



International  
Competition  
Network

# **ANTI-CARTEL ENFORCEMENT TEMPLATE**

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

**BULGARIA**

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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 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 which suffer from cartel activity to get information about the possibilities of lodging a complaint 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.

## 1. Information on the law relating to cartels

<b>A. Law(s) covering cartels:</b>	<p>Law on Protection of Competition (published in SG No 52/1998, last amended SG 107/2003) (LPC) Homepage adress: <a href="http://www.cpc.bg">www.cpc.bg</a> Languages: Bulgarian, English The law on Protection of Competition on the homepage: <a href="http://www.cpc.bg/system/storage/zak_bg_1_146.doc">http://www.cpc.bg/system/storage/zak_bg_1_146.doc</a> (in Bulgarian) <a href="http://www.cpc.bg/system/storage/zak_en_1_119.doc">http://www.cpc.bg/system/storage/zak_en_1_119.doc</a> (in English)</p> <p>Criminal Procedure Code (rules respectively applicable to coercive collection of evidence for issues not covered by the Law on Protection of Competition) - published in SG 86/2005 entrying into force from 29/04/2006; until its entry into force still applicable is the Criminal Procedure Code (published in SG 89/1974, last ammended SG 46/2005, suspended SG 86/2005 with effect from 29/04/2006)</p> <p>Law for the Supreme Administrative Court (rules applicable on appeal of the Commission on Protection of Competition's decisions) - published in SG 122/1997, last amended with SG 84/2003);</p> <p>Background rules on general procedures:</p> <p>Civil Procedure Code - published in SG 12/1952 , last ammended in SG 99/2005 (applicable for issues not specified in the Law on Supreme Administrative Court);</p>
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	<p>Law on Administrative proceedings - published SG 90/1979, last ammended SG 55/2003 (applicable for issues not settled by the Law on Supreme Administrative Court and for the general principles about administrative proceedings);</p> <p>Law on Administrative offences and Sanctions - published SG 92/1969, last ammended SG 79/2005</p>
<b>B. Implementing regulation(s) (if any):</b>	None
<b>C. Interpretative guideline(s) (if any):</b>	<p>Search, Seizure and Interview Procedural Rules pursuant to Art.41a under the Law on Protection of Competition - adopted by the Commission on Protection of Competition Available on the home page in Bulgarian  <a href="http://www.cpc.bg/system/storage/zak_bg_1_177.doc">http://www.cpc.bg/system/storage/zak_bg_1_177.doc</a>  and in English  <a href="http://www.cpc.bg/system/storage/procedurni%20pravila-08-03-e.doc">http://www.cpc.bg/system/storage/procedurni%20pravila-08-03-e.doc</a></p> <p>Methods of setting the pecuniary sanctions and fines under the Law on Protection of Competition - adopted by the Commission on Protection of Competition Available on the homepage in Bulgarian only  <a href="http://www.cpc.bg/system/storage/zak_bg_1_150.doc">http://www.cpc.bg/system/storage/zak_bg_1_150.doc</a></p> <p>Methodology on Investigation and Definition of the Market Position of Undertakings in the Relevant Market Available on the homepage in Bulgarian  <a href="http://www.cpc.bg/system/storage/methodika.doc">http://www.cpc.bg/system/storage/methodika.doc</a>  and in English  <a href="http://www.cpc.bg/system/storage/Methodology.doc">http://www.cpc.bg/system/storage/Methodology.doc</a></p>
<b>D. Other relevant materials (if any):</b>	<p>Decision of the Commission on Protection of Competition - summaries available on the home page in Bulgarian and in English  <a href="http://www.cpc.bg/public/index.php?id=177">http://www.cpc.bg/public/index.php?id=177</a></p> <p>Decisions of the Supreme Administrative Court on its homepage after registration</p> <p>Block Expemptions Regulations</p>

