



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

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

SLOVENIA

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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.

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

1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]	PREVENTION OF THE RESTRICTION OF COMPETITION ACT Available on the homepage: www.sigov.si/uvk languages: Slovene, English
B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	None
C. Interpretative guideline(s) (if any): [name and	None

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

reference number, availability (homepage address) and indication of the languages in which these materials are available]	
D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]	Decree on Block Exemptions (Official Gazette of the RS, 69/2002 and 6/2003), available on the homepage, legislation languages: Slovene, English

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>The Slovenian law does not use the term “cartel”. It addresses cartels as prohibited restrictive agreements.</p> <p>Article 5 (Prohibition of restrictive agreements)</p> <p>(1) Agreements between undertakings regarding business conditions in the market which have as their object or effect the prevention, restriction or distortion of competition in the Republic of Slovenia shall be prohibited and shall be null and void.</p> <p>(2) The prohibition shall apply in particular to agreements which:</p> <ul style="list-style-type: none"> <input type="checkbox"/> directly or indirectly fix purchase or selling prices, or other trading conditions; <input type="checkbox"/> limit or control production, markets, technical development, or investment; <input type="checkbox"/> apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; <input type="checkbox"/> make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of their contracts; <input type="checkbox"/> share market or sources of supply. <p>(3) The first paragraph shall, however, be declared inapplicable if these agreements contribute to improving production or distribution of goods, or to promoting technical and economic progress, while allowing consumers a fair share of the resulting benefit. However, these agreements, decisions or concerted practices may not:</p> <ul style="list-style-type: none"> <input type="checkbox"/> impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; and <input type="checkbox"/> afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.
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	The provisions in respect of the agreements between undertakings also apply to the decisions by association of undertakings, and to the concerted practices.
B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas²) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]	As the most serious prohibitive agreements are considered price fixing, market sharing, limiting production. The Law itself does not made any distinction, but in the case law these kinds of agreements are almost always considered as having as their object restriction of competition.
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.]	The prohibition of cartels applies to all sectors of the economy. Defences available are the same as those for other agreements that might be prohibited under §5 of the Act. If the conditions under §5 paragraph 3 are fulfilled, there is no infringement. However as the case law shows there is very little probability of exempting hard core cartels out of prohibition clause.
D. Is participation in a hardcore cartel illegal <i>per se</i>? [If the situation differs for civil, administrative and criminal liability, please clarify this.]	Yes
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	It is a misdemeanour (minor offence). Similar rules apply as in the criminal procedure with some characteristics of a administrative procedure.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels: [if there is more than one agency, please	Competition Protection Office (hereinafter referred to as: Office)
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² In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

describe the allocation of responsibilities]	
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	<p>Contact Information</p> <p>Competition Protection Office Kotnikova 28 1000 Ljubljana Slovenia</p> <p>tel: ++ 386 1 478 35 97 fax: ++ 386 1 478 36 08</p> <p>e-mail: uvk.mg@gov.si</p> <p>http://www.gov.si/uvk/</p>
C. Information point for potential complainants:	<p>Competition Protection Office Kotnikova 28 1000 Ljubljana Slovenia</p> <p>e-mail: uvk.mg@gov.si</p>
D. Contact point where complaints can be lodged:	<p>Competition Protection Office Kotnikova 28 1000 Ljubljana Slovenia</p>
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	<p>In the case of opposition, the Office can ask for police assistance.</p>

4. Decision-making institution(s)³ [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	
B. Contact details of the agency: [address, telephone and fax including the country	

³ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

code, email, website address and languages available on the website]	
C. Contact point for questions and consultations:	
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	Commencement of procedure: ex officio or at the request of a party (complaint)
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).]	No specific form required but it should be in writing and signed.
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?]	The Office must initiate procedure at the request of a party when this party submits an application in which it has demonstrated its legal interest for carrying out procedure, and if a probability arises from its application that the violation has occurred. If the application does not fulfil the above mentioned conditions, the Office shall issue an order to dismiss the application.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please	When legal requirements are satisfied, the Office must initiate a procedure.

elaborate.]	
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	When there is no probability of infringement, the Office adopts an order to dismiss the application. If the Office does not issue an order on the commencement of procedure within 30 days of the submission of a request by a party, it shall be deemed that an order on dismissal of the request has been issued.
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?	There is an instructive time limit of 30 days. But that does not limit the Office to initiate procedure or to dismiss a complaint after 30 days had passed.

