



**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

**Commission for Protection of
Competition of the Republic of
Bulgaria**

03/08/2022

ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]¹

1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]	LAW ON PROTECTION OF COMPETITION (LPC) (both English and Bulgarian language versions available) https://www.cpc.bg/General/Legislation.aspx
B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	NA
C. Interpretative guideline(s) (if	Guidelines for fighting bid rigging in public procurement and

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

<p>any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>List of circumstances the presence of which determines suspicions of bid rigging, both adopted by CPC Decision № 972/19.11.2020 (Bulgarian language version only)</p> <p>Guidelines for fighting bid rigging in public procurement</p> <p>List of circumstances the presence of which determines suspicions of bid rigging</p> <p>Programme on immunity from fines or reduction of fines in case of participation of an undertaking in a secret cartel and Rules on the application of the Programme, adopted by Decision № 604/10.06.2021 (Bulgarian language version only)</p> <p>Programme on immunity from fines or reduction of fines in case of participation of an undertaking in a secret cartel and Rules on the application of the Programme</p> <p>Guidelines on information exchange between competitors, adopted by Decision № 1778/20.12.2011 (Bulgarian language version only)</p> <p>Guidelines on information exchange between competitors</p>
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>NA</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>LPC Supplementary provisions § 1.5: “Cartel” means an agreement or concerted practice between two or more undertakings aimed at coordinating their competitive behaviour on the relevant market or influencing the relevant parameters of competition through practices such as, but not limited to, the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors..</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas²) and other</p>	<p>No such distinction.</p>

² In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]	
C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]	NA – no distinguished hardcore cartels, hence no separate prohibitions
D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal liability, please clarify this.]	Participation in any cartel is illegal, regardless of the type.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	Competition law infringements are pursued as administrative offence. There is no criminal liability for competition law infringements in our jurisdiction. Anyone who has suffered damage, whether direct or indirect, is entitled to compensation in civil proceedings.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]	Commission for Protection of Competition (CPC)
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	18, Vitosha Blvd. 1000 Sofia, Bulgaria Tel: Registry: 00359 2 9356113 Presscenter: 00359 2 935 61 88, 00359 2 935 61 15 Fax: 00359 2 9807315 Email: cpcadmin@cpc.bg
C. Information point for potential complainants:	Currently unavailable

³ For the purposes of this template the notion of ‘per se’ covers both ‘per se’ and ‘by object’, as these terms are synonyms used in different jurisdictions.

D. Contact point where complaints can be lodged:	Complaints can be sent by post to the address of the CPC or via fax or email.
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	The Ministry of Internal Affairs assists the CPC when conducting inspections on spot.

4. Decision-making institution(s)⁴ [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	
C. Contact point for questions and consultations:	
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	

5. Handling complaints and initiation of proceedings

A. Basis for initiating	Investigations can be initiated on the basis of one of the
--------------------------------	--

⁴ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	following: complaint, ex officio, leniency application or a request from a prosecutor.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]	Yes, the complaints shall be submitted in a model form, adopted by the CPC. The form can be found at: Antitrust Form
C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]	There are not specific requirements for lodging a complaint against a cartel. According to art. 38, para. 1, the persons, whose interests have been affected or threatened by an infringement of the Law, shall submit a complaint under point 3 of the LPC.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]	If the complaint is submitted according the requirements of the model form and if the tax for lodging a complaint before the CPC has been paid, the Commission is obliged to initiate a proceeding. There are explicitly stated cases where the CPC shall not initiate proceedings for example if it is not the competent authority to resolve on the case or the limitation period as laid down in the Law has expired, etc.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	If there are legal grounds for the CPC to not open the proceedings (see above) it shall adopt a decision (art. 41 of the LPC).
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	According to art. 70, para. 2 of the LPC, the proceedings shall be initiated within 30 days as of receipt of the complaint/leniency application/request from a prosecutor or the decision of the Commission (ex officio).