## 2. Scope and nature of prohibition on cartels

<p><b>A. Does your law or case law define the term “cartel”?</b></p> <p><b>If not, please indicate the term you use instead.</b></p>	<p>Agreements between undertakings, decisions by associations of undertakings, as well as concerted practices of two or more undertakings having as their object or effect the prevention, restriction or distortion of competition within the market concerned, such as:</p> <ol style="list-style-type: none"> <li>1. directly or indirectly fix prices or other trading conditions;</li> <li>2. share markets or sources of supply;</li> <li>3. limit or control production, trade, technical development or investments;</li> </ol>
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	<p>4. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;</p> <p>5. make the conclusion of contracts subject to acceptance by the other party of additional obligations or to the conclusion of additional contracts which, by their nature or according to commercial usage, have no connection with the subject of the main contract or with the performance thereof (art.9, par. 1 of LPC)</p> <p>Any agreements and decisions referred to in paragraph (1) shall be void (art.9, par.2 of LPC)</p>
<p><b>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 quotas<sup>1</sup>) and other types of “cartels”?</b></p>	<p>The prohibition as per art. 9 of LPC shall not apply on agreements, decisions or concerted practices of negligible effect on competition, because of the aggregated market share of the participants which does not exceed five per cent of the relevant market, where the participants are competitors or ten percent of the relevant market, when the participants are not competitors, unless said agreements, decisions and concerted practices have as their object or effect in:</p> <ol style="list-style-type: none"> <li>1. directly or indirectly fixing of prices or other trading conditions;</li> <li>2. sharing of markets or sources of supply</li> </ol> <p>(Art. 10 of LPC)</p> <p>The Methods of Setting the pecuniary sanctions and fines under the Law on Protection of Competition qualifies the horizontal restrictions of competition such as price cartels, market allocation (market quotas) and other similar functional restrictions, affecting significant part of or the entire national market, as extremely severe infringements of LPC, for which the basic amount of the imposed sanction is set between the average and the maximum LPC-envisaged sanction ceiling.</p>
<p><b>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]</b></p>	<p>The non-application of the prohibition as per art.9 of LPC of agreements, decisions or concerted practices due to their negligible effect on competition (which is considered to be insignificant when the market share of the participants do not exceed 5 per sent, if they are competitors, ot 10 percent, if they are not compatitors), is not applicable to agreements, decisions and concerted practices having as their object or effect in:</p> <ol style="list-style-type: none"> <li>1. directly or indirectly fixing of prices or other trading conditions;</li> <li>2. sharing of markets or sources of supply</li> </ol> <p>There is no exceptions from the cartel prohibition for any sectors of the economy.</p>
<p><b>D. Is participation in a hardcore cartel illegal <i>per se</i>?</b></p>	<p>Yes.</p>
<p><b>E. Is participation in a hardcore cartel a civil or</b></p>	<p>It is an administrative offence under the Law on Protection of Competition</p>

<sup>1</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.

administrative or criminal offence, or a combination of these?	
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### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels:</b>	Commission on Protection of Competition (CPC)
<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>Commission on Protection of Competition (CPC)</p> <p>Address: 18, Vitosha Blvd, Sofia 1000, Bulgaria  Telephone: (+359 2) 9860958, 9881221, 9867706  Fax: (+359 2) 9807315  E-mail: cpcadmin@cpc.bg  Website: www.cpc.bg</p>
<b>C. Information point for potential complainants:</b>	<p>See above point 3/A</p> <p>One is advised firstly to check the home page of CPC and the FAQ section.</p>
<b>D. Contact point where complaints can be lodged:</b>	<p>Complaints or applications (as per art.36,par.1, p.1 of LPC) can be lodged in writing, in Bulgarian language, to the CPC to its premises:  18, Vitosha Blvd, 1000 Sofia, Bulgaria</p> <p>The complaint or application has to fulfill certain requirements, specified in art. 49, par.1 of LPC (ref.to art. 36, par.1, p.1 LPC), amongs which are: due identification of the applicant and the person(s) against whom the complaint has been brought; address of the applicant; justification of the request and presentation of the circumstances forming the grounds of the application; evidence supporting of the application; signature of the person who files the application, or of his or her authorised representative; the state fees paid, if due.  Complaints which are not signed or anonymous are not to be examined by the CPC.</p> <p>In addition to the complaints (applications) received, the CPC can start its proceedings also ex officio, on request of a public prosecutor, and upon a written requests to issue authorisations or allow uniform general conditions (art.36, par.1, p.2, 3,4 of LPC).</p> <p>For initiating a proceeding ex officio, the "warning" (note, information) received could not fulfill all the requirements stipulated for a formal complaint.</p>
<b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and</b>	If need will be, the authorities of the Ministry of Interior may be sought for assistance in the case of coercive collection of evidence (dawn raids)

the type of assistance they provide.	
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#### 4. Decision-making institution(s)<sup>2</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:</b>	Commission on Protection of Competition
<b>B. Contact details of the agency:</b>	See 3/B above
<b>C. Contact point for questions and consultations:</b>	See 3/B above
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	<p>Once the proceedings are opened, the investigation is effected by a Member of the CPC, who is appointed by its Chairman for a rapporteur of the case.</p> <p>During the investigation, the rapporteur is assisted by a team selected of the administration, as well as by external experts and specialists (the latter - if necessary).</p> <p>When the investigation has been closed, the parties are given an opportunity to get acquainted with the (public) materials and evidences collected in the file</p> <p>After the investigation is closed, the Chairman of CPC schedules an open sitting of the CPC. On said sittings the parties concerned are summoned; the persons that suffered damages as a result of the infringement, representatives of local or state authorities or other persons concerned can also be summoned to the sittings.</p> <p>Written evidence shall be admitted and the explanations and opinions of the parties shall be heard at the sittings of the Commission. After the dispute is clarified from the factual and legal point of view, the chairperson shall close the sitting.</p> <p>The Commission shall pronounce then its decisions on the case in a sitting in camera. The decision is taken by open vote and with majority of four votes. In case that the sitting is attended by less than seven members and a majority of four votes can not be attained, it is deemed that the application is left with no consideration or that the authorisation requested is denied.</p> <p>The Commission shall announce its motivated decision within fourteen days after the closing of the sitting where the file had</p>

