



**International  
Competition  
Network**

**ANTI-CARTEL  
ENFORCEMENT  
TEMPLATE**

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

**Estonia**

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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>Estonian Competition Authority Homepage address: <a href="http://www.konkurentsiamet.ee">http://www.konkurentsiamet.ee</a> Languages: Estonian, English <a href="http://www.konkurentsiamet.ee/public/Leebus/438s_XI1.pdf">http://www.konkurentsiamet.ee/public/Leebus/438s_XI1.pdf</a></p> <p>Competition Act: <a href="https://www.riigiteataja.ee/akt/13277481">https://www.riigiteataja.ee/akt/13277481</a> in English: <a href="http://www.konkurentsiamet.ee/public/competition_act_july_2006.pdf">http://www.konkurentsiamet.ee/public/competition_act_july_2006.pdf</a> Criminal Code Art 400, Art 49<sup>1</sup> <a href="https://www.riigiteataja.ee">https://www.riigiteataja.ee</a> (in Estonian) <a href="http://www.legaltext.ee/indexen.htm">http://www.legaltext.ee/indexen.htm</a> (in English)</p> <p>Background rules on procedures: Code of Criminal Procedure <a href="https://www.riigiteataja.ee">https://www.riigiteataja.ee</a> (in Estonian) <a href="http://www.legaltext.ee/indexen.htm">http://www.legaltext.ee/indexen.htm</a> (in English) Administrative Procedure Act <a href="https://www.riigiteataja.ee">https://www.riigiteataja.ee</a> (in Estonian) <a href="http://www.legaltext.ee/indexen.htm">http://www.legaltext.ee/indexen.htm</a> (in English)</p>
<b>B. Implementing regulation(s) (if any):</b>	None
<b>C. Interpretative guideline(s) (if any):</b>	None
<b>D. Other relevant materials</b>	Block exemption regulations

(if any):

<http://www.konkurentsiamet.ee/?id=10479> (in Estonian, not available in English)

## 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>There is no specific legal term for cartels in the Competition Act. The law prohibits agreements between undertakings, concerted practices, and decisions by associations of undertakings which have as their object or effect the restriction of competition.</p> <p>Thus the Penal Code (art 400) makes a distinction between cartel behaviour and other type anticompetitive cooperation.</p> <p>§ 400. Agreements, decisions and concerted practices prejudicing free competition</p> <p>(1) Conclusion of agreements between undertakings, decisions and concerted practices which have as their object or effect the restriction of competition shall be punishable by a pecuniary punishment or imprisonment for up to one year.</p> <p>(2) Conclusion of agreements <u>between competitors</u>, adoption of decisions and engaging in concerted practices <u>between competitors</u> which have as their object or effect the restriction of competition, including when performed while participating in public procurement if they:</p> <ol style="list-style-type: none"><li>1) directly or indirectly fix prices or other trading conditions in respect to third parties;</li><li>2) limit production, service, goods market, technical development or investment; or</li><li>3) share the goods market or a source of supply, restrict the access of a third party to the goods market or attempt to exclude a third party from the goods market,</li></ol> <p>shall be punishable by a pecuniary punishment or up to 3 years' imprisonment.</p> <p>(3) The act set out in subsection 1 of this section, if committed by a legal person, is punishable by a pecuniary punishment of up to 5 percent of the legal person's turnover.</p> <p>(4) The act set out in subsection 2 of this section, if committed by a legal person, is punishable by a pecuniary punishment of 5 to 10 percent of the legal person's turnover.</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</b></p>	<p>As explained earlier, any kind of anti-competitive agreements, practices and decisions is prohibited. Even though there are no legal definitions of hardcore cartels in the Estonian law, one can distinguish between hardcore cartels and other types of cartels, as provided in the Penal Code (sanctions) and in the Competition Act (prohibitions).</p> <p>The Competition Act foresees the <i>de minimis</i> rule implying</p>