6. Leniency policy⁴

A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]	Slovenia has not yet adopted leniency policy.
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	
C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?	
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? In this context, is the date (the moment) at which participants in the cartel come forward with	

⁴ 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>information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</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>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p>	
<p>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	
<p>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.]</p>	
<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency – PGL – and further steps</p>	

leading to a final leniency agreement / decision)?]	
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?	
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?	
M. Does your legislation have a marker system? If yes, please describe it.	
N. Does the system provide for any extra credit⁵ for disclosing additional violations? [e.g. a hardcore cartel in another market]	
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:	
R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where	

⁵ 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>revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	
<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	

7. Investigative powers of the enforcing institution(s)⁶

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁷, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>The undertaking against which procedure has been initiated must enable the authorised person of the Office to examine the undertaking's business books, business documentation, and administrative and business records to the extent required for identifying all facts relevant for the issuing a decision within the procedure. In the carrying out of investigative action the authorised person of the Office may use photocopying means and computer equipment available at the undertaking against which procedure has been initiated to make copies and computer records of the aforementioned documents. Letters, notifications and other methods of communication related to the procedure between the undertaking against which procedure has been initiated and its legal representative shall be excluded from the investigative action. The undertaking against which procedure has been initiated must at the request of the Office submit computer records or copies of its business books, business documentation, and administrative and business records. The authorised person of the Office may request from the members of the management board, supervisory board, proxies, and any other person employed at the undertaking against which procedure has been initiated to give an oral or written explanation on the circumstances with respect to the investigative action. When a written explanation is requested, the authorised person shall specify a deadline for the preparation of the written explanation.</p> <p>Investigative action shall be carried out by a person employed at the Office on the basis of a written authorisation issued by the Director of the Office.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by</p>	<p>If the Office has a well-founded reason to believe that a certain person is in possession of information or data necessary for the issuing of the decision, it may propose to the misdemeanours judge to approve a personal body search, or it may apply to obtain a warrant for the search of residential or business premises from the competent investigative judge.</p>

⁶ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁷ “Searches/raids” means all types of search, raid or inspection measures.

a court?	
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)?	The Law does not explicatedly regulate such a situation. There is also no case law.
D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.	No.

8. Procedural rights of businesses / individuals

A. Key rights of defence in cartel cases: [e. g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc. Please indicate the relevant legal provisions.]	<p>An undertaking against whom procedure is initiated has the right to put forward facts and evidence in the procedure, and to express his legal opinions, reply to statements and proposals by other participants in the procedure, as well as to the facts and evidence which the Office takes into consideration ex officio. There is a right to access to the file all through the procedure.</p> <p>The decision by the Office may not be based on the facts and evidence in respect of which the person against whom the procedure has been initiated has not been given the possibility to reply.</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? [Please indicate the	<p>The Law stipulates the following: All information or data on the undertaking against which procedure has been initiated acquired by the Office during the investigative procedure shall be confidential. In the publication of the information in accordance with this Act, the Office must protect the confidentiality of data, and may publish only the data which is indispensable for achieving the purpose of the publication. All the officials of the Office must keep these information and data confidential, and shall be materially and criminally liable for disclosure.</p>

<p>[Please indicate the relevant legal provisions.]</p>	<p>If the decision contains data of the undertaking against which procedure has been initiated on business secrecy, this data shall be deleted from the explanation of the decision served on the other participants in the procedure.</p>
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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 limitation period for adopting a decision on finding that an infringement has been committed and imposing remedies. (decision without fine in the administrative procedure). For imposition of fine in a misdemeanour procedure procedure must start before the expiry of two years of the day the misdemeanour has been committed and the procedure must be finished before the expiry of four years of the day the misdemeanour has been committed.</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>There is no statutory limitation period for the completion of investigation or making decision in the merits. For imposition of fine a misdemeanour procedure must begin before the expiry of two years of the day the misdemeanour has been committed and the procedure must be finished before the expiry of four years of the day the misdemeanour has been committed.</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>Judicial protection against decisions issued by the Office is ensured via the administrative dispute. There is time limit of 30 days from the day of receipt of decision. For fines (misdemeanour procedure) a complaint should be lodged in 8 days.</p>