<sup>2</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	been examined.
<b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>	<p>Not applicable, as cartel offence is not criminalized as per the Bulgarian laws.</p> <p>However, there is a general "obligation of the officials to inform" provided in the Criminal Procedure Code, still in force - art. 172, par.2, stipulating that  " When they come to know about the committed offence of common nature, the officials must immediately inform the body of the preliminary proceeding and take the necessary measures for preserving the circumstances and data about the offence".</p> <p>The same obligation is provided in the Criminal procedure code, that will entry into force from 29.04.2006, in its article 205, paras 2 and 3, which state that  "(2) Whereas they learn about committed crime of general nature, the officials shall notify immediately the body of the pre-trial procedure and to take the needed measures for saving the situation and the data about the crime.  (3) In the cases of Para 1 and 2, the body of the pre-trial procedure shall immediately execute its powers to institute penal procedure".</p>

## 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</b>	<p>The investigation of a prohibited agreement, decision or concerted practice can be initiated as per the general principles, described in 3/D above, i.e. following a formal complaint (or application), ex-officio, on request of a public prosecutor, and upon a written requests to issue authorisations or allow uniform general conditions.</p> <p>According to procedures set in the LPC, a leniency application should serve as a basis for an ex-officio opening of a proceedings.</p> <p>According to the LPC, an individual exemption procedure is available, according to which the undertakings may inform the Commission of the existence of agreements, decisions or concerted practices, within thirty days following the day of their conclusion, adoption or application by submitting a notification.</p> <p>The notification should contain certain information about the participating undertakings, the legal form of the agreement or decision, or the type of concerted practice, the overall share of the participating undertakings on the market concerned, as well as requirement for exemption from prohibition.</p>
<b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b>	<p>For the general requirements to the complaints, see the described in the above point 3/D.</p> <p>The complaints should be in written, in Bulgarian language, not anonymous, should contain the information specified in</p>

	<p>the law, and a state fee should be paid.</p> <p>In case of a notification for granting an individual exemption, in addition to the general requirements, the information that the applicant is required to submit is described in details in the Notification under Art.11 of the LPC Form and the instruction for its filling, available on the homepage in english <a href="http://www.cpc.bg/system/storage/Notification.doc">http://www.cpc.bg/system/storage/Notification.doc</a></p>
<p><b>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?]</b></p>	<p>The complaint (or application) can be lodged by the "parties concerned", as per art.48, par.1 of the LPC, which means that for a formal complaint /application a legitimate interest is necessary to be shown, which is defined in art.36, par.1, p.1 of LPC as "a written application from the persons whose interests are affected or threatened by an infringement of this Law".</p>
<p><b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</b></p>	<p>If the formal complaint (application), as well as the notification, fulfills all requirements, pointed in the LPC, the Chairman of the Commission opens a file and assigns it to a rapporteur - member of the Commission.</p> <p>If the complaint or the notification fails to fulfill all the requirements, the complainant /the notifying party is informed about this and given a 7-days term to to rectify the irregularities. If the applicant /notyfing party fails to rectify the irregularities within the time limit set in, the application shall not be examined by the Commission.</p> <p>In case of receiving of "warnings" (notes, informations) the Commission is free to decide, after a preliminary gathering of additional information, if deemed appropriate, if an investigation should be lodged ex-officio.</p>
<p><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></p>	<p>In case the complaint (application) satisfies all the requirements, the CPC is obliged to commit a full investigation of the case, therefore its Chairman open a file on the case and the whole procedure, described in above point 4/D, is started.</p>
<p><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>	<p>Not applicable</p>

## 6. Leniency policy<sup>3</sup>

<p><b>A. What is the official name of your leniency policy (if any)?</b></p>	<p>The Leniency policy is introduced by articles 59a and 59b of the Law on protection of competition. The relevant titles of these articles are:</p> <p>Reduction of the Pecuniary Sanction in Case of Failure to Comply with the Provisions of Article 9 (ref. to art.59a)</p> <p>Exemption from administrative liability in Case of Failure to comply with the Provisions of Article 9 (ref. to art. 59b)</p> <p>The LPC, incl. art. 59a and 59b, is available on the homepage in English <a href="http://www.cpc.bg/system/storage/zak_en_1_119.doc">http://www.cpc.bg/system/storage/zak_en_1_119.doc</a></p>
<p><b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</b></p>	<p>Yes. Both full leniency (immunity from fines) - ref. to art. 59b of LPC, as well as partial leniency (reduction of fines) - ref. to art. 59a of LPC, are available according to the LPC.</p>
<p><b>C. Who is eligible for full leniency?</b></p>	<p>The full leniency - exemption from sanctions - according to the provisions of art. 59b LPC, is granted to undertaking, which is a party to an agreement, if such undertaking provides, before the other participants, an evidence, which at the discretion of the Commission constitutes sufficient grounds for the institution of the proceedings ex-officio.</p> <p>In order to be eligible for full immunity, in addition to the above, the following conditions must be also fulfilled:</p> <ol style="list-style-type: none"> <li>1. as of the time of the evidence provision the Commission has no information required for the institution of proceedings at its own motion in order to investigate an infringement under Article 9;</li> <li>2. the undertaking effectively cooperate to the Commission during the whole investigation procedure;</li> <li>3. As of the time of the evidence provision the undertaking has terminated its participation in the agreement and does not compel other undertakings to participate therein.</li> </ol> <p>Therefore, the full immunity can be granted only to the very first undertaking applying for leniency, before CPC has initiated the proceedings on the case.</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>Eligibility to full or partial leniency differs in regard with the stage of the proceedings - either the evidence is supplied before opening an investigation or it is supplied in the course of a pending investigation.</p> <p>Granting the full immunity as per art. 59b of LPC refers to the applicant, that has forwarded the evidence before the opening of the proceedings and is subject to number of conditions, including absence or insufficiency of knowledge of the CPC for a specific cartel to initiate proceedings (i.e. the supply of evidence</p>