<p><b>production or sales quotas<sup>1</sup>) and other types of “cartels”?</b></p>	<p>which types of anti-competitive agreements are regarded as more serious violations than others.</p> <p>Agreements, practices or decisions are considered to be of minor importance if the combined market share of the total turnover of the undertakings which enter into the agreement, engage in concerted practices or adopt the relevant decision does not exceed:</p> <ol style="list-style-type: none"> <li>1) 15 per cent for each party of in the case of a vertical agreement, practice or decision;</li> <li>2) 10 per cent in total for all parties of a horizontal agreement, practice or decision;</li> <li>3) 10 per cent in the case of an agreement, practice or decision which includes concurrently the characteristics of both vertical and horizontal agreements, practices or decisions.</li> </ol> <p>Agreements, practices and decisions which have their object or effect to</p> <ol style="list-style-type: none"> <li>1) directly or indirectly fix prices or any other trading conditions;</li> <li>2) limit production, service, goods markets, technical development or investment;</li> <li>3) share goods markets or sources of supply, including restriction of access by a third party to a goods market or any attempt to exclude the person from the market;</li> </ol> <p>do not fall into de minimis rule and they are always prohibited.</p> <p>These types of agreements, practices and decisions can thus be seen as hard-core infringements.</p> <p>As of 27 February 2010 a law amending the Penal Code, the Code of Criminal Procedure and the Competition Act introduces leniency programme with new sanctions. A distinction of cartels exists now in the Penal Code: Article 400(1) and (3) regulate prohibited anticompetitive cooperation between undertakings and Article 400(2) and (4) apply for prohibited activities of competitors if they fix prices or other conditions of sale; limit production, service, market, technical development or investment; or share market or sources of supply, restrict a third person’s participation in the market.</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>Agreements, practices and decisions which are of minor importance are not prohibited in the case where the market share of participating undertakings does not exceed the abovementioned percentages.</p> <p>Agreements, practices and decisions may be exempted and are not prohibited in case they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which do not:</p> <ol style="list-style-type: none"> <li>(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;</li> <li>(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.</li> </ol>

<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.

<b>D. Is participation in a hardcore cartel illegal <i>per se</i>?</b>	Yes.
<b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b>	<p>Participation in agreements between undertakings, concerted practices, and decisions by associations of undertakings which have as their object or effect the restriction of competition is a criminal offence and is punishable for natural person (a member of the management board or of the supervisory board, senior official or authorised representative of a legal person), as well as for the legal person itself as a crime.</p> <p>There is also a possibility to issue an administrative mandatory precept to a natural or legal person as an administrative measure if it is needed.</p> <p>If it is necessary to impose sanctions together with issuing a mandatory precept, it will be possible to carry out both the criminal proceedings and administrative proceedings at the same time.</p>

### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels:</b>	<p>The pre-trial investigation of competition restricting agreements, practices and decisions is carried out by officials of the Estonian Competition Authority.</p> <p>The Public Prosecutor's Office leads preliminary investigations and represents public prosecution in the courts of all instances in respect of cross-border crimes and other especially serious organised crimes or crimes that have received intense public response. The Office shall also direct pre-trial proceedings in cartel cases and ensure the legality and efficiency thereof and represent public prosecution in court.</p>
<b>B. Contact details of the agency:</b>	<p>Estonian Competition Authority</p> <p>Address: Auna 6 10317 Tallinn Estonia</p> <p>Tel: +372 667 2400 Fax: +372 667 2401 E-mail: <a href="mailto:info@konkurentsiamet.ee">info@konkurentsiamet.ee</a> Website: <a href="http://www.konkurentsiamet.ee">http://www.konkurentsiamet.ee</a> (in Estonian and in English)</p> <p>The Public Prosecutor's Office</p> <p>Address: Wismari 7 15188 Tallinn Estonia Phone: +372 6 139 400 Fax: +372 6 139 402 e-mail: <a href="mailto:info@prokuratuur.ee">info@prokuratuur.ee</a></p>

<b>C. Information point for potential complainants:</b>	Mr. Juhan Põldroos Phone: +372 667 2450 Fax: +372 667 2401 E-mail: <a href="mailto:juhan.poldroos@konkurentsiamet.ee">juhan.poldroos@konkurentsiamet.ee</a>
<b>D. Contact point where complaints can be lodged:</b>	Mr. Juhan Põldroos Phone: +372 667 2450 Fax: +372 667 2401 E-mail: <a href="mailto:juhan.poldroos@konkurentsiamet.ee">juhan.poldroos@konkurentsiamet.ee</a>
<b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b>	In the case of need (for example during the search of a building, room, vehicle or enclosed area), the assistance of the police can be requested. It is also possible to ask for assistance from a forensic institution.