6. Leniency policy⁵

A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]	Programme on immunity from fines or reduction of fines in case of participation of an undertaking in a secret cartel and Rules on the application of the Programme, adopted by Decision № 604/10.06.2021 (Bulgarian language version only)
--	--

⁵ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

	<p>Programme on immunity from fines or reduction of fines in case of participation of an undertaking in a secret cartel and Rules on the application of the Programme</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>Both full as well as partial leniency is offered.</p>
<p>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p>	<p>Full leniency may be granted only to the applicant, which not only discloses its participation in a secret cartel, but also <u>submits before all</u> the remaining participants certain amount of evidence to Commission. This evidence must be sufficient for the CPC to either carry out an inspection on the spot, or prove the claimed infringement. If another undertaker applies first, but does not submit enough evidence before the one, which does, the first applicant shall not be eligible for full leniency.</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>The eligibility for full immunity is dependent on the lack of or the insufficient evidence at the disposal of the CPC. However, it does not depend on whether the proceedings have been initiated as long as the application is the first one applying for leniency for the investigated cartel.</p> <p>The date and the hour of the leniency application determines if the undertaking is eligible for a full or partial immunity (reduction of fine).</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Only an undertaking that has taken part in the cartel.</p>
<p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</p>	<p>In order to get full immunity, the undertaking must provide prior to any other participant in the cartel, evidence on the basis of which the Commission may:</p> <ol style="list-style-type: none"> 1. carry out an inspection on the spot; it is necessary that up to that moment the Commission did not already have sufficient data and evidence in order to file an application for issuance of court authorization for conducting an inspection on spot; OR 2. prove the alleged infringement; it is necessary that up to that moment the Commission did not already have granted to another undertaking a conditional immunity from sanctions prior to making the inspection or prior to having sufficient data in order to file an application for issuance of court authorization for an inspection, as well as did not already have sufficient evidence in order to adopt a decision for finding of an infringement. <p>In addition to these conditions, the undertaking should not have taken steps to coerce other undertakings to join the cartel and</p>

	<p>must have fulfilled all conditions laid down in the Leniency programme.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p>	<p>For a reduction of the sanction can apply every undertaking that has taken part in the cartel, including the ones that have taken steps to coerce other undertakings to join it.</p> <p>In order to get the reduction, the undertaking should voluntarily provide before the conclusion of the proceedings, evidence, which has significant added value for proving the infringement and fulfils all conditions set out in the leniency programme.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	<p>The leniency applicant must fulfil the following cumulative conditions until the end of the proceedings, set in point 20 of the Leniency programme:</p> <ol style="list-style-type: none"> 1. The undertaking has discontinued its participation in the secret cartel immediately after it has submitted an application to be granted immunity from sanction or reduction of the amount thereof at the latest unless the Commission has decided that the continuation of such participation is necessary for the investigation. After the application submission the undertaker must comply with the Commission's instructions about the continuation of the participation in the cartel or its termination in order to protect the efficiency of the inspection. 2. The undertaker cooperates voluntarily, without interruptions and genuinely with the CPC from the moment of the application submission until the termination of the proceedings. The cooperation with the Commission includes: <ol style="list-style-type: none"> a) immediate provision of all the information as well as evidence in relation to the alleged cartel, which the applicant acquires or has access to; b) present without delay answers to requests for information from the Commission, which can contribute to the establishment of facts; c) enabling the Commission to take oral statements from all current and, if possible, former staff members of the relevant undertaking, as well as from current and former managers or members of its Management or Supervisory bodies; d) to not destroy, falsify or conceal any information or evidence related to the cartel; e) to not disclose in any way either the fact of its participation in the Leniency Programme, or any of the content of its application before or after its submission until the moment of Statement of objections for an alleged infringement is adopted within the proceeding, unless the Commission has not indicated else. Applications submitted to other competition authorities or to the European Commission shall not be considered as a breach of this obligation;
<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can</p>	<p>The Leniency Programme sets all the requirements about the information and evidence that should be included in the application.</p> <p>Moreover, the Rules for implementation of the Leniency programme include a model form for the application.</p> <p>The application can be submitted in written or oral form, in the</p>