<sup>3</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>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>before opening an investigation is of utmost importance), sufficiency of the evidence provided by the undertaking for opening a procedure, effective cooperation of the undertaking in the whole investigation, as well as termination the participation in the cartel at the time of supply of information and the role of the undertaking in the cartel.</p> <p>As regards the partial leniency - reduction of fines - as per art. 59a of LPC, it is granted to undertakings which, in the course of the investigation opened by the CPC, voluntary provide an evidence, which is essential for establishment of the infringement, and at the moment of its provision the said undertaking has ceased to be involved therein.</p> <p>The reduction of fines shall be at the rate of 30 to 50 percent of the sanction provided for in LPC for said infringement for the first undertaking that satisfies the above conditions, of 20 to 30 percent for the second undertaking and of 10 to 20 percent for any subsequent undertaking.</p>
<p><b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b></p>	<p>Only "undertakings" by the means of the legal definition of LPC, as well as associations of undertakings - the ones who are the subjects of the infringement of the cartel prohibition of LPC and the ones who are subject are subjects to sanctions for said infringement.</p> <p>The legal definitions, provided in the Additional provision of the LPC, states for "undertaking" and "association of undertakings" the following:</p> <p>"1. 'Undertaking' shall mean any natural or legal person, or joint adventure which carries out economic activities in the market concerned, regardless of its legal and organizational form.</p> <p>2. 'Association of undertakings' shall mean professional associations and other forms of associations of independent undertakings, which do not carry out separately autonomous economic activities and do not distribute profits, respectively. "</p> <p>Individuals are not subject to the infringement as per art.9 of LPC and therefore not subject to sanction for it as per the LPC.</p>
<p><b>F. What are the conditions of availability of full leniency:</b></p>	<p>The conditions for availability of full leniency are set in art. 59b of LPC and include:</p> <ul style="list-style-type: none"> <li>- CPC having not opened proceedings to this moment;</li> <li>- the undertaking having participated in cartel;</li> <li>- the evidence supplied is sufficient for opening of proceedings ex-officio</li> <li>- no immunity from fines granted to another undertaking</li> <li>- the undertaking effectively cooperates with CPC during the whole investigation;</li> <li>- terminating the participation in the cartel at the time of supply of evidence</li> <li>- the undertaking hasn't compelled other undertakings to participate in the cartel</li> </ul> <p>Further clarifications are available in the Methods of setting the pecuniary sanctions and fines under the Law on Protection of Competition, point II.1. - available on the homepage in Bulgarian <a href="http://www.cpc.bg/system/storage/zak_bg_1_150.doc">http://www.cpc.bg/system/storage/zak_bg_1_150.doc</a></p>
<p><b>G. What are the conditions of availability of partial</b></p>	<p>The partial leniency is available during already opened investigation. The conditions for partial leniency are set in art.</p>

<p><b>leniency (such as reduction of sanction / fine / imprisonment):</b></p>	<p>59a of LPC and include:</p> <ul style="list-style-type: none"> <li>-voluntarily provision of evidence</li> <li>-essentiality of the evidence provided for the establishment of the infringement</li> <li>-terminating of the participation in the cartel at the time of providing the evidence</li> </ul> <p>Undertakings eligible for partial leniency - reduction of fines are divided as per LPC in three groups:</p> <ul style="list-style-type: none"> <li>- the first one eligible for partial leniency, as per above conditions, is subject to reduction of fine from 30 to 50 percent;</li> <li>-the second one, eligible for partial leniency as per above conditions, is subject to reduction of fines from 20 to 30 percent</li> <li>-any subsequent ones eligible for partial leniency as per above conditions are subject to reduction of fines from 10 to 20 percent.</li> </ul> <p>Further clarifications are available in the Methods of setting the pecuniary sanctions and fines under the Law on Protection of Competition, point II.2. - available on the homepage in Bulgarian <a href="http://www.cpc.bg/system/storage/zak_bg_1_150.doc">http://www.cpc.bg/system/storage/zak_bg_1_150.doc</a></p>
<p><b>H. Obligations for the beneficiary after the leniency application has been accepted:</b></p>	<p>Effective cooperation during the whole proceedings.</p> <p>The termination of the participation in the cartel is an obligatory condition for application for leniency (either for full immunity, or for reduction of fines)</p>
<p><b>I. Are there formal requirements to make a leniency application?</b></p>	<p>In principle, the Commission will give higher credibility to written evidence, directly connected with the suggested infringement and produced during its commitment</p>
<p><b>J. Are there distinct procedural steps within the leniency program?</b></p>	<p>An undertaking, wishing to take advantage of immunity from fines (art. 59b of LPC), should contact the Commission, clearly declaring its intent and giving exhaustive information on the evidence, which it has in possession. Provided the Commission has already been informed about the suggested secret cartel and has instituted proceedings or undertaken steps to its initiation, the Commission should immediately advise the undertaking by sending a letter-notification that immunity from liability is not available for the suspected infringement. Provided such immunity is available and in order to meet the remaining conditions the undertaking should be notified to submit immediately all evidence, which it has listed as being in its possession. In case not all evidence are in its possession, then the undertaking must submit to the Commission a detailed (descriptive) list of evidence, which the undertaking commits to deliver in a reasonable period, agreed with the Commission. The list must indicate the nature and content of each piece of evidence. Provided the undertaking is not able to submit detailed evidence, it must definitely give the Commission its potential source of information or indicate where the evidence might be eventually.</p> <p>For its final decision if an undertaking will be granted immunity from sanctions, the Commission estimates the nature, the essence and the content of each evidence and its contribution for finding the infringement.</p> <p>In order to warrant the interests of the undertaking and also for the latter to feel safe as to the steps undertaken, the Commission must in an appropriate manner acknowledge the date on which the evidence or the detailed evidence list was</p>