#### 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>	<p>In an administrative procedure the Competition Authority can make a mandatory precept which may contain one or several of the following obligations:</p> <ol style="list-style-type: none"> <li>1) to perform the act required by the precept;</li> <li>2) to refrain from a prohibited act;</li> <li>3) to terminate or suspend activities which restrict competition;</li> <li>4) to restore the situation prior to the offence.</li> </ol> <p>The Competition Authority may also terminate administrative proceedings by a decision, if:</p> <ol style="list-style-type: none"> <li>1) in the activities of the undertaking there are no indications of a violation of the Competition Act;</li> <li>2) competition has not been significantly restricted, or</li> <li>3) the undertaking has significantly improved competition in the goods market;</li> <li>4) misdemeanour or criminal proceedings have commenced concerning the same matter;</li> <li>5) the applicant has withdrawn the application and the termination of the proceedings does not infringe the rights or freedoms of third parties;</li> <li>6) an action concerning the same matter has been filed with a competition authority of another Member State of EU or</li> </ol>
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<sup>2</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	<p>a decision of a competition authority of another Member State concerning the same matter has entered into force or if an action concerning the same matter has been filed with the European Commission or a decision of the European Commission concerning the same matter has entered into force.</p> <p>Any sanctions (pecuniary punishment or imprisonment) for the anticompetitive agreements, practises and decisions can be imposed by the criminal panel of Harju County Court.</p>
<p><b>B. Contact details of the agency:</b></p>	<p>See 3/B above.</p> <p>Harju County Court  Address: Liivalaia 24  15034, Tallinn  Estonia  Tel: +372 6200 002  Fax: +372 6200 000  E-mail: harjumk.info@kohus.ee</p>
<p><b>C. Contact point for questions and consultations:</b></p>	<p>See 3 B above.</p>
<p><b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b></p>	<p>The Estonian Competition Authority as an investigative body shall independently perform the procedural acts provided in the Code of Criminal Procedure unless the permission of a court or the permission or order of a Prosecutor's Office is necessary for the performance of the act. The main task is to investigate the case and to collect evidentiary information in the pre-trial procedure.</p> <p>The Public Prosecutor's Office shall direct pre-trial proceedings and ensure the legality and efficiency thereof and represent public prosecution in court.</p> <p>If the investigator is convinced that the evidence necessary to proceed with a criminal case has been collected, he or she shall immediately prepare a summary of the pre-trial proceedings. The summary of the criminal proceedings and the criminal file shall be sent to the Prosecutor's Office.</p> <p>If the Prosecutor's Office has submitted a criminal file for examination and is thereafter convinced that the necessary evidence in the criminal matter has been collected, the Prosecutor's Office shall prepare the statement of charges. The Prosecutor's Office shall send the statement of charges to the court.</p>
<p><b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b></p>	<p>The Competition Authority is the investigative body in criminal proceedings.</p>

## 5. Handling complaints and initiation of proceedings

<p><b>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</b></p>	<p>The Competition Authority may initiate case investigations either based upon its own initiative or pursuant to a complaint. The Competition Authority and the Prosecutor's Office are required to conduct criminal proceedings upon the appearance of facts referring to a criminal offence (i.e. in the case of appearance of infringement of the provisions prohibiting anti-competitive cooperation of the Estonian Competition Act and the Penal Code or article 101 of the TFEU). The Competition Authority or a Prosecutor's Office commences criminal proceedings by the first investigative activity or other procedural act if there is reason and grounds therefor and the circumstances precluding criminal proceedings provided for in the Code of Criminal Procedure do not exist. The Competition Authority may also initiate an administrative procedure either based upon its own initiative or pursuant to an application in case there is need to issue a mandatory precept (e.g. to terminate the infringement).</p>
<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>	<p>There are no specific requirements for complaints. A report of a criminal offence can be submitted to the Competition Authority or a Prosecutor's Office orally or in writing. An oral report of a criminal offence which is submitted directly on site of the commission of the offence shall be recorded in a report, and a report of a criminal offence communicated by telephone shall be recorded in writing or audio-recorded.</p> <p>An application filed with the Competition Authority for the commencement of administrative proceedings or an application submitted to the Competition Authority during the administrative proceedings shall be in writing. A written application shall set out the following:</p> <ol style="list-style-type: none"> <li>1) the name of the person submitting the application;</li> <li>2) the clearly worded content of the application;</li> <li>3) the date of submission of the application, and the signature of the applicant;</li> <li>4) the desired manner of delivery of an administrative act or other document, and the details necessary for delivery;</li> <li>5) other data prescribed by legislation.</li> </ol>
<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>Any legal or natural person may make a complaint to the Competition Authority or to the Prosecutor's Office (in criminal procedure) or application to the Competition Authority (administrative procedure).</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>The criminal proceedings are commenced if the report of a criminal offence (complaint) contains the grounds for a criminal proceeding, i.e. in the case of constitution by ascertainment of criminal elements in the complaint. The Competition Authority has to assess the grounds of the complaint within ten days. If it is needed it may collect preliminary data or ask for clarification of circumstances from the complainant.</p>

	<p>Criminal proceedings shall not be commenced if:</p> <ol style="list-style-type: none"> <li>1) there are no grounds for criminal proceedings;</li> <li>2) the limitation period for the criminal offence has expired;</li> <li>3) an amnesty precludes imposition of a punishment;</li> <li>4) the suspect or the accused is dead or the suspect or the accused who is a legal person has been dissolved;</li> <li>5) a decision or a ruling on termination of criminal proceedings has entered into force in respect of a person in the same charges.</li> </ol> <p>Administrative proceedings start by submission of an application to the Competition Authority and the Competition Authority has to investigate the case. If the application is clearly unjustified it shall immediately be returned to the applicant without review.</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>	The Competition Authority or the Public Prosecutor's Office shall, within ten days as of the receipt of a report of a criminal offence, notify the person who submitted the report of the refusal to commence criminal proceedings. The Competition Authority or the Public Prosecutor's Office shall notify also the person against who the complaint was submitted or announce the refusal to commence criminal proceedings.
<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>	See 5/D above and 9 A below.

