



**International  
Competition  
Network**

**ANTI-CARTEL  
ENFORCEMENT  
TEMPLATE**

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

**FINLAND  
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# 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.]<sup>1</sup>

## 1. Information on the law relating to cartels

<b>A. Law(s) covering cartels:</b> [availability (homepage address) and indication of the languages in which these materials are available]	The Competition Act (No 948/2011) <a href="https://www.kkv.fi/en/competition-affairs/competition-act/">https://www.kkv.fi/en/competition-affairs/competition-act/</a> (in Finnish, Swedish, English)
<b>B. Implementing regulation(s) (if any):</b> [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	Act on the Finnish Competition and Consumer Authority (661/2012) <a href="https://www.finlex.fi/fi/laki/ajantasa/2012/20120661">https://www.finlex.fi/fi/laki/ajantasa/2012/20120661</a> (in Finnish)

<sup>1</sup> 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><a href="https://www.finlex.fi/sv/laki/ajantasa/2012/20120661">https://www.finlex.fi/sv/laki/ajantasa/2012/20120661</a></p> <p>(in Swedish)</p>
<p><b>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b></p>	<p>Finnish Competition and Consumer Authority (FCCA) Guidelines on immunity from and reduction of penalty payments in Cartel Cases.</p> <p><a href="https://www.kkv.fi/uploads/sites/2/2022/01/2022-guidelines-leniency.pdf">https://www.kkv.fi/uploads/sites/2/2022/01/2022-guidelines-leniency.pdf</a></p> <p>(in Finnish, Swedish, English)</p> <p>Finnish Competition Authority (FCA) Guidelines on the Assessment of the amount of the Fine</p> <p><a href="https://www.kkv.fi/uploads/sites/2/2021/11/2011-suuntaviivat-3-2011-seuraamusmaksu.pdf">https://www.kkv.fi/uploads/sites/2/2021/11/2011-suuntaviivat-3-2011-seuraamusmaksu.pdf</a></p> <p>(in Finnish and Swedish)</p> <p>FCA Guidelines on Prioritisation in the handling of competition restriction cases</p> <p><a href="https://www.kkv.fi/uploads/sites/2/2021/11/2011-suuntaviivat-4-2011-priorisointi.pdf">https://www.kkv.fi/uploads/sites/2/2021/11/2011-suuntaviivat-4-2011-priorisointi.pdf</a></p> <p>(in Finnish and Swedish)</p>
<p><b>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</b></p>	<p>Not applicable.</p>

## 2. Scope and nature of prohibition on cartels

<p><b>A. Does your law or case law define the term “cartel”? [Please quote.]</b></p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>Agreements between undertakings, decisions by associations of undertakings, and concerted practices by undertakings which have as their object the significant prevention, restriction or distortion of competition or which result in a significant prevention, restriction or distortion of competition. (Section 5 of the Competition Act)</p>
<p><b>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing,</b></p>	<p>The Competition Act includes no express distinction, but contains a list of agreements, decisions or practices which are, in particular, prohibited. These are agreements, decisions or practices which:</p>

<p><b>bid rigging or production or sales quotas<sup>2</sup>) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</b></p>	<ol style="list-style-type: none"> <li>1. directly or indirectly fix purchase or selling prices or any other trading conditions;</li> <li>2. limit or control production, markets, technical development, or investment;</li> <li>3. share markets or sources of supply;</li> <li>4. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or</li> <li>5. make the conclusion of a contract subject to acceptance by the other party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such a contract.</li> </ol>
<p><b>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.]</b></p>	<p>No specific exceptions exist. However, Section 6 (below) of the Competition Act provides for a general exception to the prohibition of horizontal agreements, provided the efficiencies of the agreements outweigh their negative effects. In practice, the exception will not be applicable to hardcore cartels.</p> <p>Section 6 <b>Exemption</b> The prohibition of Section 5 does not, however, apply to any agreement between undertakings, any decision by associations of undertakings, or any concerted practice by undertakings, or any category of agreements, decisions or concerted practices, which:</p> <ol style="list-style-type: none"> <li>1. contributes to improving the production or distribution of goods or to promoting technical or economic progress;</li> <li>2. allows consumers a fair share of the resulting benefit;</li> <li>3. does not impose on the undertakings concerned restraints which are not indispensable to the attainment of these objectives; and</li> <li>4. does not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.</li> </ol> <p>According to Section 32 of the Competition Act, the Finnish Competition and Consumer Authority may prioritise its investigations and thus allocate its resources towards the most harmful competition restrictions. In general, hardcore cartels fall within the category of harmful competition restrictions and are, in principle, always prohibited and taken action upon.</p> <p>Section 32 <b>Prioritisation and leaving a case uninvestigated</b> (1) The Finnish Competition and Consumer Authority prioritises its duties. (2) The Finnish Competition and Consumer Authority may decide not to investigate a case if:</p> <ol style="list-style-type: none"> <li>1. it cannot be deemed likely that the case concerns a restriction of competition prohibited by Section 5 or 7, or Article 101 or 102 of the Treaty on the Functioning</li> </ol>

<sup>2</sup> 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.

	<p>of the European Union;</p> <ol style="list-style-type: none"> <li>2. competition in the relevant market may be considered effective as a whole, irrespective of the suspected restriction of competition;</li> <li>3. the request for measures in the case is manifestly unfounded;</li> <li>4. it is unlikely that the procedure or operating structure referred to in section 30a has significant effects on the conditions for healthy and effective economic competition; or</li> <li>5. it is unlikely that the suspected restriction of competition would significantly affect the conditions for sound and effective competition.</li> </ol> <p>(3) The decision to not to investigate shall be made without delay.</p>
<b>D. Is participation in a hardcore cartel illegal <i>per se</i><sup>3</sup>? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</b>	Yes.
<b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b>	It is an administrative offence.

### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</b>	The Finnish Competition and Consumer Authority (FCCA)
<b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b>	<p>The Finnish Competition and Consumer Authority          Lintulahdenkuja 2, 00530 Helsinki          POB 5, 00531          Helsinki, Finland  <a href="http://www.kkv.fi">http://www.kkv.fi</a> (in Finnish, Swedish and English)          e-mail: <a href="mailto:kirjaamo@kkv.fi">kirjaamo@kkv.fi</a>  <a href="https://kilpailuvihje.kkv.fi/kiva">https://kilpailuvihje.kkv.fi/kiva</a> (incl. link for sending confidential e-mail messages)</p>
<b>C. Information point for potential complainants:</b>	<p>Mr Antti Norkela          Head of Cartel Investigation          Tel. + 358 29505 3345          e-mail: <a href="mailto:antti.norkela@kkv.fi">antti.norkela@kkv.fi</a></p>

<sup>3</sup> 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.

	In another position until 31 January 2023.  Mr Pekka Mattila Head of Research Tel +358 29 505 3324 e-mail: <a href="mailto:pekka.mattila@kkv.fi">pekka.mattila@kkv.fi</a>
<b>D. Contact point where complaints can be lodged:</b>	Complaints can be lodged by hand, by mail or by e-mail. Contact information included in point 3B above.
<b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b>	Yes.  The Regional State Administrative Agencies may assist the FCCA e.g. in investigating competition restrictions and conducting inspections.

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

<b>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</b>	The Finnish Competition and Consumer Authority: - decisions finding an infringement and requiring an infringement to be terminated - decisions imposing necessary behavioural or structural remedies - interim measures - decisions not to take action (“non action decisions”) - decisions on immunity from competition infringement fine - decisions accepting commitments  The Market Court: - imposition of competition infringement fine - decisions on reduction of competition infringement fine - decisions on penalty payments imposed for infringements of procedural provisions
<b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b>	The Finnish Competition and Consumer Authority, please see point 3B above.  The Market Court Sörnäistenkatu 1 00580 Helsinki Finland tel. +358-(0)29 56 43300 fax. +358-(0)29 56 43314 <a href="mailto:markkinaoikeus@oikeus.fi">markkinaoikeus@oikeus.fi</a>

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

	<a href="https://www.markkinaoikeus.fi/">https://www.markkinaoikeus.fi/</a> (in Finnish, Swedish, English)
<b>C. Contact point for questions and consultations:</b>	See point 3B above
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	The FCCA investigates the cartel case and conducts, if necessary, an inspection in the business premises of the undertaking (Section 35 of the Competition Act) and/or other premises (Section 36 of the Competition Act). If the cartel conduct has not been terminated, the FCCA issues a decision ordering the cartel members to terminate their illegal conduct. Furthermore, the FCCA makes a proposal to the Market Court for the imposition of a competition infringement fine for the cartel conduct.
<b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>	Not applicable.

## 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</b>	In general, investigations are initiated on the basis of a complaint, a leniency application or ex officio.
<b>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).]</b>	No formal criteria are required for lodging a complaint but the complaint should ideally contain at least the following facts: <ul style="list-style-type: none"> <li>• contact information of the complainant</li> <li>• information about the market that the alleged competition restriction concerns (what is the product or service at issue and how could the relevant product and geographical markets be defined)</li> <li>• information about how competition is restricted and who is responsible for the restriction (parties to the restriction)</li> <li>• information or assessment of who will suffer as a result of the competition restriction and what is the harm caused by the restriction</li> <li>• information about the market position of the parties to the competition restriction and the ones suffering from the restriction as well as their significance in the market (e.g. their market shares)</li> <li>• copies of documents or other material, which in the opinion of the complainant serves as proof of the existence of the restriction, its harmfulness etc.</li> </ul>
<b>C. Legal requirements for lodging a complaint against a cartel:</b>	There are no specific legal requirements for lodging a complaint, i.e. anyone who has information about an alleged

<b>[e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</b>	cartel may lodge a complaint. Nevertheless, only a person whose rights, interests or obligations are affected by the conduct which might violate the Competition Act will be considered as a complainant.
<b>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.]</b>	According to Section 32 of the Competition Act, the FCCA shall prioritise its tasks and thus allocate its resources in a way it sees appropriate e.g. to investigate the most harmful competition restrictions. See 2c above.
<b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b>	The FCCA is only required to adopt a decision addressed to the complainant if the competition restriction may affect the complainant's rights, interests or obligations. Nonetheless, the FCCA always informs all persons who have lodged a complaint at the FCCA about the fact that the complaint does not give cause to further action on the part of the FCCA.
<b>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?</b>	<p>According to Section 32 of the Competition Act a decision not to investigate must be taken without delay.</p> <p>Furthermore, the FCCA is bound by the Administrative Procedure Act, which contains rules governing good administration including a duty for swift and appropriate action.</p>

## 6. Leniency policy<sup>5</sup>

<b>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</b>	<p>Immunity from penalty payment in cartel cases (Section 14 of the Competition Act) / Reduction of penalty payment in cartel cases (Section 15 of the Competition Act).</p> <p>FCCA Guidelines on immunity from and reduction of penalty payments in Cartel Cases.</p> <p><a href="https://www.kkv.fi/uploads/sites/2/2022/01/2022-guidelines-lenency.pdf">https://www.kkv.fi/uploads/sites/2/2022/01/2022-guidelines-lenency.pdf</a></p> <p>(in Finnish, Swedish, English)</p>
<b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on</b>	The Finnish jurisdiction provides full leniency (immunity) as well as partial leniency (reduction of fines).