	<p>received. These conditions must be met as the final immunity from sanction may be granted only by the decision of the Commission upon completing the investigation. To that date the conduct of the undertaking must be compliant in order to meet the remaining cumulative conditions for granting immunity from sanction.</p> <p>Provided the undertaking fails to meet the initial requirements for immunity from fine, it may withdraw its application and request the Commission to consider the delivered evidence in deciding on reduction of the sanction. The Commission may not consider other applications for immunity from fines (and also may not issue acknowledgements) before it has taken a position on an existing application in relation to the same suspected infringement.</p> <p>When deciding that at the moment of the initial contact with the Commission the conditions relevant to the immunity from fines for the undertaking were met, the Commission signs with the undertaking a Protocol for conditional immunity form fines.</p> <p>Undertaking that does not meet the above-stated conditions may be eligible to benefit from a reduction of the envisaged fine (Art.59a). In order to qualify, the subject undertaking must voluntarily provide the Commission with evidence of the suspected infringement which represents significant added value with respect to the evidence, already in the possession of the Commission. It is also necessary the undertaking to have terminated its involvement in the suggested infringement no later than the time at which it submits the evidence. In the assessment to what extent the submitted evidence “substantially” adds value to the already available evidence, the Commission should take in priority the significance of this evidence and to what extent it strengthens the ability of the Commission to prove the facts in question. For example, evidence, directly relevant to the fact in question will generally be considered to have a greater value than that having indirect relevance to the existence of certain relations or deeds. The Commission determines in its final decision whether the evidence provided was of significant value for the process of investigation.</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>By signing a protocol for conditional immunity or reduction of fines as per art. 59a or 59b of LPC.</p> <p>Signing said protocol, though binding for the Commission, stipulates that at the conditions laid down in it (basically referring to the conditions for eligibility of the undertaking for leniency and also defining the necessary behaviour of the undertaking during the ongoing investigation), the eligibility is still conditional, as the Commission gives the leniency with its final decision on the case and this depends on the fulfilling (after the signing of the protocol and for the whole period of the proceedings until adopting the decision) of the conditions laid down in it.</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</b></p>	<p>The law on Protection of Competition - articles 59a and 59b.</p> <p>The leniency - both immunity or reduction of fines - is granted by the Commission in its final decision on the case. In its final decision the Commission is obliged to make an evaluation of the position of each undertaking during the investigation and list the reasons to grant immunity from sanction, reduction of the sanction or to deny these privileges</p>

<b>decides about leniency applications?</b>	
<b>M. Does your legislation have a marker system? If yes, please describe it.</b>	No
<b>N. Does the system provide for any extra credit<sup>4</sup> for disclosing additional violations?</b>	No
<b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b>	<p>There is no such formal / legal requirement.</p> <p>Although, art. 12 of the Search, Seizure and Interview Procedural Rules, pursuant to Art.41a of LPC, provides for that the investigating body undertakes protective measures upon request or agreement of the individual, having provided oral explanations on somebody's illegal activity, against whom there are sufficient grounds to assume, that in result of witnessing a real risk to his business has occurred or may occur. The protection of this individual is ensured by keeping his identity secret. Then a procedure for handling of this matter is described.</p>
<b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b>	<p>There is no possibility for a separate appeal.</p> <p>As the final decision on granting or not a leniency is taken with the final decision of the CPC on the case, this final decision could be appealed.</p>
<b>Q. Contact point where a leniency application can be lodged:</b>	<p>For the time being a separate contact point for leniency applications is not yet created. Therefore, right at the moment for any leniency applications the general way of submitting complaints or notifications, as described in above point 3/D should be applied.</p> <p>Creating a separate contact point for leniency applications is considered by the CPC as a necessary measure to be taken.</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>In principle yes.</p> <p>Provided the Undertaking submits false information or at certain time ceases to fulfill its commitments, undertaken in order to receive leniency and specified under the Conditional Sanction Immunity or Sanction Reduction Protocol, then CPC preserves the right to apply to this Undertaking the general sanctioning provisions, by assessing its conduct against the criteria, adopted by the Methodology on Setting Pecuniary Sanctions and Fines.</p> <p>This condition is stated in the Conditional Sanction Immunity or Sanction Reduction Protocol to be signed as per art. 59a and 59b as per LPC.</p>
<b>S. Does your policy allow for "affirmative</b>	As such possibility is not prohibited by the LPC, it is upon the discretion of the CPC to apply such approach either on the