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

<b>A. What is the official name of your leniency policy (if any)?</b>	<p>On 27 February 2010, an amendment (Amendment Act) to the Penal Code, Code of Criminal Procedure and Competition Act entered into force which introduces a specific leniency programme into the Estonian legal system.</p> <p>The new leniency programme provides for full immunity or reduction of fines for the applicant depending on whether and to what extent the conditions for lenient treatment are met.</p>
<b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the</b>	Yes.

<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.

<b>case?</b>	
<b>C. Who is eligible for full leniency?</b>	<p>According to § 205<sup>1</sup>(1) of the Code of Criminal Procedure the Public Prosecutor's Office shall terminate criminal proceedings with regard to an applicant who meets the leniency conditions stipulated in the Competition Act.</p> <p>In order to benefit from full immunity, the applicant will have to be the first to apply for leniency and the information provided will have to be sufficient to initiate criminal proceedings regarding anti-competitive agreements, concerted practices or decisions of associations of undertakings.</p>
<p><b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b></p> <p><b>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</b></p>	<p>If the criminal proceedings have already been initiated before the first leniency application is filed, the proceedings will be terminated with regard to the applicant who meets the leniency conditions and submits the evidence with the leniency application, which in the view of the Prosecutor's Office enables him to charge with a crime other participants to the anti-competitive agreement.</p> <p>If the applicant is not the first to file for leniency it will not be able to get full immunity. In that case he can apply for a reduction of the penalty proportional to the cooperation provided to the prosecution.</p>
<b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b>	<p>As both undertakings (legal person) and members of the management or of the supervisory board of a legal person will be liable and may be punished for violation of a prohibition against agreements, decisions or concerted practices prejudicing free competition, natural and legal person can both be subject to the leniency policy.</p>
<b>F. What are the conditions of availability of full leniency:</b>	<p>In order to apply leniency the following conditions must be met:</p> <ol style="list-style-type: none"> <li>1) an application for leniency is in the applicant's own initiative, and complies with the formal application requirements;</li> <li>2) leniency applicant terminates the participation in the cartel unless agreed otherwise;</li> <li>3) leniency applicant will disclose for full all the evidence available to him about the cartel;</li> <li>4) leniency applicant will cooperate at his own expenses and in good faith with the investigation and prosecution until criminal proceedings are completed;</li> <li>5) leniency applicant has not initiated or led the preparation of the cartel</li> <li>6) leniency applicant has not deliberately destroyed evidence or disclosed information without the permit of the prosecutor.</li> </ol>
<b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b>	<p>The reduction of sanction is dependent on the cooperation of the applicant who is not the first leniency applicant. The sanction will be reduced in proportion with the cooperation offered by that applicant.</p>
<b>H. Obligations for the</b>	<p>See 6F.</p>

<b>beneficiary after the leniency application has been accepted:</b>	
<b>I. Are there formal requirements to make a leniency application?</b>	<p>The requirements are stipulated in Art 78<sup>1</sup> subsec. 1 and 2 of the Competition Act.</p> <p>Pursuant to § 205<sup>1</sup> of the Code of Criminal Procedure, a participant in a crime set out in § 400 of the Penal Code may submit a leniency application to the Competition Authority in a format that can be reproduced in writing and allows for the date and time of receipt of the application by the Competition Authority to be recorded.</p> <p>The leniency application shall contain the following data:</p> <ol style="list-style-type: none"> <li>1) name, personal identification code, date of birth or registration number, address and other contact details of the applicant;</li> <li>2) details of other parties who participate in the criminal offence set out in § 400 of the Penal Code that allow for them to be identified;</li> <li>3) detailed description of the criminal offence set out in § 400 of the Penal Code, including details of the affected goods, the geographical extent of the offence and the time and manner of the offence;</li> <li>4) all evidence available and known to the leniency applicant about the criminal offence set out in § 400 of the Penal Code. If submission of evidence with the application is technically impossible, then such evidence may be submitted in any other manner without delay. If immediate submission of evidence is impossible, then description of evidence with indication of the location of evidence shall be deemed sufficient;</li> <li>5) data of other competition institutions or other institutions to whom the leniency applicant has submitted leniency applications or to whom they intend to submit such an application.</li> </ol>
<b>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency – PGL – and further steps leading to a final leniency agreement / decision)?]</b>	<p>Once the application has been submitted, the Competition Authority shall immediately confirm acceptance of the leniency application to the leniency applicant, noting the exact time when it was received in the Authority and pass the application with any enclosures on to the The Public Prosecutor's Office.</p> <p>The Prosecutor's Office, having received notice from the Competition Authority about leniency application, shall coordinate further activities with the leniency applicant with the investigative bodies and the leniency applicant. The Prosecutor's Office may grant the leniency applicant a deadline of one month for submission of evidence.</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>See 6/J above.</p>
<b>L. What is the legal basis for the power to agree to grant leniency? Is</b>	<p>According to § 205<sup>1</sup>(1) of the Code of Criminal Procedure the Public Prosecutor's Office shall terminate criminal proceedings with regard to an applicant who meets the leniency conditions</p>