they be made orally, etc.]	Commission premises or via fax or email.
J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]	<p>The participant in a cartel may seek for informal guidance from the CPC by contacting the appointed contact persons without identifying itself.</p> <p>The applicant may lodge a full application or a marker application.</p> <p>After assessing the application, the CPC Chairperson may grant or refuse to grant conditional immunity/reduction of fines to the undertaking by written order.</p> <p>The undertaking shall be notified in writing about the order.</p>
K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?	<p>If the CPC determines that the data and evidence submitted with the application is sufficient to satisfy the requirements for exemption / reduction of fines, the CPC Chairman, by written order, shall grant conditional immunity / reduction of fines to the applicant. The undertaking shall be notified in writing about the order.</p>
L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?	<p>According to art. 60, para. 1, point 4 of the LPC, by adopting a decision the CPC shall exempt from sanction or reduce the amount of the sanction imposed on the undertaking.</p> <p>Therefore, the immunity/reduction of fines shall be granted in the final decision of the proceedings.</p> <p>The CPC decides about the immunity/reduction of fines based on the report presented by the case team.</p>
M. Do you have a marker⁶ system? If yes, please describe it.	<p>Yes, it is settled in points 21 -24 of the Leniency programme.</p> <p>When applying for leniency the undertaking might not have all the relevant evidence. In that case it shall provide the "minimum" information as provided in point 27 of the Programme: identifying information of the applicant and the other participants in the cartel, description of the cartel (products, markets, behaviour, implementation and period of the cartel) as well as any other submitted or possible leniency applications to other national authorities (both in and out of the EU) in relation to the cartel in question. This is the marker application.</p> <p>The undertaking may ask the Commission to determine a time limit for submitting the relevant evidence.</p> <p>The CPC shall notify the undertaking of the date and time of its application and of the determined time limit.</p> <p>If the undertaking succeeds in providing the evidence within the set time limit, the CPC assesses its application as submitted on the date and time of the marker application.</p>
N. Does the system provide for any extra credit⁷ for	<p>Points 16 – 19 of the Leniency programme provide for an additional reduction of the sanction for disclosing a second</p>

⁶ A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁷ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal

<p>disclosing additional violations? [e.g. a hardcore cartel in another market]</p>	<p>cartel.</p> <p>During the investigation of a cartel (Cartel 1), an undertaking participating in it may, by the end of the proceedings, provide the CPC with information regarding its participation in a second cartel (Cartel 2). On this basis, the undertaking may, subject to all the conditions of item 30 of the Programme, receive a reduction of the sanction of up to 10% for its participation in the first cartel.</p> <p>This reduction is applied cumulatively with the leniency reduction.</p> <p>The reduction is up to 10% of the sanction for each additional cartel but not more than 30% for all of them.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>The CPC is required to keep the identity of the leniency applicant confidential up to the issuing of the Statement of objections.</p>
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>The decision on leniency is part of the final infringement decision of the Commission and is subject to appeal.</p>
<p>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</p>	<p>Leniency applications can be submitted to:</p> <p>Fax: + 359 2 935 6153</p> <p>Email: leniency@cpc.bg</p> <p>Address: Commission for Protection of Competition, 18 Vitosha Blvd., 1000 Sofia</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>As provided for in points 35 -36 of the Rules on the application of the Programme, up until the end of the proceedings the CPC may withdraw the conditional immunity provided that it finds that the undertaking does not comply with all obligations under point 20 of the Programme, or that it has taken steps to coerce other undertakings to participate or continue to participate in the cartel.</p> <p>For applications for a reduction of the fine, the conditional reduction may be withdrawn if the undertaking does not comply with all obligations under point 20 of the Programme.</p> <p>The withdrawal shall be effected by an order of the CPC Chairman, which shall be notified in writing.</p> <p>The withdrawal means that the undertaking may not benefit from any favourable treatment under the Programme.</p>
<p>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</p>	<p>At present, there is no such policy.</p>
<p>T. Does your authority have rules to protect leniency material from disclosure? If</p>	<p>There are no specific rules regarding the protection of leniency material from disclosure. The applicant may appoint all the materials containing commercial or other secret according to</p>

information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p>yes, please elaborate which parts are protected and what does protection actually mean.</p>	<p>the Rules on the access, use and storage of documents constituting production, trade or other secret, protected by law.</p>
--	--

7. Settlement

<p>A. Does your competition regime allow settlement?</p> <p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	<p>The current regime does not allow settlement.</p>
<p>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p>	
<p>C. What is the reward of the settlement for the parties?</p>	
<p>D. May a reduction for settling be cumulated with a leniency reward?</p>	
<p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p>	
<p>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</p>	
<p>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</p>	
<p>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</p>	
<p>H. Is there a possibility for</p>	

settled parties to appeal a settlement decision at court?