<sup>4</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.

leniency”, that is the possibility of the agency approaching potential leniency applicants?	case-by-case basis, or as a matter of policy for fighting cartels
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## 7. Investigative powers of the enforcing institution(s)<sup>5</sup>

<p><b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>6</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b></p>	<p>The investigation of the file can be conducted by:</p> <ol style="list-style-type: none"> <li>1. requesting written or oral explanations (or statement) from the applicant; from the person against whom the complaint for infringement of this Law is brought by undertakings concerned, or by other undertakings, as well as by any state and local authorities. The oral explanations shall be recorded and signed by the person who has given the explanations;</li> <li>2. requesting copies of private and official documents;</li> <li>3. requesting written opinions from state and local authorities.</li> </ol> <p>Said measures do not require court warrant and can be undertaken by the rapporteur in the course of the investigation.</p> <p>In addition, for conducting an investigation in cases of cartel infringements (as well as in cases of abuse of dominance), where there is a risk that an evidence of material importance for the procedure before the commission may be suppressed, or an undertaking refuses to provide an evidence, the Commission on protection of competition has powers for coercive collection of evidence, and namely:</p> <ol style="list-style-type: none"> <li>1. to search premises, used for performing the activity of the undertaking, or in which are kept accountancy, commercial and other documents, as well as vehicles;</li> <li>2. to seize copies of or extracts from commercial correspondence and other documents, accountancy or business books, including records on computer means of transferring information;</li> <li>3. To collect oral explanations.</li> </ol> <p>Where it is not possible to collect copies referred to above, extracts or records the originals are seized.</p> <p>Said coercive measures can be undertaken only with authorization by a judge of the competent District court at the seat of the undertaking.</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>CPC has no explicitly attributed powers to effect coercive collection of evidence (to search and seize evidences) in private premises or to search persons.</p> <p>The search of motor vehicles during the coercive collection of evidence is possible after the court authorization.</p>
<p><b>C. May evidence not falling under the scope of the</b></p>	<p>The CPC still has no extensive practice in coercive collection of evidence, so a summary based on its experience can not be</p>

<sup>5</sup> “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

<sup>6</sup> “Searches/raids” means all types of search, raid or inspection measures.

<p><b>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)?</b></p>	<p>provided</p>
<p><b>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p>	<p>The CPC still has no extensive practice in coercive collection of evidence, so a summary based on its experience can not be provided</p>

## 8. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases:</b></p>	<p>The right of the parties to :</p> <ul style="list-style-type: none"> <li>- get acquainted with all materials (excluding the ones containing business, trade or production secrets), after the investigation is closed (art. 51, par.5 of LPC)</li> <li>- Get acquainted with the alleged infringements (which is done by sending the respondent a copy of the complaint or the decision of the CPC for starting a proceeding in the very beginning of its proceedings)</li> <li>- Supply the Commission during the investigation with all additional evidences (both written and oral) and requirements, which at their own discretion will contribute to the clarification of the facts and the legal qualification of the case</li> <li>- to attend the open sittings of the Commission, scheduled after the investigation of the case is closed by the rapporteur, and to present there written evidence and oral explanations</li> <li>- to be represented during the proceedings by attorney or legal advisor (although it is not obligatory)</li> <li>- to receive a motivated decision by the Commission on the merits of the case</li> <li>-to appeal the decision of the Commission in front of the Supreme administrative court - both appelation and cassation appeal</li> <li>- during the coersive collection of evidence - search and seizure - the searched undertakings posses all the rights provided by the Criminal procedure code (including the presence of independent witnesses, and the representatives of the undertakings concerned, the right of said categories of persons to sign the protocols for the effected search and seizure with remarks, special opinion, etc.)</li> <li>- according to art.41b, p.4 of LPC, the order of the court, authorizing the coercive collection of evidence, or the denial of issuing an order upon request, may be appealed against in three-day time limit as of taking the decision before the respective Court of appeal. The appeal shall not stop the execution.</li> </ul>
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<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?</b></p>	<p>Any documentation and information, received by the Commission in the course of an investigation may be used solely for the purposes of that investigation.</p> <p>When requested to supply the CPC with information or documents for the purposes of on-going investigation, the persons cannot refer to manufacturing, trade or other secret protected by a law. Where the documentation and the information contain data representing classified information, the procedure provided for in the Law of Protection of classified information is applicable.</p> <p>According to the definitions of the LPC, 'Industrial or trade secret' shall mean facts, information, decisions and data relating to the economic activities keeping in secret of which is in the interest of the rightful holders thereof, and for which the latter have undertaken appropriate measures to secure their confidentiality</p> <p>CPC is currently in the process of developing and internal guidelines for processing of documents, containing business, trade or other kind of secrets.</p>
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## 9. 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 in the merits of the case must be made?</b></p>	<p>No proceedings shall be initiated by the CPC or the proceedings initiated shall be discontinued after the expiry of five years as of the time of offence commitment (art.46 of LPC)</p>
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</b></p>	<p>The investigation of a cartel shall be conducted within 90 days. In cases which raise complex points of fact and law the above time limit may be extended to no more than thirty days, by decision of the Commission</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?</b></p>	<p>The decisions of the Commission shall be subject to appeal before the Supreme Administrative Court within fourteen days of their notification according to the procedure provided for in the Code of Civil Procedure.</p>

