



**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

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

Latvia

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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

A. Law(s) covering cartels:	04.10.2001. Law on Competition homepage address: www.competition.lv Languages: Latvian, English
B. Implementing regulation(s) (if any):	Cabinet Regulation "Regarding Vertical Agreement Exemption from the Agreement Prohibition Specified in Section 11, Paragraph One of the Competition Law" No. 434 Cabinet Regulation "Procedures by Which the Competition Council Permits Agreements referred to in Section 11, Paragraph One of the Competition Law" No. 699 Cabinet Regulation "Procedures for Calculation of Fines for Violations Referred to in Section 11, Paragraph One and Section 13 of the Competition Law" No. 862 (translation into English not yet available) homepage address: http://www.competition.lv/?object_id=605
C. Interpretative guideline(s) (if any):	NA
D. Other relevant materials (if any):	Block exemption regulations: http://www.competition.lv/?object_id=605 (Latvian, English) Decisions of Competition Council (available in Latvian only):

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>In the Law on Competition the term "prohibited agreements" is used. The term agreement is explained as follows (Section 1, paragraph 11 of Law on Competition) - a contract between two or more market participants or concerted practices in which market participants participate, as well as a decision taken by a registered or unregistered grouping (association, union and the like) of market participants or by an authorised official of such grouping.</p> <p>The Cabinet of Ministers Regulation No.862 on the Calculation of Fines for Violations Referred to in Section 11, paragraph one and Section 13 of the Competition Law define term "horizontal cartel agreement" as an agreement among competitors which has as its purpose or consequence the hindrance, restriction or distortion of competition among them, including agreements on direct or indirect fixing of prices or tariffs in any manner or provisions of their formation, as well as regarding such exchange of information which relates to prices or provisions regarding sale, agreements on restriction or control of the scope of production or sales, markets, technical development, or investment, agreements on the division of markets, taking into account territory, customers, suppliers, or other conditions, agreements on the participation or non-participation in competitions or auctions or regarding the provisions for such actions (inactions).</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>The abovementioned regulation on calculation of fines for violations of Competition Law distinguish between three types of violations: less serious violations - vertical agreements and horizontal cooperation agreements which hinder, restrict or distort competition, serious violations - abuse of dominant position and vertical agreements restricting resale prices, especially serious violations - horizontal cartel agreements and agreements restricting imports or exports of products.</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions</p>	<p>There are no limitations as regards the scope of prohibition of hardcore cartels.</p>

¹ 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.

and defences e.g. for particular industries or sectors.]	
D. Is participation in a hardcore cartel illegal <i>per se</i> ?	Yes
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	It is an administrative offence

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	The Bureau of Competition (within the Competition Council)
B. Contact details of the agency:	Competition Council of Latvia Address: Blaumaņa iela 5a, Rīga, LV-1011, Latvia Phone: +371 7282 865 Fax: +371 7242 141 website: www.competition.lv (Latvian, English) email: foreign@competition.lv
C. Information point for potential complainants:	Address: Blaumaņa iela 5a, Rīga, LV - 1011, Latvia Phone: +371 7282 865 Fax: +371 7242 141
D. Contact point where complaints can be lodged:	Address: Blaumaņa iela 5a, Rīga, LV - 1011, Latvia
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	No

4. Decision-making institution(s)² [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases:	Competition Council
B. Contact details of the agency:	see point 3B
C. Contact point for questions and consultations:	see point 3B
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	The Competition Bureau investigates the case using its investigatory powers and drafts the final decision in the case which is then submitted to the Competition Council together with the case. The final decision in the case is adopted by the Competition Council.
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	Not applicable