8. Commitment

A. Does your competition regime allow the possibility of commitment?

If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].

Yes.

Art. 75 of the LPC provides for the commitments regime.

With Decision № 605/10.06.2021 the Commission adopted Rules for consider the proposed commitments under the LPC (Bulgarian language version only).

[Rules for consider the proposed commitments under the LPC](#)

B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?

Are there violations which are excluded from the commitment possibility?

The Law and the rules do not specify the types of agreements to which the procedure applies.

According to art. 75 (4) the Commission shall not adopt commitment decisions in cases of severe infringements of the Law.

LPC Supplementary provisions § 1.16: "Grave infringement" means an infringement under Articles 15 and 21 of this law and/or under Articles 101 and 102 of the Treaty on the Functioning of the European Union that affects or might considerably and lastingly in time affect the competitive environment of a substantial part of the national market as well as any cases of cartel.

According to § 9 of the Rules: the procedure is not applicable in cases of:

- cartels;
- prohibited agreements, decisions or concerted practices between undertakings active in different markets (so-called vertical agreements) having as their object or effect the allocation of markets or sources of supply, the direct or indirect price fixing;
- abuse of a dominant position having a foreclosure effect (so-called structural abuse), where that effect relates to a substantial part of the market;
- exploitative abuse of a dominant position affecting a significant number of users;
- other severe infringements within the meaning of § 1, item 16 of the Supplementary provisions of the LPC, beyond the cases listed above.

C. List the criteria (if there are any) determining the cases which are suitable for commitment.

The procedure for considering proposals for commitments is applicable where the CPC considers that:

1. the commitments would lead to a fast and efficient suspension of the unlawful conduct of the responsible undertakings or associations of undertakings,

	<p>2. the commitments are likely to create conditions for restoring the competition in the relevant market,</p> <p>3. the fulfilment of the proposed obligations is not dependent on the adoption of acts within the competence of other central or local authority bodies, and</p> <p>4. the termination of the proceedings with a commitment decision will have more effective deterrent effect on the undertakings.</p>
D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]	The proposed commitments may be of a behavioral or structural nature, as well as of a positive or negative nature.
E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]	<p>The defendant may propose to undertake commitments. The commitment proposal must be submitted within the fixed term within which the complainant and the defendant have the right to submit their written objections on the submitted Statement of objections.</p> <p>The Commission may approve these commitments by a decision. In such cases, the Commission shall terminate the proceedings without establishing an infringement, concluding that there are no longer grounds for further proceedings. In its decision, the Commission may prescribe the period within which the commitments shall be effective.</p> <p>The proposed commitments are not binding for the defendant until the final decision. At any time until the final decision, the undertakings and associations of undertakings may withdraw their proposal, in which case the proceedings before the CPC shall continue in the general order.</p>
I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?	No
J. Describe how your authority monitors the parties' compliance to the commitments.	<p>The Commission supervises the full, accurate and timely implementation of the commitments and may, at its own initiative, at any time after the adoption of the commitment decision, request information on its implementation by the respondent, the complainant, the constituted interested parties or public authorities.</p> <p>The Commission may request from the responding parties to periodically notify it or to provide certain evidence regarding the fulfilment of the commitments.</p> <p>The Commission may also collect signals and information from every natural person, legal entities, including undertakers, associations, public authorities as well as non-government organizations in relation with the implementation of the commitments.</p>
K. Is there a possibility for parties to appeal a commitment decision at court?	Yes