<p><b>leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</b></p>	<p>stipulated in the Competition Act.</p> <p>The person that is involved in anti-competitive agreements, concerted practices or decisions of association of undertakings set out as punishable in § 400 of the Penal Code, will have a chance to be released from liability or get remarkable reduction of penalty if the person submits a leniency application to the Competition Authority and performs the terms for application of leniency stipulated in the Competition Act.</p> <p>Cartels and leniency programmes are being dealt with by the Supervisory Department of the Competition Division of the Competition Authority.</p>
<p><b>M. Does your legislation have a marker system? If yes, please describe it.</b></p>	<p>§ 205<sup>1</sup>(4) of the Code of Criminal Procedure provides that the Public Prosecutor's Office may give the leniency applicant a one month deadline to collect evidence, therefore giving the applicant a possibility to receive a marker (to reserve place in the queue).</p>
<p><b>N. Does the system provide for any extra credit<sup>4</sup> for disclosing additional violations?</b></p>	<p>No.</p>
<p><b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b></p>	<p>In general, the Competition Authority does not disclose the identity of the leniency applicant for the effectiveness of the investigation.</p> <p>Pursuant to Code of Criminal Procedure § 226 (4) 1) a copy of a leniency application may be excluded from the documents that the Prosecutor sends to the court.</p>
<p><b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b></p>	<p>No.</p>
<p><b>Q. Contact point where a leniency application can be lodged:</b></p>	<p>leebus@konkurentsiamet.ee</p> <p>For information about leniency, tel +372 667 2444</p> <p>(office hours only)</p>
<p><b>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</b></p>	<p>Leniency could be withdrawn if the conditions of leniency are breached or new elements arise which are in conflict with the concept of leniency. As it is stated in § 205<sup>1</sup>(5) of the Code of Criminal Procedure, if, after the granting of lenient treatment, facts appear that do not allow for leniency to be applied, the Public Prosecutor's Office may with its order renew the proceedings against the leniency applicant. Until today, this has not been used in practice.</p> <p>Articles 228-232 of the Code of Criminal Procedure enact the general possibilities of appeal against the Competition Authority or/and the Prosecutor's Office.</p>

<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.

<b>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</b>	No.