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	Investigations can be initiated on the basis of a complaint, leniency application, ex officio, or based on the report of other institution.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	There is no specific form established for applications to be made. They must be submitted in writing and the legal criteria applying to such complaints are included in Section 23 of Competition Law which requires that the application contained the following information 1) the information on parties involved in the infringement; 2) evidence in the possession of the applicant which proves the alleged infringement; 3) provisions of Competition Law which are allegedly infringed; 4) facts which prove that the person has sufficient reasons to be interested in the termination of the infringement; 5) measures taken to terminate the infringement before application to the Competition Council.
C. Legal requirements for	Complaints can be made by persons who have legitimate

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

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?]	interest in the termination of the infringement. Such persons according to Section 23 of Competition Law are persons the rights and legal interests of which had been or could be violated by the infringement, as well as persons involved in the infringement.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	The Competition Council is obliged to take action on each complaint which is submitted according to Section 23 of Competition Law. It must decide within 30 days from the day complaint is received whether to open an investigation or not.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	According to Article 5 of Section 23 of Competition Law "if the proceedings were not initiated, the applicant shall be informed about reasons why proceedings were not initiated and about possible reconsideration of the application after the inadequacy of the application was eliminated or additional information received.
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?	See point 5D

6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	There is no specific name for leniency policy in Latvia. Section of Cabinet Regulation No.862 (see point 1B) dealing with leniency matters is named Immunity from fines or reduction of fines of members of horizontal cartel agreement.
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Our jurisdiction provides full immunity from fines as well as reduction of fines.
C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?	Full immunity can be granted to market participant who is the first to inform the Council about cartel and the Council does not possess such information which would allow the Council to initiate a case or find infringement.

³ 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>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>Eligibility for leniency is dependent on whether the Council has any information about cartel. Thus full immunity could be granted only if the Council did not possess any information that would allow it to initiate a case on possible infringement or to find infringement. Still the applicant can apply for reduction of fine if he voluntarily submits information, which is not in the possession of the Council when the case is already initiated.</p> <p>The applicant can only apply for partial reduction (not full immunity) of fine if he submits information after the case is initiated.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>market participants (term identical in the meaning to European term "undertakings")</p>
<p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</p>	<p>To apply for full immunity the party to the infringement must be the first to submit the information which is not in the possession of the Council before any case is initiated; the party has submitted all the information in its possession; the information submitted is sufficient to initiate a case or find an infringement; party has cooperated with the Council during all the investigation process; the party is not the initiator of the cartel, does not play a decisive role in that and has not forced other parties to participate in the cartel.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>Partial leniency or reduction of fines is possible if the party voluntarily on its own initiative submits information already after the case is initiated and the Council does not have such information in its possession as well as the party must cooperate with the Council during the investigation and is not the initiator of the cartel, does not play a decisive role in it and has not forced others to participate in the cartel.</p> <p>The first one to submit information after a case is initiated can receive 50 to 90% reduction if he complies with the abovementioned criteria;</p> <p>others can receive 30-49% reduction if the Council did not have the information in question and if they cooperate actively during the investigation of the case.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>Parties which apply for full or partial leniency must actively cooperate with the Council during the investigation of the case.</p>
<p>I. Are there formal requirements to make a leniency application?</p>	<p>There is no specific form for leniency applications. Applications must be submitted in writing. The Cabinet Regulation No.862 (see point 1B) requires a reasoned application in which the applicant explains whether and how he complies with the legal</p>

	criteria to receive immunity or reduction of fines.
J. Are there distinct procedural steps within the leniency program?	There are no distinct procedural steps expressly mentioned in the legislation however they can be implied. The one step would be submission by the applicant of the information on the cartel. The next step would be submission of the reasoned application that the applicant complies with the legal criteria for leniency. And the last step - adoption by the Council of the final decision in the case in which inter alia leniency application is evaluated and full immunity or reduction of fines granted.
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?	Since there are criteria, which can be assessed only at the end of the investigation of the case namely the requirement to actively cooperate with the Council during the investigation, the applicant can be certain that he will be granted full immunity only when the final decision is adopted in the case.
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?	Leniency is granted in the final decision of the case. The Competition Council decides on whether to grant or not the leniency within the final decision in the case.
M. Does your legislation have a marker system? If yes, please describe it.	No.
N. Does the system provide for any extra credit⁴ for disclosing additional violations?	No.
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	No, there is no such requirement for the agency. Moreover, the Council cannot guarantee confidentiality of the leniency applicant once the case goes to the court since it is obliged to disclose any information in its possession in the case in question.
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	Yes. Since the leniency questions are decided in the final decision in the case, which can be appealed, the applicant can appeal Council's decision rejecting a leniency if he thinks that he complies with the legal criteria.
Q. Contact point where a leniency application can be lodged:	Address: Blaumana 5a, Rīga, LV-1011, Latvia Telephone: +371 7282 865 Fax: +371 7 242 141