9. Investigative powers of the enforcing institution(s)⁸

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁹, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>During the investigation the supervising Member of the Commission and the case team, have the right to:</p> <ol style="list-style-type: none"> 1. request information, material, written, digital and electronic evidence, irrespective of the media on which they have been stored; 2. take oral or written statements; 3. entrust the conducting of expertise by external experts; 4. request information or assistance by other national competition authorities of Member States of the European Union and by the European Commission. 5. The Commission may carry out all kinds of inspections of the undertakings and associations of undertakings after authorisation by a judge from the Administrative Court.
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Yes, private locations, vehicles and other objects can also be inspected provided that these inspections are authorized by the Administrative Court. However, each private object has to be explicitly requested from the Court. Furthermore, private homes and vehicles cannot be sealed.</p>
<p><u>C.</u> Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!</p>	<p>Yes. There are no special rules.</p>
<p><u>C.D.</u> May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>Yes. There is no need of court warrant. Any document or evidence found may be seized if they contain data raising well-founded doubts of other infringements under Art. 15 of this Law or under Article 101 TFEU. After conclusion of the inspection, they shall be immediately handed over to the Commission for adoption of a decision for the initiation of new proceedings.</p>
<p><u>D.E.</u> Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No, there haven't been.</p>

⁸ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁹ “Searches/raids” means all types of search, raid or inspection measures.

10. Procedural rights of businesses / individuals

A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.

- Right to be heard – Art.76 LPC;
- Right to access any evidence, collected in the course of the investigation – Art. 55 LPC;
- Principle of equal treatment - Art.8 Administrative Procedure Code (APC);
- Right to defence - a fundamental constitutional right, Art. 56 Constitution of the Republic of Bulgaria. It includes the right to submit objections on the Statement of objections.
- Right to appeal the final decision on the proceedings - art. 64, (1), as well as some procedural rulings such as the ruling for the suspension of the proceedings (art. 40, (3)), the ruling that certain information does not qualify as confidential (art. 55, (2)), etc.
- Right to appeal the court authorization for an inspection – art. 51 (6) LPC;
- Right to legal representation before the CPC and the court – art. 18 APC

B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.

According to art. 55 LPC, The parties and constituted interested third parties in the proceedings shall have the right to access any evidence, collected in the course of investigation with the exception of those containing production, trade or other secret, protected by law.

Any person, submitting information to the Commission in the course of proceedings shall identify the materials that are claimed to contain production, trade or other secret, protected by law and which should, therefore, be treated by the Commission as confidential. In such cases the person shall substantiate its claim and shall submit the same materials in a version in which all data considered to be confidential has been erased. Whenever the Commission considers that certain information is not confidential, it shall issue a ruling in this regard and inform the person of it. The ruling shall be subject to appeal under the procedure set forth in Art. 64, paragraph (3).

Any material indicated to contain production, trade or other secret protected by law, may be disclosed and used by the Commission in case it is essential as evidence to the alleged infringement or in order to secure the right of defence of the respondent.

There is no different regime depending on whether the information is provided under a compulsory legal order or provided under informal co-operation.

The procedure regulating the access, use and storage of documents constituting production, trade or other secret protected by law, is set out in the rules adopted by the Commission.

11. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made? <u>Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</u></p>	<p>The limitation period for infringements provided for in art. 42, LPC is:</p> <p>“1. three years – for infringements of the provisions referring to requests for information or making of inspections;</p> <p>2. five years – for all other infringements.</p> <p>(2) The limitation period shall run from the day the infringement is committed and in case of continuous infringement - from the date it is discontinued.”</p> <p>According to Art.42 (3) the limitation period is suspended when proceedings for the establishment of infringement are initiated by the Commission.</p> <p>According to Art. 42 (5) the limitation period is interrupted during a proceeding for establishment of 101 or 102 TFEU infringement initiated by another national authority or the European Commission.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits? <u>Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</u></p>	<p>Currently there is no legal deadline for the completion of an investigation nor for issuing a decision in cartel cases. Hence, suspension or interruption of a term is not applicable.</p> <p>According to Art.42 (4) LPC no limitation period runs during the time proceedings are ongoing or until entry of the decision into force.</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</p>	<p>The decisions of the Commission, unless otherwise provided for in the Law, may be appealed before Administrative Court – Sofia Region in respect of their conformity with the law by the parties to the proceedings or by any third person that has legal interest.</p> <p>Decisions shall be appealed within a term of 14 days, which shall start as of their notification in accordance with the procedure laid down in the Administrative Procedure Code, and in respect of third parties – as of the date of their publication in the electronic register of the Commission. (Art. 64, para. 1, LPC).</p> <p>The decision for the initiation of the proceedings cannot be appealed.</p> <p>The rulings of the Commission for which this is provided in the Law, may be subject to appeal in respect of their conformity with the law by the parties to the proceedings under the procedure for appealing Commission’s decisions. The rulings shall be subject to appeal within 7 days of their notification in accordance with the procedure laid down in the Administrative Procedure Code before Administrative Court – Sofia Region (art. 64, para. 3, LPC).</p>

