i)
21.g)	Information on timing of the case	(i)
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>	
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
<b>23</b>	<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	X
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	X
23.e)	Other (please specify)	X - information must not be disclosed further without the agreement of the OFT (Enterprise Act s243(10)(a))
<b>24</b>	<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>	Y - Enterprise Act 2002 Part IX
<b>25</b>	<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>	Y - Court order
<b>26</b>	<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	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
<b>27</b>	<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>	
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	2
27.c)	Methodology of anti-cartel investigations (without indication of particular parties involved) – foreign “know-how” in relation to cartel investigations.	6
27.d)	Results of a foreign authority’s market studies into markets potentially affected by cartelisation	7
27.e)	General legal information	4
27.f)	General information on sanctions	5
27.g)	Information on timing of the case	3
27.h)	Other (please specify)	
<b>28</b>	<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>	
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
<b>29</b>	<b>Does your agency have formal information sharing powers? [Y/N]</b>	<b>Y</b>
<b>30</b>	<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>	<b>N</b>
<b>31</b>	<b>Competition agencies often exchange information through regional competition networks such as the European Competition Network (ECN).</b>	
31.a)	Is your agency part of a regional competition network? [Y/N] If Y, please list.	Y - ECN
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.	N
31.c)	Are there types of information that your agency can share in the absence of the network? [Y/N] If Y, please list.	Y - any specified information subject to s243 of the Enterprise Act 2002 or under EC Regulation 1/2003 Article 12