## 7. Investigative powers of the enforcing institution(s)<sup>5</sup>

<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>In the administrative proceedings under the Competition Act the Competition Authority is entitled to:</p> <ol style="list-style-type: none"> <li>1) request information from all natural and legal persons and the representatives thereof and all state agencies and local governments and the officials thereof to be submitted. The Competition Authority must provide a written request, which must set out the purpose and the legal grounds for the request of information.</li> <li>2) request natural persons, including representatives or employees of legal persons or associations which are not legal persons and officials or representatives of state agencies or local governments to provide explanations at the Competition Authority or on the site. If individuals are asked to provide explanations at the Competition Authority, they are summoned to the Competition Authority by written summons.</li> <li>3) request to submit the originals of documents, drafts or other materials, or true copies thereof, certified by the signature of the person submitting the copies. Upon submission of a copy, the Competition Authority has the right to request submission of the original document to verify the authenticity of the copy.</li> <li>4) inspect the registered office and place of business of undertaking, including the enterprises, territory, buildings, rooms and means of transport of the undertaking, both during working hours and at any time the place of business is used, without prior warning or special permission. With the consent of the undertaking, the seat, place of business or enterprises of the undertaking may also be inspected at any other time. For such inspection the official of Competition Authority must be authorised by a directive of the director-general of the Competition Authority. An inspection shall be conducted with the knowledge of the undertaking, or a representative or employee thereof, and they have the right to be present during the inspection. During an inspection the official conducting the inspection has the right to: * immediately examine documents relating to the activities of</li> </ol>
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<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>the undertaking, drafts thereof and other materials and to obtain, at the expense of the person under inspection, copies or transcripts thereof, the authenticity of which shall be certified by the signature of the person submitting them;</p> <p>* immediately examine data or databases kept in electronic form on computer at the seat or place of business of the undertaking under inspection and electronic data media held at the seat or place of business and to make printouts and electronic copies thereof at the expense of the undertaking under inspection, the authenticity of which shall be certified by the signature of the person under inspection or the representative thereof or employee on the printout or on a separate page;</p> <p>* request the undertaking or a representative or employee thereof to submit explanations.</p> <p>Acting as an investigative body in the criminal proceedings pursuant to Code of Criminal Procedure, Competition Authority has the rights during the pre-trial phase of the procedure under usual criminal procedure rules.</p> <p>Competition Authority has a right to:</p> <ol style="list-style-type: none"> <li>1) demand the submission of a document necessary for the adjudication of a criminal matter;</li> <li>2) perform hearing of witnesses;</li> <li>3) perform the interrogation of suspect;</li> <li>4) perform confrontation, comparison of statements to circumstances, and presentation for identification;</li> <li>5) perform an inspection of a scene of events, a document, any other object or physical evidence (the objective of an inspection is to collect information necessary for the adjudication of a criminal matter, detect the evidentiary traces of the criminal offence and confiscate objects which can be used as physical evidence);</li> <li>6) conduct a search of any private or business premises on the basis of an order of a Prosecutor's Office or a court ruling;</li> <li>7) perform investigative experiment (the objective of an investigative experiment is to ascertain whether circumstances relating to an event under investigation existed or an act was performed at the time of commission of a criminal act or whether their existence or performance was perceptible);</li> <li>8) make arrangement of conduct of expert assessment.</li> </ol>
<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>Yes (see 7/A above). A search shall be conducted on the basis of an order of a Prosecutor's Office or a court ruling (usually it is conducted on the basis of an order of a Prosecutor's Office)</p>
<p><b>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)?</b></p>	<p>Yes. In cases of urgency, an investigative body may conduct a search on the basis of an order of the investigative body without the permission of a Prosecutor's Office, but in such a case the Prosecutor's Office shall be notified of the search within twenty-four hours and the Prosecutor's Office shall decide on the admissibility of the search.</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>No.</p>
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## 8. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases:</b></p>	<p>In an administrative procedure the person has the following rights:</p> <ol style="list-style-type: none"> <li>1) right to representation. A representative may represent a participant in a proceeding in all procedural acts which, arising from law, need not be performed personally by the participant in the proceeding (Administrative Procedure Act art 13);</li> <li>2) to examine documents and files, if such exist, which are relevant in the proceedings and which are preserved with an administrative authority (excluding information which is not allowed to disclose by law) (Administrative Procedure Act art 37);</li> <li>3) to provide his or her opinion and objections in a written, oral or any other suitable form (Administrative Procedure Act art 40).</li> </ol> <p>In criminal procedure a suspect or accused has the right to:</p> <ol style="list-style-type: none"> <li>1) know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion;</li> <li>2) know that his or her testimony may be used in order to bring charges against him or her;</li> <li>3) the assistance of a counsel;</li> <li>4) confer with the counsel without the presence of other persons;</li> <li>5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;</li> <li>6) participate in the hearing of an application for an arrest warrant in court;</li> <li>7) submit evidence;</li> <li>8) submit requests and complaints;</li> <li>9) examine the report of procedural acts and give statements on the conditions, course, results and report of the procedural acts, whereas record shall be made of such statements;</li> <li>10) give consent to the application of settlement proceedings, participate in the negotiations for settlement proceedings, make proposals concerning the type and term of punishment and enter or decline to enter into an agreement concerning settlement proceedings. (Code of Criminal Procedure art 34).</li> </ol> <p>A suspect or accused who is a legal person shall participate in the criminal proceeding through a member of the management</p>
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	<p>board or the body substituting for the management board of the legal person and such member has all the rights of a suspect or accused, including the right to give testimony in the name of the legal person.</p>
<p><b>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</b></p>	<p>There is no difference between business secrets on the basis of the way of collection.</p> <p>According to Competition Act art 63 (1) a business secret shall mean such information concerning the business activities of an undertaking the disclosure of which to other persons may adversely affect the interests of the undertaking. Information subject to disclosure to the public, decisions and precepts made by the Director General of the Competition Authority or his or her deputy and documents prepared by the Director General of the Competition Authority or his or her deputy or any other official of the Competition Authority from which business secrets have been excluded are not deemed to be business secrets.</p> <p>Unless otherwise provided by law, an official of the Competition Authority does not have the right to disclose the business secrets, including information subject to banking secrecy, of an undertaking which have become known to the official in the course of performance of his or her official duties to other persons nor publish them without the consent of the undertaking (Competition Act art 63 sec 2).</p> <p>An official of the Competition Authority may disclose and use a business secret of an undertaking if this is needed to provide evidence of the commission of an offence relating to competition, or violation of this Act or of Article 101 or Article 102 of the TFEU. Officials of the Competition Authority may submit documents containing business secrets to courts for the purposes of preparing the hearing of and hearing criminal, civil and administrative matters or misdemeanours, and making decisions (Competition Act art 63 sec 3).</p>