<sup>5</sup> 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><b>the case?</b></p>	
<p><b>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</b></p>	<p>Only one undertaking can, in principle, obtain immunity for the same infringement. Thus, the FCCA will grant full leniency only to the first undertaking that satisfies the conditions for obtaining leniency set in Sections 14 and 16 of the Competition Act. However, the Market Court is not restricted from deciding to reduce the fine for other applicants even by 100%.</p>
<p><b>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?</b></p> <p><b>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?</b></p>	<p>According to Section 14 of the Competition Act, the FCCA will grant full leniency to an undertaking which:</p> <ul style="list-style-type: none"> <li>- provides information or evidence, on the grounds of which the FCCA may conduct an inspection referred to in Section 35 or 36 of the Competition Act; or</li> <li>- following an inspection referred to in Section 35 or 36, delivers information or evidence, on the grounds of which the FCCA can establish that Section 5 or Article 101 of the Treaty on the Functioning of the European Union has been violated</li> <li>- provides the information before the FCCA has obtained the information from some other source.</li> </ul>
<p><b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b></p>	<p>Business undertakings.</p>
<p><b>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.]</b></p>	<p>Section 14 of the Competition Act states that the FCCA will grant full leniency to an undertaking which:</p> <ul style="list-style-type: none"> <li>- provides information or evidence, on the grounds of which the FCCA may conduct an inspection referred to in Section 35 or 36 of the Competition Act; or</li> <li>- following an inspection referred to in Section 35 or 36, delivers information or evidence, on the grounds of which the FCCA can establish that Section 5 or Article 101 of the Treaty on the Functioning of the European Union has been violated</li> <li>- provides the information before the FCCA has obtained the information from some other source</li> </ul> <p>An undertaking which has coerced another undertaking to participate in a cartel cannot obtain immunity.</p> <p>By the request of the applicant the FCCA can process a declined Leniency application as a Reduction of penalty payment application.</p> <p>Section 16 of the Competition Act includes further conditions for immunity and the reduction of fines in cartel cases as follows.</p> <p>(1) Immunity from fines or reduction of fines is further conditional upon the undertaking:</p> <ol style="list-style-type: none"> <li>1. immediately ceasing participation in the restraint on competition once it has delivered to the FCCA the application referred to in Section 17(1) except in cases where an FCCA considers that the undertaking's</li> </ol>

	<p>continued involvement is reasonably necessary to preserve the integrity of the investigation;</p> <ol style="list-style-type: none"> <li>2. cooperating genuinely, fully, on a continuous basis and expeditiously with the FCCA from the time of its application until the FCCA has closed the investigation regarding all investigated parties by adopting a decision or a making a proposal to the Market Court;</li> <li>3. not destroying, falsifying or concealing evidence of the alleged secret cartel or disclosed the fact of, or any of the content of, its contemplated application, other than to any other competition authorities.</li> </ol> <p>(2) The cooperation with the FCCA in Section 16(1)(2) requires that the undertaking:</p> <ol style="list-style-type: none"> <li>1. submits to the FCCA promptly all leniency statements relating to the alleged secret cartel that comes into the applicant's possession or is accessible to it and the following information and evidence: <ol style="list-style-type: none"> <li>a) the name and address of the applicant;</li> <li>b) the names of all other undertakings that participate or participated in the alleged secret cartel;</li> <li>c) detailed description of the alleged secret cartel, including the affected products, the affected territories, the duration, and the nature of the alleged secret cartel conduct,</li> <li>d) information on any past or possible future leniency applications made to any other competition authorities in relation to the alleged secret cartel.</li> <li>e) any other relevant information and evidence.</li> </ol> </li> <li>2. remains at the FCCA's disposal to answer any request that may contribute to the establishment of facts;</li> <li>3. ensures directors, managers and other members of staff are available for interviews with the FCCA and makes reasonable efforts to make former directors, managers and other members of staff available for interviews with the FCCA;</li> <li>4. does not destroy, falsify or conceal relevant information or evidence; and</li> <li>5. does not disclose the fact of, or any of the content of, its leniency application before the FCCA national has issued objections in the enforcement proceedings before it, unless otherwise agreed;</li> <li>6. helps in any other way with the investigations of the alleged secret cartel.</li> </ol>
<p><b>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</b></p>	<p>According to Section 15 of the Competition Act, the fine shall be reduced if the undertaking submits information and evidence to the FCCA that is significant for establishing a restriction on competition or its entire extent or nature, and prior to the FCCA receiving the information from some other source.</p> <p>The fine shall be reduced in the following way:</p> <ol style="list-style-type: none"> <li>1. 30-50 per cent if the undertaking is the first one to submit the</li> </ol>

<p><b>initiation of investigations?]</b></p>	<p>information;</p> <p>2. 20-30 per cent if the undertaking is the second one to submit the information;</p> <p>3. 20 per cent at most in any other situations than the ones referred to in Section 15(1)(1) and Section 15(1)(2) above.</p> <p>When setting any fine to be imposed on the applicant for reduction of fines additional facts which could lead to an increase in fines shall not be taken into account for the applicant which provided this evidence.</p> <p>Section 16 of the Competition Act includes further conditions for immunity and the reduction of fines in cartel cases (see 6F above)</p> <p>The Market Court may reduce or not impose a fine if the undertaking has considerably assisted the FCCA in the investigation of the competition restriction.</p>
<p><b>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.]</b></p>	<p>See point 6F above.</p>
<p><b>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 they be made orally, etc.]</b></p>	<p>An application for leniency may be given orally as well as in writing. A leniency application shall contain the following information:</p> <ul style="list-style-type: none"> <li>• the applicant's name and address</li> <li>• parties to the cartel</li> <li>• a detailed description of the functioning of the cartel including the products targeted by the cartel, the regional extent of the cartel, the temporal duration of the cartel, and the nature of the cartel activities</li> <li>• a description of how the restraint on competition has been implemented and how it has been maintained</li> <li>• applications in the same cartel case made to other competent authorities in the same cartel issue</li> <li>• information on whether the applicant intends to make an application concerning immunity from fines or the reduction of the penalty payment to other competent authorities</li> </ul>
<p><b>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)?]</b></p>	<p>The procedure for immunity from fines and the reduction of fines in cartel cases is laid out in Section 17 of the Competition Act. As per Section 17(1), leniency shall be applied from the FCCA.</p> <p>According to Section 17(2), the FCCA grants the undertaking conditional immunity from fines after the undertaking has submitted to the FCCA the information and evidence referred to in Section 14. The FCCA shall not take a position on any other applications referred to in Section 14 prior to deciding whether it shall grant conditional immunity to the undertaking</p>