⁴ 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>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>No, there is no such possibility</p>
<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>No, there is no such possibility</p>

7. Investigative powers of the enforcing institution(s)⁵

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>The Competition Bureau according to Section 9 of Competition Law is entitled</p> <ol style="list-style-type: none"> 1) to request from any person and person association, information necessary to perform the tasks specified in this Law, also restricted access information or information containing commercial secrets, as well as to receive from the relevant persons explanations either in writing or orally; 2) to visit market participants (also without prior warning). During the visit to the market participant, Bureau officials on the basis of an authorisation have the right to receive from the relevant persons explanations either in writing or orally, become acquainted on site with all documents (also documents prepared in an electronic format) and to receive such documents, the true copy (copies) thereof or extracts thereof; 3) on the basis of a substantiated decision of the Bureau director, to seize property and documents of a market participant and the employees thereof which may be of importance in a matter; 4) on the basis of a court decision, without prior warning in the presence of police, to enter the means of transport, dwellings, non-residential premises, structures and other immovable and movable property of a market participant and the employees thereof, to open them and the existing storage facility thereof, and perform an inspection of the existing property and documents therein, and an inspection of the property and documents of the market participant and the employees thereof. During the inspection the Bureau is entitled to request explanations either in writing or orally from officials and employees of the market participant, receive true copies (copies) of documents or extracts thereof, as well as to seize property and documents, which may be of importance in
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⁵ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

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

	<p>clarifying the issue under investigation. Officials of the Bureau have the right to seal means of transport dwellings, non-residential premises, structures and other immovable and movable property and storage facilities in order to ensure the preservation of evidence;</p> <p>5) on the basis of a court decision, if there are justifiable grounds for suspicion that documents, which may serve as evidence for a violation of the Competition Law, are being stored in the means of transport, dwellings, non-residential premises, structures and other immovable and movable property belonging to another person or in the possession of another person, the Bureau in relation to such persons the property thereof is entitled to perform the activities referred to in Clause 4 of this Paragraph in the presence of police.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>See point 7A</p>
<p>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>The law states that only documents which may be of importance in clarifying the issue under investigation can be seized.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No there have not been challenges of court authorisations. However there is an ongoing case concerning investigative measures which do not need a court order. The party alleges that the Bureau has used an investigative measure without a court order (see point 7A 1)) which allegedly needs a court order.</p>

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<ul style="list-style-type: none"> - the party shall be notified on the suspected violation; the party must be informed of its rights and obligations when investigative measures are used. - the party submitting information voluntary or under a request of investigative institution can indicate which part of information should be treated as confidential and should not be disclosed to third parties; - the party is entitled to receive a notification from the Council when all the facts necessary to adopt a decision in the case are
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	<p>collected.</p> <ul style="list-style-type: none"> - the party is entitled to get acquainted with case materials after all the facts necessary to adopt a decision are collected; - the party is entitled to get acquainted with the case, express its opinion and submit additional information in ten days from the moment the respective notification is received from the Council; - the party shall be informed of the legal basis of all the investigative measures used by the Bureau against it; - the party is entitled to appeal investigative measures implemented by the Bureau.
<p>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?</p>	<p>06.11.1998. Section 7 of Law on the Access to Information defines business secrets as information which when disclosed by the institution could harm the competitiveness of the person who submitted the information. The status of confidentiality can be attributed according to law by the institution or the person itself.</p> <p>According to Section 19 of Commercial Law a commercial secret comprises such things of an economic, technical or scientific nature associated with the undertaking of a merchant, and information which is recorded in writing or by other means, or is not recorded, which have an actual or potential financial or non-financial value, and which, by their coming into the disposition of another person, may cause losses to the merchant, and in relation to which a merchant has taken reasonable measures to preserve secrecy.</p> <p>There is no difference depending on whether the information is provided under a compulsory legal order or under informal co-operation.</p>

9. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</p>	<p>There is no such time limitation provided in Competition Law.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>The decision on the merits must be made in six-month period from the date of initiation of the case. If there are objective factors, which do not allow to follow the six month period, investigation can be prolonged up to one year since the initiation of the case. If the particular case needs a long-drawn facts establishing process, the Council by a motivated decision can prolong the term of investigation up to two years from the moment of initiation.</p>

<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</p>	<p>Decisions of the Competition Council can be appealed within one month from the moment they come into force. The decisions on initiation of proceedings and prolongation of investigation cannot be appealed.</p>
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10. Types of decisions

<p>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.</p>	<p>The Council can make the following decision. If no infringement is found the Council makes a decision on termination of investigation of the matter. In case of infringement the Council adopts a decision establishing fact of infringement, imposition of legal obligations and pecuniary penalties.</p>
<p>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).</p>	<p>See point 10.A</p>
<p>C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>Decision on Interim adjustment can be adopted by the Council in cases concerning breach of EU competition law. The Competition Council can adopt decision on interim adjustment when it has convincing evidence of possible infringement of European Union competition law and failure to eradicate this infringement may cause significant, irreversible damage to competition. By interim adjustment the market participant is obliged to perform a particular action within the set time period or a particular action is prohibited.</p>

⁷ 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].

⁸ Only for agencies which answered “yes” to question 2.C. above

11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

A. Grounds for the imposition of procedural sanctions / fines:	Persons can be fined for refusal to supply information in the term and amount requested by the Council or for the supply of misleading information. Persons can also be fined for non-compliance with decisions of Competition Council and non-compliance with legal inquiries of the officials of the Council.
B. Type and nature of the sanction (civil, administrative, criminal, combined):	These are administrative sanctions
C. On whom can procedural sanctions be imposed?	Natural persons, legal entities
D. Criteria for determining the sanction / fine:	See point 11.A
E. Are there maximum and / or minimum sanctions / fines?	Natural persons can be fined up to 500 lats (approx. 714 EUR) Legal entities can be fined minimum 50 lats (approx. 71 EUR) and maximum 10 000 lats (approx. 14 285 EUR).

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be imposed?	In cartel cases there are administrative sanctions which can be imposed on market participants. If the person falls under the definition of market participant it can be fined.
B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]	The amount of the fine in each particular case depends on the gravity and duration of the infringement. Determining the gravity of the infringement the following factors are taken into account - the type of infringement; factual and potential consequences; role of each party involved in the infringement.
C. Are there maximum and / or minimum sanctions / fines?	The Council may fine market participants up to 5% from their net turnover of the last financial year, but not less than 250 lats (approx. 357 EUR) each. The Council may fine market participants which are

⁹ 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.

	competitors up to 10% from their net turnover of the last financial year but not less than 500 lats (approx. 714 EUR) each.
D. Guideline(s) on calculation of fines:	Cabinet of Ministers Regulation No862 (see point 1B)
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	Yes, the challenge of the decision in court suspends its effect. Appeal of interim adjustment does not suspend it.

13. Possibilities of appeal

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?	Decisions of the Council can be appealed on the grounds that material or procedural norms or facts of the case are wrongly interpreted or applied.
B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]	Appeal can be lodged with the District Administrative Court.