## 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>The limitation periods depend on the type of proceedings.</p> <p>There is no specific limitation period for the administrative proceedings. Administrative procedure shall be purposeful, efficient and straightforward and conducted without undue delay, avoiding superfluous costs and inconveniences to persons.</p> <p>The law does not require the Competition Authority to reach a decision within specified time. It is up to the authority itself to decide when the case has been investigated thoroughly enough to adopt a decision.</p> <p>In the case of criminal offence no one shall be convicted of or punished for the commission of a competition-related crime if five years have expired between the commission of the criminal offence and the entry into force of the corresponding court judgment.</p>
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	<p>The limitation period of a criminal offence is interrupted if a procedural act is performed with regard to the person in a criminal matter concerning the person or if the person commits a new criminal offence before the expiry of five years term. In such a case, calculation of the limitation period of the criminal offence commences as of the performance of the procedural act in the criminal matter regarding the person or as of the commission of the new criminal offence.</p> <p>In case of criminal procedure the final decision has to be made within the limitation period. There are no clearer rules – it is up to the prosecution to carry out the procedure and decide the exact timeframe. After the limitation period has passed, the proceedings will have to be terminated, so, the final decision will have to be made before the limitation period has passed.</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>See 9/A above.</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 commencement of an administrative or a criminal procedure cannot be challenged, but parties to a proceeding can submit an application or a request for termination of the procedure.</p> <p>The administrative act on the merits can be challenged (an action for annulment of an administrative act) in administrative court within thirty days after the date on which the administrative act was made public.</p> <p>A victim may file an appeal with a Prosecutor's Office against refusal to commence criminal proceedings. An appeal may be filed within ten days as of receipt of a notice on refusal to commence criminal proceedings, a copy of an order prepared by a Prosecutor's Office on adjudication of an appeal or a copy of an order on termination of the criminal proceedings. If an appeal is dismissed by an order of the Prosecutor General's Office, the appellant may file an appeal against the order with the circuit court (court of appeal) through an advocate within one month as of the receipt of a copy of the order.</p> <p>The decision regarding sanctions is made by the court. If a party to a court proceeding does not consent to the judgment of the court of first instance, the party has the right to file an appeal to the court of appeal (court of second instance).</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</b></p>	<p>See 4/A above.</p>
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under Section 1.	
<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>	See 4/A above.
<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>	No.

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

<b>A. Grounds for the imposition of procedural sanctions / fines:</b>	<p>In the administrative procedure a legal person (a party of the proceedings or any other person) who refuses to submit or fails to submit documents or information necessary for supervision to the Competition Authority on time, submits false information or submits documents or information in a manner which does not permit exercise of supervision shall be liable for the misdemeanour offence (fine of up to 3200 euros).</p> <p>In criminal procedure the procedural sanctions can be imposed in following cases:</p> <p>1) A fine of up to two hundred minimum daily rates or detention for up to fourteen days shall be imposed by a preliminary investigation judge at the request of a Prosecutor's Office or by a court on its own initiative on the basis of a court ruling on a person who has failed to appear when summoned by the body</p>
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<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