	<p>who has been the first one to submit an application.</p> <p>Leniency statements can be submitted in writing or orally. Applicants have the right to present the leniency statements in Finnish or in Swedish or in the official language of a Member State of the EU bilaterally agreed between the FCCA and the applicant.</p> <p>According to Section 17(4), the FCCA shall issue a written decision at the end of the procedure on whether the undertaking fulfils all the criteria set out in Sections 14 or 15 and 16.</p> <p>Leniency statements, information and evidence submitted to the FCCA for the application of immunity from the penalty payment or reduction of the penalty payment shall not be used for any other purpose than to find or require an infringement to be brought to an end or to impose a behavioural remedy (Section 9), to impose a structural remedy (Section 9a), making a commitment decision (Section 10), withdrawing a block exemption (Section 11), making a proposal for a penalty payment (Section 12) in the FCCA, the Market Court or the Supreme Administrative Court of Finland.</p> <p>However, information and evidence referred to in Section 17(5) can be used in the handling of damage claims raised under the Act on compensation of damages related to the infringement of competition law (1077/2016).</p>
<p><b>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?</b></p>	<p>A final decision may only be given once the investigation has finished, as the fulfilment of the criteria referred to in Section 16 can only be found upon completion of the investigation.</p> <p>The FCCA provides the undertaking with a conditional immunity from the penalty payment, in writing, once the FCCA has obtained the information and evidence referred to in Section 14(1), and having made sure that it is sufficient to grant immunity.</p> <p>If it turns out during the investigations that the undertaking does not fulfil the criteria in Sections 14, 15 or 16, the FCCA shall issue a written decision on dismissing the application without delay.</p>
<p><b>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?</b></p>	<p>The FCCA shall issue a separate decision on whether the undertaking fulfils all the conditions for full leniency. This decision is not separately subject to appeal.</p> <p>Leniency applications are processed by Enforcement 2, but the Director of the Competition Division makes the decision about granting leniency. Nonetheless, if the applicant fulfils the conditions for obtaining leniency, the Director of the Competition Division has no discretionary power, but is obliged to grant leniency.</p>

**M. Do you have a marker<sup>6</sup> system? If yes, please describe it.**

Yes.

According to Section 17A the FCCA may grant an undertaking fixed-term marker in order to give the undertaking a specific time to gather the leniency statements, information and evidence necessary.

In order to obtain a marker, the undertaking shall provide to the FCCA:

1. the name and address of the applicant;
2. the basis for making an application for immunity;
3. the names of all other undertakings that participate or participated in the alleged secret cartel;
4. the affected products and territories;
5. the duration and the nature of the alleged secret cartel conduct;
6. information on any past or possible future leniency applications made to any other competition authorities in relation to the alleged secret cartel.

All leniency statements, information and evidence provided by the applicant within the validity period of the marker is deemed to have been submitted at the time of the initial request.

According to Section 17B if an undertaking has applied to the Commission or to a competent competition authority of another EU Member State for leniency either by applying for a marker or by submitting a full application in relation to the same alleged secret cartel the undertaking may in the same case apply for immunity from a penalty payment in accordance with section 14 or reduction of a penalty payment in accordance with section 15 with the FCCA by way of a summary application.

Summary applications shall consist of a short description of each of the following:

1. the name and address of the applicant;
2. the names of other parties to the alleged secret cartel;
3. the affected products and territories;
4. the duration and the nature of the alleged secret cartel;
5. the Member State(s) where the evidence of the alleged secret cartel is likely to be located; and
6. information on any past or possible future leniency applications made to any other competition authorities in relation to the alleged secret cartel.

The FCCA may ask the undertaking to provide clarifications regarding aforementioned items.

The FCCA shall give the undertaking that has provided a summary application the opportunity to submit a full application if the European Commission has informed that it does not intend to pursue the case in whole or in part.

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<sup>6</sup> 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.

	<p>When strictly necessary for case delineation or case allocation, the FCCA may request the applicant to submit the full application before the Commission has informed the national competition authorities concerned that it does not intend to pursue the case in whole or in part, or if the application has been submitted solely to a national competition authority in another Member State. The FCCA shall set a reasonable period within which the applicant is to submit the full application. However, the applicant has the right to voluntarily submit a full application at an earlier stage.</p> <p>If the FCCA has not received an application from another applicant in relation to the same alleged secret cartel and in the summary application fulfil the requirements of Section 17B(2) the FCCA informs the applicant of its priority status.</p> <p>If the applicant submits the full application to the FCCA within the period specified by the FCCA in Section 17B(3) or (4), or voluntarily at an earlier stage, the application is deemed to have been submitted at the time of the summary application, provided that the summary application covers the same affected product(s) and territory(ies), as well as the same duration of the alleged secret cartel, as the leniency application filed with the Commission or a competition authority of another Member State, which may have been updated.</p>
<p><b>N. Does the system provide for any extra credit<sup>7</sup> for disclosing additional violations? [e.g. a hardcore cartel in another market]</b></p>	<p>No.</p>
<p><b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b></p>	<p>According to Finnish legislation all documents written by public authorities or submitted to them are public unless there is a legitimate reason to classify the document confidential. However, the FCCA can decline to reveal the name of the applicant as long as it might jeopardize the investigations. After conducting dawn raids it is likely that the name of the applicant will become public.</p>
<p><b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b></p>	<p>The decision to reject a leniency application is not separately subject to appeal. Claims connected to the FCCA's decision may, however, be presented to the Market Court in the context of the handling of the primary matter concerning a penalty payment.</p>
<p><b>Q. Contact point where a leniency application can be lodged [telephone and fax]</b></p>	<p>The Finnish Competition and Consumer Authority</p> <p>Mr Antti Norkela Head of Cartel Investigation</p>