12. Types of decisions

<p>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<p>According to art. 60 LPC, the Commission adopts decisions that:</p> <ol style="list-style-type: none"> 1. Establish the infringement committed and the infringer; 2. Impose pecuniary sanctions, periodic sanctions and/or fines; 3. Exempt from sanction or reduce the amount of the sanction in compliance with Art. 101. 4. Establish that no infringement has been committed under this Law or that there is no ground for taking actions for committed infringement under Article 101 and 102 of the Treaty on the Functioning of the European Union; 5. Terminate the proceedings; 6. Approve commitments undertaken and define the period for their implementation; 7. Reopen the proceedings terminated with a commitment decision; 8. Rule that the respective decision on block exemption shall not apply to the specific case and shall specify a time limit within which the parties must bring their agreement into compliance with Art. 17 or terminate it; 9. Withdraw the application of an EU Regulation on block exemption from the prohibition of Article 101, paragraph 1 of the Treaty on the Functioning of the European Union in case that the conditions under Art. 29 of Regulation (EC) 1/2003 are present and specify a time limit within which the parties have to bring their agreement into compliance with Article 101, paragraph 3 of the Treaty on the Functioning of the European Union or terminate it; 10. Order the termination of infringements, including by imposing appropriate behavioural and/or structural measures to restore competition; 11. Exempt certain categories of agreements, decisions or concerted practices from the prohibition under Art. 15 LPC
<p>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</p>	<p>NA</p>
<p>C. Can interim measures¹⁰ be ordered during the proceedings in cartel cases? (if different measures for</p>	<p>Yes, the CPC can order the immediate termination of the practice by the undertaking or the association of undertakings, or impose other necessary measures, taking into account the objectives of this Law. It can do so at its own initiative or on request of the persons whose interests are affected or</p>

¹⁰ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<p>hardcore cartels please describe both¹¹.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>threatened by the infringement.</p> <p>Conditions:</p> <ul style="list-style-type: none"> - Evidence of an infringement; - in urgent cases where there is a risk of serious and irreparable damage to competition; - The Commission may not impose measures which are of the competence of other authorities and are stipulated in other Acts. - The Commission shall impose interim measures with a reasoned ruling stating the objectives of the imposed measure and giving the grounds for its urgency. - The ruling is subject to appeal under the procedure set forth in Art. 64, paragraph (3). Appeal shall not suspend the application of the interim measure. - The term of effect of the interim measures shall be up to 3 months as of the time they are ordered. If necessary, the time limit may be extended under the procedure set forth in paragraph (2). - CPC shall notify the European Commission and the national competition authorities of the EU member states of the interim measures imposed by it under the proceedings for infringements of Art. 101 and 102 TFEU
--	--

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p>A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</p>	<p>The Commission shall impose a pecuniary sanction for:</p> <ul style="list-style-type: none"> - failure to comply with the obligation to provide assistance to the Commission in its investigations; - opposition to an inspection - damaging the integrity or destroying the seals which have been placed during the inspections; - delayed submission of information or furnishing of information which is incomplete, inaccurate, untrue or misleading; - failure to comply with the obligations to duly inform the Commission of the implementation of a decision, in the event it stipulates certain conditions or obligations. - failure to provide oral or written explanations to the Commission within a determined period
<p>B. Type and nature of the sanction (civil, administrative, criminal,</p>	<p>Administrative pecuniary sanction</p>