<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>conducting the proceedings. Compelled attendance may be imposed on a suspect, accused, convicted offender, victim, civil defendant or witness who failed to appear when summoned by the body conducting the proceedings;</p> <p>2) In the event of a violation of the prohibition on disclosure of information concerning pre-trial proceedings, a preliminary investigation judge may impose a fine of up to sixty minimum daily rates on the participants in the procedural act by a court ruling at the request of the Prosecutor's Office. The suspect and the accused shall not be fined;</p> <p>3) A preliminary investigation judge may impose a fine of up to sixty minimum daily rates on a participant in a proceeding, other persons participating in criminal proceedings or persons not participating in the proceedings who have failed to perform an obligation provided for in orders and demands issued by investigative bodies and Prosecutors' Offices by a court ruling at the request of a Prosecutor's Office. The suspect and the accused shall not be fined.</p> <p>4) If the accused violates order in a court session and fails to comply with the orders of the judge, the following measures may be applied on the basis of a court ruling removal of the accused from the courtroom temporarily or for the duration of the whole session or imposition of detention for up to ten days or a fine of up to sixty minimum daily rates on the accused. If a prosecutor or counsel violates order in a court session, fails to comply with the orders of a judge or acts in contempt of court, a fine of up to one hundred minimum daily rates may be imposed on him or her by a court ruling. If any other participant in a proceeding or a person present in a courtroom violates order in a court session, fails to comply with the orders of the judge or acts in contempt of court, he or she may be removed from the courtroom, or a fine of up to one hundred minimum daily rates or detention for up to five days may be imposed on him or her on the basis of a court ruling.</p>
<b>B. Type and nature of the sanction (civil, administrative, criminal, combined):</b>	Procedural sanctions.
<b>C. On whom can procedural sanctions be imposed?</b>	See 11/A above.
<b>D. Criteria for determining the sanction / fine:</b>	See 11/A above.
<b>E. Are there maximum and / or minimum sanctions / fines?</b>	See 11/A above The minimum daily rate is 3,2 euros.

## 12. Sanctions on the merits of the case

<b>A. Type and nature of sanctions in cartel cases (civil, administrative,</b>	Criminal sanctions shall be imposed on legal persons and natural persons (e.g. a member of the management board, of a body substituting for the management board or of the
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<p><b>criminal, combined):</b></p> <p><b>On whom can sanctions be imposed?</b></p>	<p>supervisory board of a legal person, senior officials, authorised representatives).</p> <p>A natural person (member of the management board, of a body substituting for the management board or of the supervisory board or senior official or an authorised representative of a legal person), who violates a prohibition against agreements, decisions or concerted practices prejudicing free competition will be punished by a pecuniary punishment or up to 3 years' imprisonment and may be prohibited to conduct business from 1 to 5 years.</p> <p>The court may apply a prohibition on business to the convicted offender (natural person) for a term of one to five years if the person is convicted of a criminal offence relating to abuse of official status or violation of official duties or a criminal offence set out in § 400 of the Penal Code</p> <p>A legal person shall be punished by a pecuniary punishment from 5 to 10 % of its annual revenue (for competitors who participate in hardcore cartels).</p> <p>Undertakings whose actions prejudice free competition by prohibited agreements, decisions or concerted practices that do not constitute a cartel can be imposed a pecuniary punishment up to 5 % of its annual turnover.</p>
<p><b>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</b></p>	<p>For a natural person the court may impose a pecuniary punishment of 30 to 500 daily rates. The court shall calculate the daily rate of a pecuniary punishment on the basis of the average daily income of the convicted offender. Average daily income shall be calculated on the basis of the income subject to income tax received by the convicted offender during the year immediately preceding the year in which criminal proceedings were commenced against the convicted offender or, if the data pertaining to such year are not available, during the year preceding such year, less the income tax.</p>
<p><b>C. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>In case of a legal person, the court may impose a pecuniary punishment up to 16 000 000 euros (calculated on the bases of percentage of the offender's turnover).</p>
<p><b>D. Guideline(s) on calculation of fines:</b></p>	<p>The principal punishments imposed for criminal offences is provided in the Penal Code.</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>A court judgment with the imposed sanction enters into force when it can no longer be contested in any other manner except by review procedure. The imposed sanction can be enforced only after a court judgment enters into force.</p> <p>A court judgment enters into force upon expiry of the term for appeal or appeal in cassation. If an appeal in cassation is filed, the court judgment enters into force as of the date on which acceptance of the appeal in cassation is refused or the conclusion of the judgment of the Supreme Court is pronounced. Judgments of the Supreme Court enter into force as of the date they are made.</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>A mandatory precept or decision of the Director General of Competition Authority can be challenged in an administrative court. Only a person who finds that his or her rights have been violated or his or her freedoms have been restricted by an administrative act or measure has the right to file an action with an administrative court. An action for the establishment of the unlawfulness of an administrative act or measure may be filed by a person who has a legitimate interest in the matter. The action shall be reviewed according to the procedure in the Code of Administrative Court Procedure.</p> <p>§ 71-73 of the Administrative Procedure Act allow a person who believes that his rights have been violated or his liberties have been limited by an administrative act or an administrative procedure to challenge that act or procedure. The Director General of the Competition Authority who will review the complaint in 10 days.</p> <p>In the criminal procedure if a party to a court proceeding does not consent to the judgment of the court of first instance, the party has the right to file an appeal to the court of appeal (Tallinn District Court). The appeal can be made on the question of application of law as well as fact or breaches of procedural requirements.</p>
<p><b>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</b></p>	<p>See 13/A above.</p>