## 10. Types of decisions

<p><b>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</b></p>	<p>According to art. 55 of LPC, the Commission can pronounce a decision, with which it can:</p> <ul style="list-style-type: none"> <li>- establish the infringement committed and the infringer, and determine the type and amount of the sanction provided for in this Law;</li> <li>- establish that no infringement has been committed under this Law or that the time limit specified in Article 45 has expired, and reject the application;</li> <li>- declare that no grounds exist to impose the prohibition provided for in Article 9;</li> <li>- exempt certain agreements, decisions or concerted practices from the prohibition provided for in Article 9;</li> <li>- prohibit a given agreement, decision or concerted practice;</li> <li>- allow or prohibit the alignment of general conditions;</li> <li>- order discontinuance of the infringement referred to in Article 9 of LPC.</li> </ul> <p>On the basis of the Law on Administrative Proceedings, there is a possibility to order in the CPC decisions the preliminary implementation - in case when, for example, there is a danger that the implementation may be seriously compromised or prevented.</p>
<p><b>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</b></p>	<p>See above point 10/A</p>
<p><b>C. Can interim measures<sup>7</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>8</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>No</p>

<sup>7</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>8</sup> Only for agencies which answered “yes” to question 2.C. above

## 11. Sanctions for procedural breaches (non-compliance with procedural obligations)<sup>9</sup>

<b>A. Grounds for the imposition of procedural sanctions / fines:</b>	art.60, par.2 of LPC
<b>B. Type and nature of the sanction (civil, administrative, criminal, combined):</b>	Administrative
<b>C. On whom can procedural sanctions be imposed?</b>	Persons who fail to submit on time the evidence requested or accurate information, or fail to appear in person to give explanations before the Commission, shall be liable to a fine of BGN 500 to 2 500. In case of repeated infringement under paragraphs the culprit shall be liable to a fine of BGN 2 000 to 20 000
<b>D. Criteria for determining the sanction / fine:</b>	<p>These criteria are set in the above quoted Methods of setting the pecuniary sanctions and fines under the Law on protection of competition and refer to:</p> <ul style="list-style-type: none"> <li>- Significance of the respective evidence, information or explanations to the entire investigation or survey;</li> <li>- Reason for non-presentation of the evidence;</li> <li>- Reason for presenting inaccurate or incorrect information as well as the extent to which this misconduct had effect on the investigation or survey;</li> <li>- Reasons for non-appearance at the scheduled interview;</li> <li>- Behavior of the given person during the process of investigation or survey;</li> <li>- Possibility to gather the evidence, information or explanations in question by other means or from other sources;</li> <li>- Capacity of the respective persons.</li> </ul>
<b>E. Are there maximum and / or minimum sanctions / fines?</b>	<p>The minimum is set at BGN 500 (equal to approximately Euro 255) and the maximum - at BGN 2000 (equal to approximately Euro 1278).</p> <p>For a repeated infringement the minimum is set at BGN 2000 (approximately equal to Euro 1022 and the maximum - at BGN 20000 (approximately equal to Euro 10225)</p>

## 12. Sanctions on the merits of the case

<b>A. Type and nature of sanctions in cartel</b>	Administrative pecuniary sanction, imposed on the undertakings that committed the infringement
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<sup>9</sup> In some jurisdictions non-compliance with procedural obligations (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.) can be sanctioned.

<p><b>cases (civil, administrative, criminal, combined):</b></p> <p><b>On whom can sanctions be imposed?</b></p>	
<p><b>B. Criteria for determining the sanction / fine:</b></p>	<p>The initial amount of the sanction is determined according to the <b>severity and the duration</b> of the infringement.</p> <p>In assessing the <b>severity</b> of a given infringement, account is taken of its nature and specific impact on the market. Based on this initial criterion the infringements can be classified in three separate groups: not so severe, severe and extremely severe ones.</p> <p>The <b>severe infringements</b> category covers the majority of incidents of horizontal restriction, as well as vertical ones which, however, include elements of explicit determination and persistence and harms substantial section of the national market. <b>Extremely severe</b> infringements of LPC are mostly the horizontal restrictions of competition such as price cartels, market allocation (market quotas) and other similar functional restrictions, affecting significant part of or the entire national market.</p> <p>Within each of the above-quoted categories, it is advisable to have <b>internal differentiation</b> in setting the fines depending on the nature of the infringement. Here it also extremely important for this differentiation to identify who was the <b>initiator</b> of the respective infringement, as well as to specify the <b>real and potential possibility to harm the competitors and consumers</b>. When a number of undertakings are involved in a given infringement (prohibited agreements and concerted practices), often during the investigation various groups can be delineated, to which different fines to be set. It results from the fact that the individual undertakings play <b>different role and have different functions in the cartel</b> framework, while the consequences from their actions have different effect on competition at the relevant market. These considerations are extremely important when undertakings of different size participate in a prohibited agreement.</p> <p>Three major groups are differentiated when taking into account the infringement <b>duration</b>, namely:</p> <ul style="list-style-type: none"> <li>- Short-term infringements, made within a period shorter than a year;</li> <li>- Medium-term infringements, which have taken place within a period from one to five years;</li> <li>- Long-term infringements, lasting for more than five years.</li> </ul> <p>In setting the size of the final sanction, one should account for the need it to be commensurate to the economic situation of the undertakings. It is assumed that the profit which can be generated annually by an undertaking represents 10% of its turnover on average. The sanction should not exceed the profit or else the undertaking may have to exit the market and instead of promoting the competition, the effect will be just the contrary.</p> <p>In addition to the basic sanction amount, each individual infringement must be reviewed in conformity with the specific conditions, present at the time when made and the specific</p>