<sup>7</sup> 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 information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p>including the country code, plus out of hours contacts (if any)]:</p>	<p>Tel. + 358 29505 3345 e-mail: <a href="mailto:antti.norkela@kkv.fi">antti.norkela@kkv.fi</a></p> <p>In another position until 31 January 2023.</p> <p>Mr Pekka Mattila Head of Research Tel +358 29 505 3324 e-mail: <a href="mailto:pekka.mattila@kkv.fi">pekka.mattila@kkv.fi</a></p> <p>Lintulahdenkuja 2, 00530 Helsinki POB 5, 00531 Helsinki, Finland e-mail: <a href="mailto:kirjaamo@kkv.fi">kirjaamo@kkv.fi</a></p>
<p><b>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?</b></p>	<p>There are no express provisions in the Competition Act empowering the FCCA to revoke its decision to grant leniency.</p>
<p><b>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</b></p>	<p>No.</p>
<p><b>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what does protection actually mean.</b></p>	<p>According to the Act on the Openness of Government Activities (621/1999) all documents written by public authorities and documents submitted to them are public unless there is a legitimate reason to classify the document confidential. Information supplied by a leniency applicant may be kept confidential to the public and the parties as long as the publication can jeopardize the investigation as per Section 24(1)(15). Business secrets are protected by Section 24(1)(20).</p> <p>Since the implementation of the ECN+ Directive, Section 38a of the Competition Act now stipulates that the right to receive information on the content of a leniency statement only applies to a party under investigation and solely for the purpose of exercising its rights of defence.</p>

## 7. Settlement

<p><b>A. Does your competition regime allow settlement?</b></p>	<p>No</p>
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<p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	
<p><b>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b></p>	<p>Not applicable, see 7A above</p>
<p><b>C. What is the reward of the settlement for the parties?</b></p>	<p>Not applicable, see 7A above</p>
<p><b>D. May a reduction for settling be cumulated with a leniency reward?</b></p>	<p>Not applicable, see 7A above</p>
<p><b>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</b></p>	<p>Not applicable, see 7A above</p>
<p><b>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.].</b></p>	<p>Not applicable, see 7A above</p>
<p><b>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</b></p>	<p>Not applicable, see 7A above</p>
<p><b>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</b></p>	<p>Not applicable, see 7A above</p>
<p><b>H. Is there a possibility for settled parties to appeal a settlement decision at court?</b></p>	<p>Not applicable, see 7A above</p>

## 8. Commitment

<p><b>A. Does your competition regime allow the possibility of commitment?</b></p> <p>If yes, please indicate its public availability [link to the relevant rules, guidelines,</p>	<p>Yes, but not in cartel cases</p>
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etc.]	
<p><b>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b></p> <p><b>Are there violations which are excluded from the commitment possibility?</b></p>	See 8A above
<p><b>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</b></p>	<p>As per Section 10 of the Competition Act, commitments offered by undertakings and associations of undertakings involved in a suspected restriction of competition may be made binding on the, where the commitments can eliminate the anti-competitive nature of the activity. The Government Proposal for this Section refers to EU Regulation 1/2003, indicating that commitments are not appropriate in cases where the Authority intends to impose a fine. According to the European Commission's fining guidelines (2006), "horizontal price-fixing, market-sharing and output-limitation agreements (...) are, by their very nature, among the most harmful restrictions of competition" and ought to be heavily fined as a result.</p>
<p><b>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</b></p>	See 8A and 8C above.
<p><b>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.]</b></p>	See 8A and 8C above.
<p><b>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</b></p>	See 8A and 8C above.
<p><b>J. Describe how your authority monitors the parties' compliance to the commitments.</b></p>	See 8A and 8C above.
<p><b>K. Is there a possibility for parties to appeal a commitment decision at court?</b></p>	See 8A and 8C above.

## 9. Investigative powers of the enforcing institution(s)<sup>8</sup>

**A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>9</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.**

According to Section 33 of the Competition Act, an undertaking association of undertakings, contracting entity, municipality, joint municipal authority, wellbeing services county, wellbeing services consortium and the central government, and any entities within their control shall be obliged, at the request of the FCCA, to provide the Authority with all the information and documents needed for the investigation of the content, purpose and impact of a competition restriction and for clarifying the competitive conditions. Natural persons are also obliged to provide any information and documents needed to investigate the contents, purpose and impact of a restriction of competition, with limited exceptions concerning personal data.

Undertakings and associations of undertakings are additionally obliged to provide the FCCA with all the information and documents needed to investigate suspected procedural infringements during investigations, such as breaking seals or destroying evidence (with reference to Section 37a of the Competition Act). Undertakings and associations of undertakings may also be obliged by the FCCA to provide information and evidence as referred to above at the request of another EU Member State.

Section 34 of the Competition Act empowers the FCCA to summon for an interview any representative of an undertaking or association of undertakings, or any other person who may possess information necessary to establish a restriction of competition. The FCCA may record the answers provided. A summons for an interview is also possible at the request and on behalf of another EU Member State.

Section 35 of the Competition Act confers an authorised official of the FCCA and a Regional State Administrative Agency the right to conduct an inspection in order to supervise compliance with the Competition Act and the provisions issued under it. At the request of the European Commission, the FCCA is obliged to conduct an inspection as prescribed in the European Union legal acts.

The officials of the FCCA are allowed to enter any business premises, storage facilities, land, and means of transport controlled by the undertaking. An inspection of such premises may also be carried out at the request of another Member State.