¹¹ Only for agencies which answered “yes” to question 2.B. above

combined; pecuniary or other):	
C. On whom can procedural sanctions be imposed?	Natural persons, undertaking or an association of undertakings
D. Criteria for determining the sanction / fine:	When determining the amount of the pecuniary sanction/fine, the gravity and the duration of the infringement, the role in which the person, undertaking or association of undertakings has acted, as well as the mitigating and aggravating circumstances shall be taken into consideration. The exact amount of the sanction shall be determined in compliance with a methodology adopted by the Commission published in the web-page of the Commission.
E. Are there maximum and / or minimum sanctions / fines?	<p>There is legal maximum of the sanctions for undertakings or associations of undertakings.</p> <p>The Commission shall impose a pecuniary sanction in the amount of up to 1% of the total turnover in the preceding financial year on the grounds stated above.</p> <p>The Commission shall impose periodic pecuniary sanctions on an undertaking or association of undertakings to the amount of up to 1% of the average daily turnover for the preceding financial year for each day of:</p> <ol style="list-style-type: none"> 1. failure to comply with the obligation for assistance after expiry of the period specified in the decision establishing the procedural infringement; 2. failure to furnish complete, accurate, true and not misleading information, after the expiry of the period specified in the decision establishing the procedural infringement; 3. impeding an inspection. <p>Natural persons who fail to submit in time the evidence requested or fail to supply complete, accurate, trustworthy and not misleading information shall be liable to a fine of BGN 500 to BGN 25 000.</p>

14. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):	The sanctions for all type of infringements of the competition rules, including cartels are administrative.
On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]	According to art. 100, para. 1 of the LPC, the CPC can impose sanctions on undertakings or associations of undertakings. Natural persons who have assisted in the commitment of infringements are liable to a fine of up to 50 000 BGN.
B. Criteria for determining the	In determining the amount of the sanction the gravity and

sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]	duration of the infringement, the capacity in which the natural person has acted as well as the circumstances mitigating and aggravating the liability shall be taken into account. The exact amount of the sanction shall be determined in compliance with a methodology adopted by the Commission published in the web-page of the Commission.
C. Are there maximum and / or minimum sanctions / fines?	<p>There is no fixed maximum or minimum amount. The sanction which can be imposed on undertakings or associations of undertakings cannot exceed 10 % of the total turnover in the preceding financial year.</p> <p>For an infringement of an association of undertakings related to the activities of its members, the Commission can impose sanction on the association to the amount of up to 10 % of the sum of the total turnover of each member of the association that operates on the market affected by the infringement for the preceding financial year.</p> <p>For natural persons the fine cannot be more than BGN 50 000.</p>
D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	<p>Methodology for setting fines under the Law on protection of competition</p> <p>Available in Bulgarian here</p>
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	Yes, the suspensory effect comes into force by law and there is no application procedure.

15. Possibilities of appeal

A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	<p>Infringement decisions of the CPC may be appealed in respect of their conformity with the law by the parties to the proceedings or by any third person that has legal interest.</p> <p>The grounds of appeal include questions of law or fact as well as procedural breaches.</p>
B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]	<p>The Administrative Court – Sofia Region</p> <p>http://www.asso-bg.net/</p>

16. Private enforcement

<p>A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?</p>	<p>Yes, they are.</p>
<p>B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]</p>	<p>Law on Protection of Competition (LPC), art. 105 ÷ 120. Available in English and Bulgarian. Text in English - https://www.cpc.bg/storage/file/CPCLAW.pdf</p>
<p>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>See Answer B.</p>
<p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</p>	<p>Liability for tort resulting of a breach under LPC Chapters Three (forbidden agreements) and Four (abuse of monopoly) and under Article 101 and 102 of the Treaty on the Functioning of the European Union</p>
<p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> • is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals? • if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? 	<p>No, It is not.</p> <p>An enforced decision of the Supreme Administrative Court acknowledging a decision of the Commission for an established infringement of the law shall have a binding effect for the civil court with regard to the fact of the infringement and the infringer. As far as the fact of the infringement and the infringer are concerned, the civil court shall be also bound by a decision of the commission, which has not been appealed, or the appeal against it has been withdrawn.</p> <p>NA</p>