consequences and effects, it has caused or may cause on the relevant market. Therefore, when fixing the final amount of the sanction the Commission should weigh in some additional circumstances, and namely the **aggravating and attenuating circumstances**.

The basic sanction can be increased as a result of specific **aggravations** for the individual undertakings, which might generally be grouped as follows:

- Repetitive action or behavior of the same nature by the same undertaking (s);
- The undertaking has taken the initiative or the lead on the infringement;
- The undertaking has offered or granted "bonuses" or "compensation" to other undertakings for their involvement into the unlawful act and/or its continuation;
- Exercising pressure or any type of coercion over other undertakings to involve in this infringement;
- Other case-specific circumstances.

It is also possible the basic rate of the pecuniary sanction to be respectively increased in order to reach the amount of the unlawfully generated profit as a result of the infringement, insofar as this amount is subject to objective calculation and there are sufficient data to that effect, gathered during the investigation.

The basic pecuniary sanction amount can be respectively reduced, depending on certain **extenuating circumstances**, covering:

- Extremely passive collaboration on behalf of a given undertaking related to the unlawful action or the adoption of the strategy "to follow the leader";
- Non-implementing the law-infringing agreements or practices in fact;
- Discontinuation of the infringement immediately after the first intervention on behalf of the Commission;
- Presence of reasonable doubts and concerns on behalf of the undertaking as to the unlawfulness of the anti-competitive actions, undertaken by them;
- Actions undertaken unintentionally or by negligence;
- Active collaboration on behalf of the law offenders during the investigation beyond the scope of applicability of Articles 59a & 59b under LPC;
- Other case-specific circumstances.

Depending on the circumstances and data collected under the case some objective factors might be taken into consideration, such as specifics of the economic environment when rendering the infringement; economic or financial benefit to the offenders; the specific situation of those undertakings and their real potential to pay the respective sanction and other factors, to which the amount of the sanction to be specifically bounded.

The above-described approach should be interpreted in the light of the leniency provisions of Articles 59a and 59b of LPC, which envisage administrative liability exemption (immunity) or reduction of the pecuniary sanction for violation of LPC, Art.9 to undertakings, having revealed those infringements by their own initiative or collaborating to the Commission during the process of investigation.

<p><b>C. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>The amounts of fines are set in art.59 of LPC. The minimum amount of fine is BGN 5000 (equal to approximately Euro 2556) and the maximum - at BGN 300000 (approximately equal to Euro 153387). For a repeated infringement the sanction on the undertaking can be from the minimum of BGN 100000 (approximately equal to Euro 51129) to the maximum of BGN 500000 (approximately equal to Euro 255645)</p>
<p><b>D. Guideline(s) on calculation of fines:</b></p>	<p>Methods of setting the pecuniary sanctions and fines under the Law on Protection of Competition - adopted by the Commission on Protection of Competition Available on the homepage in Bulgarian only <a href="http://www.cpc.bg/system/storage/zak_bg_1_150.doc">http://www.cpc.bg/system/storage/zak_bg_1_150.doc</a></p>
<p><b>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?</b></p>	<p>Yes</p>

## 13. Possibilities of appeal

<p><b>A. Does your law provide for an appeal from 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>The decisions of CPC, including the decisions stating violations of the prohibition of cartels, are subject to appeal (including appellate and cassation appeal) before the Supreme Administrative Court within fourteen days of their notification.</p> <p>According to art.12 of the Law on Supreme Administrative Court, the grounds for appellate appeal of administrative acts shall be:</p> <ol style="list-style-type: none"> <li>1. lack of competence [of the authority that adopted the act];</li> <li>2. non-compliance [of the act] with the established form;</li> <li>3. substantial violations of the administrative procedural rules [during the procedure for adoption of the act];</li> <li>4. contradictions [of the act] to tangible legal provisions;</li> <li>5. incompatibility [of the act] with the purpose of the law.</li> </ol> <p>The grounds of cassation appeal are stipulated in the Civil procedure Code, art. 218b, applicable to the cassation appeal of the above appeal decisions of the SAC, and include: shall be lodged:</p> <ol style="list-style-type: none"> <li>a) when the ruling is invalid;</li> <li>b) when the ruling is inadmissible;</li> <li>c) (Amend., SG 105/02) when the ruling is incorrect due to violation of the material law, substantial offence of the jurisdiction rules or insufficiency</li> </ol>
<p><b>B. Before which court or agency should such a challenge be made? [if the answer to question</b></p>	<p>Before the Supreme Administrative Court - see 13/A above</p>

13/A is affirmative]	
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