Under Section 37 the officials have the power to examine, irrespective of the data storage medium, to examine the business correspondence, accounts, data processing records, any other records and data of the undertaking or association of undertakings which may be relevant to the supervision of compliance with this Act or the provisions issued under it, and

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

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

	<p>to take copies thereof. The FCCA also has the right to receive all information necessary to carry out the inspection from a company that handles the communications or information falling under the scope of the inspection at the request of an undertaking subject to the inspection or otherwise as part of a service provided to it.</p> <p>The officials also have the right to request oral explanations on the spot and to make a record of the replies obtained, and have the power to seal business premises and books or records for the period and to the extent necessary for the inspection.</p> <p>A court warrant is not required for conducting an inspection in the business premises of an undertaking.</p> <p>Under Section 36 of the Competition Act, an authorised official of the FCCA and a Regional State Administrative Agency may also conduct an inspection in premises other than the ones referred to in Section 35, if a reasonable suspicion exists that books and records relating to the subject matter of the investigation may be held there, provided that these documents may have relevance in proving a violation of Sections 5 or 7 of the Competition Act, or Articles 101 or 102 of the Treaty on the Functioning of the European Union. This type of inspection is possible also in accordance with the Nordic Agreement on Cooperation in Competition Cases, and an inspection is also possible on behalf of another EU Member State.</p> <p>Such an inspection requires prior authorisation from the Market Court. The Market Court may prohibit an inspection if it would be arbitrary or excessive. Oral explanations may not be requested on-site nor seals placed during inspections under Section 36.</p> <p>The FCCA may conduct the inspection of temporary copies of data obtained in its own premises.</p>
<p><b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</b></p>	<p>See 9A above.</p>
<p><b>C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!</b></p>	<p>Finland has implemented EU Directive 2019/1 and thereby Article 6(1)(b), thus confirming the access principle.</p>
<p><b>D. 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</b></p>	<p>Not by the FCCA, upon accidental findings there would be a need for a new inspection decision to broaden the scope of an investigation, or to open a new case.</p>

post-search court warrant needed)?	
<b>E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b>	No.

## 10. Procedural rights of businesses / individuals

<p><b>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.</b></p>	<p>Section 12 of the Administrative Procedure Act (434/2003) provides the party the right to an attorney or counsel in an administrative matter and therefore also in a competition case. Section 38 of the Competition Act confirms protection of Legal Professional Privilege in competition investigations, interpreted in line with the decisional practice of the EU courts.</p> <p>Before the matter is decided, a party shall according to Section 34 of the Administrative Procedure Act be reserved an opportunity to express an opinion on the matter and to submit an explanation on the demands and information which may have an effect on the authority's decision. As per Section 38 of the Competition Act, a reasonable time period will be set by the FCCA to allow the undertaking under investigation to make its views known.</p> <p>Moreover, according to Section 37 of the Administrative Procedure Act, the FCCA has on the request of a party an obligation to reserve a party the opportunity to submit his/her demands or information orally, if this is necessary for purposes of clarification of the matter and a written procedure would cause unreasonable inconvenience to the party. The other parties shall be summoned to be present at the same time, if this is unavoidable in view of safeguarding the rights or interests of the parties. Similarly, the FCCA may on the request of a party reserve an opportunity for the oral submission of information necessary for the clarification of the matter also in other situations.</p> <p>When the FCCA conducts an inspection, the party has the right to be present during the inspection and to express opinions and ask questions on points pertaining to the inspection.</p> <p>The party has a right to be informed, in so far as possible, of the purpose of the investigation, the procedure therein and the follow-up measures. Section 38 of the Competition Act also obliges the FCCA to inform any undertaking under investigation of its status in the investigation and of what it is suspected as soon as possible without jeopardising the investigation.</p> <p>The inspection shall be carried out without causing undue inconvenience to the object of the inspection or the person</p>
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	<p>possessing it. Furthermore, the inspector shall without delay draw up a report of the inspection, indicating the progress of the inspection and the essential observations made by the inspector. The inspection report shall be served on parties entitled to be present during the inspection (see Section 39 of the Administrative Procedure Act).</p> <p>According to Section 11 of the Act on the Openness of Government Activities (621/1999), a party has the right of access also to the contents of a document which is not in the public domain, if they may influence or may have influenced the consideration of his/her case, unless there is a legitimate reason to deny access to the document in question.</p> <p>The party also has the right not to self-incriminate, as Finland has ratified the European Human Rights Convention.</p>
<p><b>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.</b></p>	<p>According to Finnish legislation (The Act on the Openness of Government Activities) all documents written by public authorities and documents submitted to them are public unless there is a legitimate reason to classify the document confidential. Documents containing business secrets will, according to Section 24(1)(20) of the Act on the Openness of Government Activities, in general remain secret.</p> <p>This is applicable to information regardless of the manner in which it has been provided.</p>

## 11. Limitation periods and deadlines

<p><b>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? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</b></p>	<p>As per Section 19 of the Competition Act, a penalty payment shall not be imposed unless the proposal has been made to the Market Court within five years of the termination of the infringement. Measures of the FCCA to investigate the infringement shall reset the limitation period. A penalty payment shall not be imposed, however, if the proposal to the Market Court has not been made within ten years of the termination of the infringement.</p> <p>Measures taken by the European Commission or the national competition authority of another EU Member State to investigate the same restriction of competition suspend the limitation period from the notification of the first investigative measure to at least one undertaking or association of undertakings under investigation. The limitation period is suspended for all undertakings and associations of undertakings which have participated in the infringement. The suspension ends when the relevant competition authority makes a decision on the principal claim or concludes that there are no grounds for further action.</p>
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	<p>A penalty payment for a procedural breach shall not be imposed under Section 37A if the proposal to the Market Court has not been made within two years since the FCCA became aware of the infringement, or within five years of the infringement itself.</p> <p>Apart from that the FCCA is bound by the rules governing good administration which include the duty to swift and appropriate action.</p>
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</b></p>	<p>No statutory limits exist apart from the limitation period for the imposition of fines, but the FCCA is bound by the rules governing good administration which include the duty to swift and appropriate action.</p>
<p><b>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)</b></p>	<p>The decision by the Market Court to impose a competition infringement fine may be appealed to the Supreme Administrative Court within 30 days of notice of the decision. An administrative complaint may be filed on the conduct of the FCCA according to the stipulations of Chapter 8a of the Administrative Procedure Act (434/2003), and complaints on the conduct of the FCCA may also be lodged with the Parliamentary Ombudsman or the Chancellor of Justice as the supreme guardians of the law in Finland. An administrative complaint concerning a matter dating back more than two years shall not be admitted for examination without a special reason.</p>