<p>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</p>	<p>NA</p>
<p>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</p>	<p>An immunity recipient shall bear joint and several liability, as follows:</p> <ol style="list-style-type: none"> 1. to its direct and indirect purchasers or providers; and 2. to other injured parties only where a full compensation cannot be received from the other undertakings involved in the same infringement. <p>The liability of the immunity recipient is accordingly limited in case of a recourse action from co-infringer - a co-infringer who has contributed in excess to its share shall have the right to recourse action against each of the other co-infringers for the difference proportionately to their relevant liability for the harm caused by the infringement of the competition law. The amount due by a co-infringer who/which is an immunity recipient may not exceed the amount of damages it has caused to its direct or indirect purchasers or providers.</p>
<p>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</p>	<p>Claims for damages may be lodged before the civil courts depending on the price of the claim – claims over 25 000 BGN are under the jurisdiction of the district court as a first instance, while claims under 25 000 BGN are under the jurisdiction of the regional court as a first instance.</p>
<p>I. Information about class action opportunities</p>	<p>Class actions are available under the general rules of the Civil Procedural Code – art. 379 ÷ 388.</p>
<p>J. Role of your competition agency in private enforcement actions (if at all)</p>	<p>The CPC has an ancillary role in private damages claims:</p> <ol style="list-style-type: none"> 1. On demand by the court the commission within the limits of its competence shall provide assistance with respect to estimating the amount of harm, where necessary for the defence of the interests of the injured party. 2. The court may order the CPC to disclose evidence included in its file under the conditions provided for in the LPC. See Answer L.
<p>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</p> <ul style="list-style-type: none"> • Role of your competition agency in the damage calculation (if at all) 	<p>Subject to proof of the contrary, it is presumed that cartels cause harm.</p> <p>If established that the claimant has suffered harm, the court shall award damages, even where based on available evidence it is impossible to estimate accurately the amount of the harm.</p> <p>See Answer J</p>
<p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> • can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations? 	<p>Following a request by a party the court may order the disclosure of evidence collected by the CPC. The rules for disclosure are as follows:</p> <p>The court shall order the authority for protection of competition to disclose evidence included in its file where a given party or a third party is unable to provide such evidence. The court shall assess the proportionality of the request for disclosure taking into consideration:</p> <ol style="list-style-type: none"> 1. the extent to which the claim of the claimant or the defence of

<ul style="list-style-type: none"> • is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? • summary of the rules regulating the disclosure of confidential information by the competition agency to the court • summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court 	<p>the defendant are supported by the facts and evidence justifying the request for disclosure of evidence;</p> <ol style="list-style-type: none"> 2. the scope and cost of disclosure, especially for any third parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure; 3. whether the evidence contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information; 4. whether the request has been formulated specifically with regard to the nature or the content of documents submitted to a competition authority or is it a general one; 5. whether the party requesting disclosure is doing so in relation to an action for damages before a national court; and 6. the need to safeguard the effectiveness of the public enforcement of competition law. <p>Only after the competition authority has closed the proceedings brought before it, the court may order the disclosure of information that has been specifically prepared by natural or legal persons for the proceedings before the competition authority and information that the competition authority has drawn up and sent to the parties in the course of its proceedings.</p> <p>At its own discretion, the competition authority may file written objections regarding the proportionality of the request for disclosure of evidence before the court.</p> <p>The disclosure of leniency applications is not allowed. On request of the claimant, the court may only verify whether the content of the leniency application complies with the legal definition. In that assessment, national courts may request assistance only from the competent competition authority. Leniency applications obtained by a natural or legal person solely through access to the file of the competition authority are inadmissible in actions for damages.</p> <p>Collection of evidence comprising of internal documents of the authority for protection of competition, including its correspondence with other competition protection bodies shall not be allowed.</p>
<p>M. Passing-on issues:</p> <ul style="list-style-type: none"> • how is passing-on regulated / treated in your jurisdiction? • is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims? 	<p>Compensation of harm may be claimed by anyone who suffered it, irrespective of whether they are direct or indirect purchasers.</p> <p>Compensation may be claimed also if the infringement of competition law is related to a delivery for the undertaking that has committed the infringement.</p> <p>The compensation for incurred losses on every level of the supply chain may not exceed the overcharge at that level.</p> <p>The injured party shall have right to compensation for loss of profits, including in the case of full or partial passing-on the overcharge across the supply chain.</p> <p>The court shall estimate the amount of the overcharge, which has been passed on to another level of the supply chain.</p>