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. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<p>The Office can adopt a decision in which he finds that an infringement has been committed and it can order to the undertaking to bring the infringement to an end. The Office can also impose measures for eliminating effects of the infringement. In the misdemeanour procedure the Office can impose a fine for the infringement. The Office could also issue commitment decision.</p>
<p>B. Please list which types</p>	<p>The same as under A.</p>

<p>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>C. Can interim measures⁸ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁹.) 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>No.</p>

11. Sanctions for procedural breaches (non-compliance with procedural obligations)¹⁰

<p>A. Grounds for the imposition of procedural sanctions / fines:</p>	<p>If an undertaking against which procedure has been initiated unjustifiably supplies to the Office incorrect data, if it refuses to submit to the investigative procedure, if it in any other way obstructs the investigation, if it fails to submit the required documents by the specified deadline, or if an individual person obliged to give an oral explanation fails to do so, the Office may by order impose on the offender a monetary fine.</p> <p>If the undertaking referred to in the preceding paragraph continues to obstruct the procedure or to refuse to co-operate despite the adjudicated fine, the Office may by order impose on the offender the monetary fine referred to in the preceding paragraph on a weekly basis.</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined):</p>	<p>Administrative</p>

⁸ 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].

⁹ Only for agencies which answered “yes” to question 2.C. above

¹⁰ 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.

C. On whom can procedural sanctions be imposed?	On undertaking against which procedure has been initiated and on individual person obliged to give an oral or written explanation.
D. Criteria for determining the sanction / fine:	None of the criteria are explicitly stated in the Law. It depends on the type and gravity of the behaviour.
E. Are there maximum and / or minimum sanctions / fines?	The fine is in the range from SIT 500,000 (2.086,46€) to SIT 1,000,000 (4.172,93€) .

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? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]	It is an administrative procedure and sanctions (order to bring the infringement to an end, imposition of behavioural or structural remedies) are of the administrative nature. But the imposition of fine must be made in the misdemeanour procedure, which is more criminal oriented (it is a part of penal law). Sanctions can be imposed on undertakings (including sole entrepreneur), association of undertakings and also on individuals as responsible persons of the legal entity which committed the infringement. There are only monetary fines, no imprisonment as a separate sanction. However in the misdemeanour procedure if a perpetrator fails to pay the fine partially or entirely within the specified time limit he shall be forced to pay the fine by imposing on him a compliance detention. Compliance detention shall be imposed by the court by issuing an order ex officio or at the proposal by the misdemeanour authority.
B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]	The fine is defined in the range from of SIT 30,000,000 (125.187,78€) to SIT 90,000,000 (375.563,35€). The Office can only impose a minimum amount of fine (30,000,000 SIT). Only the Court can impose higher fine. The Court sets the fine with regard to the gravity of the infringement, the level of the perpetrator's liability for the misdemeanour, motives for committing the misdemeanour, level of threat or violation of a protected good, circumstances in which the misdemeanour was committed and with regard to other mitigating and aggravating circumstances.
C. Are there maximum and / or minimum sanctions / fines?	A fine of SIT 30,000,000 (125.187,78€) to SIT 90,000,000 (375.563,35€) can be imposed on an undertaking, and a fine of SIT 10,000,000 (41.729,26€) to SIT 50,000,000 (208.646,30€) shall be imposed on a sole entrepreneur for committing the infringement. A fine of SIT 1,000,000 (4.172,93€) to SIT 3,000,000 (12.518,78€) shall be imposed on a responsible person of the legal entity for committing the infringement.
D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the	None

languages in which these materials are available]	
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?	The challenge to a decision imposing a fine has an automatic suspensory effect, but a challenge towards a decision imposing an order to bring the infringement to an end and possible remedies does not automatically suspend the effects of the contested decision. The plaintiff must prove that execution of the decision would cause him irreparable damage and that the suspension would not be against public interest.

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?	Yes, there is a judicial review in the administrative dispute. A decision can be contested : – if the decision has violated a substantive provision of the Act; – if a violation has been committed of the provisions governing the proceedings; -- if there was an erroneous or incomplete establishment of the facts; -- if there are reasons that lead to the nullity of the decision.
B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]	Administrative Court.