## 12. Types of decisions

<p><b>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.]</b></p>	<p>The FCCA may</p> <ul style="list-style-type: none"> <li>- find or prohibit an infringement of the Competition Act</li> <li>- oblige a business undertaking to deliver on non-discriminatory terms</li> <li>- issue interim measures</li> <li>- decide not to take action</li> <li>- decide on immunity from the competition infringement fine</li> <li>- make a proposal to the Market Court on the imposition of a competition infringement fine.</li> </ul> <p>The Market Court</p> <ul style="list-style-type: none"> <li>- may impose a competition infringement fine</li> <li>- decide on the reduction of the competition infringement fine.</li> </ul>
<p><b>B. List any other types of decisions on the merits of the case relevant particularly in</b></p>	<p>N/A</p>



<p><b>hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</b></p>	
<p><b>C. Can interim measures<sup>10</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>11</sup>.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</b></p>	<p>According to Section 45 of the Competition Act, the FCCA may impose interim measures where it is immediately found that the application or implementation of a restriction of competition may cause serious and irreparable harm to competition. Such measures shall be valid for a specific period which does not exceed one year. Their validity may be extended for a maximum period of one year at a time, where such extension is necessary. The FCCA shall revoke the interim measure immediately when it is no longer required.</p> <p>Before imposing interim measures, the FCCA shall give the undertaking or association of undertakings an opportunity to be heard subject to the urgency of the matter or another specific reason.</p>

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

<p><b>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.]:</b></p>	<p>Unless the infringement is to be deemed negligible or the imposition of a penalty payment is to be deemed otherwise unfounded, the FCCA may submit a proposal to the Market Court for imposition of a penalty payment on an undertaking or association of undertakings which intentionally or negligently:</p> <ul style="list-style-type: none"> <li>- opposes an inspection;</li> <li>- breaks a seal;</li> <li>- fails to correct or complete an incorrect, misleading or incomplete explanation in response to a request made under subsection 3 of section 37 in connection with an investigation carried out under section 35 to investigate a restriction of competition, or fails to submit a requested explanation;</li> <li>- gives incorrect, incomplete or misleading information in response to a request made under subsection 1 of section 33 to establish a restriction of competition, or fails to supply the requested information within the period specified by the FCCA;</li> <li>- fails to confirm that its representative appears at an interview performed as part of an investigation of a restriction of competition by virtue of section 34;</li> <li>- fails to comply with a decision issued on the basis of a restriction of competition by virtue of section 9, 9a or 10 or with an order issued under section 45 during an investigation.</li> </ul>
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<sup>10</sup> 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].

<sup>11</sup> Only for agencies which answered “yes” to question 2.B. above

	<p>Determination of the amount of such a penalty payment is based on an overall assessment, which shall take account of the nature and extent of the infringement and of its degree of gravity. The penalty payment shall not exceed one per cent of the total worldwide turnover of the infringer in the financial year preceding submission of the proposal for a penalty payment.</p> <p>Under Chapter 16, Section 8, of the Criminal Code a person who provides an authority with false documents shall be sentenced to a fine or to imprisonment for at most six months. A sentence for providing false documents to a public authority shall be passed also on a person pursuing an activity under the specific supervision of an authority, the representative or employee of such a person, and an auditor of the corporation under supervision, who during a statutory inspection or when otherwise fulfilling a statutory reporting duty provides the supervising authority with legally relevant false oral information.</p>
<b>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</b>	Procedural penalty payments are an administrative sanction whereas the sentence for providing false documents to a public authority is a criminal sanction. See also 13A above.
<b>C. On whom can procedural sanctions be imposed?</b>	<p>Procedural sanctions can be imposed on the undertakings participating in the proceedings.</p> <p>Only natural persons can be sentenced for providing false documents to a public authority.</p>
<b>D. Criteria for determining the sanction / fine:</b>	For administrative sanctions, see 13A above. Criminal sanctions are determined according to the various provisions detailed in Chapter 6 of the Criminal Code, the general principle being that a sentence shall be determined so that it is in just proportion to the harmfulness and dangerousness of the offence, the motives for the act and the other culpability of the offender manifest in the offence.
<b>E. Are there maximum and / or minimum sanctions / fines?</b>	See 13A above.

## 14. Sanctions on the merits of the case

<b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b>	Administrative.
<b>On whom can sanctions be imposed? [E.g.:</b>	Sanctions may be imposed on undertakings and associations of undertakings.



<p>representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</p>	
<p><b>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</b></p>	<p>As per Section 13 of the Competition Act, the amount of the fine shall be based on an overall assessment, and in determining the amount, attention shall be given to the nature and extent, the degree of gravity, and the duration of the infringement. The overall assessment shall take account of the aggravating and mitigating factors in accordance with subsections 2 and 3 of Section 13e, including recidivism and coercion as possible aggravating factors and voluntary cooperation with the investigation as a mitigating factor. The assessment shall also take account of the grounds for reducing a penalty payment relating to the insolvency of an undertaking in accordance with Section 13f.</p> <p>In calculating the basic amount of the penalty payment, the FCCA shall also apply the procedure laid down in sections 13b–13d. This means that the basic amount will start off from up to 30% of relevant turnover, use duration in years as a multiplier, and add a percentage of relevant turnover for the most serious infringements.</p>
<p><b>C. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>According to Section 13a, the fine shall not exceed 10 per cent of the worldwide turnover of the undertaking or association of undertakings concerned.</p> <p>Where the infringement of an association of undertakings relates to the activities of its members, the penalty payment imposed on the association shall not exceed 10% of the sum of the total turnover of the association and each member active on the market affected by the infringement. The turnover of a member of an association to which imposition of a penalty payment is being separately proposed or has been imposed on the basis of the same infringement shall not be taken into account in the maximum amount for the association.</p>
<p><b>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]</b></p>	<p>The FCCA Guidelines on the Assessment of the amount of the Fine</p> <p><a href="https://www.kkv.fi/uploads/sites/2/2021/11/2011-suuntaviivat-3-2011-seuraamusmaksu.pdf">https://www.kkv.fi/uploads/sites/2/2021/11/2011-suuntaviivat-3-2011-seuraamusmaksu.pdf</a></p> <p>(in Finnish and Swedish)</p> <p>Please note that the Competition Act has been amended since the publication of these Guidelines to include the considerations detailed further above.</p>
<p><b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that</b></p>	<p>No. The Market Court's decision imposing a competition infringement fine shall be followed, notwithstanding an appeal, unless the Supreme Administrative Court rules otherwise.</p>

<p>sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	
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## 15. Possibilities of appeal

<p><b>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?</b></p>	<p>An appeal may be lodged against a decision by the FCCA finding a violation of a prohibition of cartels within 30 days of notice of that decision.</p> <p>Any person to whom a decision is addressed or whose right, obligation or interest is directly affected by a decision taken by the FCCA may lodge an appeal against the decision.</p> <p>The decision may be appealed on questions of law or fact as well as on breaches of procedural requirements.</p>
<p><b>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</b></p>	<p>An appeal against a decision taken by the FCCA shall be lodged before the Market Court, if the decision is appealed on questions of law or fact.</p> <p>If the decision is appealed on breaches of procedural requirements, the appeal shall be lodged before an administrative court, or a complaint made to the Parliamentary Ombudsman or the Chancellor of Justice.</p>

## 16. Private enforcement

<p><b>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?</b></p>	<p>Yes.</p>
<p><b>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)]</b></p>	<p>Act on Antitrust Damages  <a href="https://www.finlex.fi/fi/laki/alkup/2016/20161077">https://www.finlex.fi/fi/laki/alkup/2016/20161077</a>  (Finnish and Swedish)</p>

<p><b>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]</b></p>	<p>N/A</p>
<p><b>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</b></p>	<p>The Finnish Antitrust Damages Act implements EU Directive 2014/104, whereby Section 2 of the Damages Act mandates that any natural or legal person who has suffered harm caused by an infringement of competition law is able to claim and to obtain full compensation for that harm.</p> <p>Section 1 of the Act stipulates that the Act applies to restrictions of competition prohibited by Section 5 or 7 of the Competition Act, or Article 101 or 102 of the Treaty on the Functioning of the European Union. This is to say, in broad terms, horizontal and vertical restrictions as well as abuse of dominance.</p>
<p><b>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</b></p> <ul style="list-style-type: none"> <li>• <b>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?</b></li> <li>• <b>if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised?</b></li> </ul>	<p>A prior finding is not a formal requirement but may be necessary in practice.</p> <p>A court shall, as per Section 3 of the Antitrust Damages Act, consider <i>ex officio</i> a final decision finding a competition infringement from the FCCA, the Market Court or the Supreme Administrative Court as the basis of its judgment on claims for antitrust damages. A final decision from another EU Member State shall be taken into account as part of the evidence in the proceedings.</p>
<p><b>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</b></p>	<p>Finland has no criminalisation of competition infringements in force as such, so it is unlikely that the two would coincide.</p>
<p><b>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</b></p>	<p>As Finland has implemented the EU Damages Directive, leniency has been taken into consideration accordingly. Undertakings which have infringed competition law through joint behaviour are thereby jointly and severally liable for the harm caused by the infringement of competition law, as a main rule. An immunity recipient is, however, jointly and severally liable only to its own direct or indirect purchasers or providers</p>

	<p>unless other injured parties are not able to obtain full compensation from the other undertakings that were involved in the same infringement of competition law.</p>
<p><b>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</b></p>	<p>None.</p>
<p><b>I. Information about class action opportunities</b></p>	<p>The Finnish system does not contain provisions for class action in competition cases.</p>
<p><b>J. Role of your competition agency in private enforcement actions (if at all)</b></p>	<p>A district court, an appeals court or the Supreme Court may ask the FCCA to give a statement concerning the assessment of harm caused by an infringement. The FCCA may assist a national court with respect to the determination of the quantum of damages where the FCCA considers such assistance to be appropriate. As per Section 2 of the Antitrust Damages Act, should the FCCA opt not to give a statement it shall inform the court accordingly without delay.</p>
<p><b>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</b></p> <ul style="list-style-type: none"> <li>• <b>Role of your competition agency in the damage calculation (if at all)</b></li> </ul>	<p>In cartel cases, a cartel carries a presumption of damage caused unless otherwise proven. This presumption is codified in Section 2 of the Antitrust Damages Act.</p> <p>The general rule for assessment of evidence in Finland is free deliberation. The main rules are codified in Section 1 of Chapter 17 of the Code of Judicial Procedure (4(1734) as follows:</p> <p>(1) A party has the right to present the evidence that he or she wants to the court investigating the matter and comment on each piece of evidence presented in court unless otherwise provided by law.</p> <p>(2) The court shall, after considering the evidence presented and the other circumstances shown in the proceedings, determine what has been proven and what has not been proven in the matter. The court shall consider the probative value of the evidence and the other circumstances thoroughly and objectively on the basis of free consideration of the evidence unless otherwise provided by law.</p> <p>See also 16J above.</p>
<p><b>L. Discovery / disclosure issues:</b></p> <ul style="list-style-type: none"> <li>• <b>can plaintiff obtain access to competition authority or prosecutors' files or documents collected during</b></li> </ul>	<p>There is no discovery such as in the United States for instance, but publicity of public authorities documents and data is very broad in Finland. Business secrets and leniency applicants have been given additional safeguards in Finnish legislation.</p> <p>See 6T above.</p>

<p><b>investigations?</b></p> <ul style="list-style-type: none"> <li>• <b>is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)?</b></li> <li>• <b>summary of the rules regulating the disclosure of confidential information by the competition agency to the court</b></li> <li>• <b>summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court</b></li> </ul>	
<p><b>M. Passing-on issues:</b></p> <ul style="list-style-type: none"> <li>• <b>how is passing-on regulated / treated in your jurisdiction?</b></li> <li>• <b>is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims?</b></li> </ul>	<p>As per Subsection 1 of Section 2 of the Antitrust Damages Act, an indirect purchaser or supplier is equally entitled to full compensation for damage suffered as a result of a competition infringement.</p>