



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.

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

## 1. Information on the law relating to cartels

<b>A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]</b>	Competition Act Homepage address: <a href="http://www.konkurentsiamet.ee">http://www.konkurentsiamet.ee</a> Languages: Estonian, English Competition Act on the homepage: <a href="https://www.riigiteataja.ee/ert/act.jsp?id=782641">https://www.riigiteataja.ee/ert/act.jsp?id=782641</a> (in Estonian) <a href="http://www.konkurentsiamet.ee/public/documents/eng/competition_act_july_2006.pdf">http://www.konkurentsiamet.ee/public/documents/eng/competition_act_july_2006.pdf</a> (in English)  Penal Act art 400 <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)  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)
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<sup>1</sup> Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

	<a href="http://www.legaltext.ee/indexen.htm">http://www.legaltext.ee/indexen.htm</a> (in English)
<b>B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b>	None
<b>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b>	None
<b>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</b>	Block exemption regulations <a href="http://www.konkurentsiamet.ee/?lang=ee">http://www.konkurentsiamet.ee/?lang=ee</a> (in Estonian, not available in English)

## 2. Scope and nature of prohibition on cartels

<b>A. Does your law or case law define the term “cartel”? [Please quote.]</b>  <b>If not, please indicate the</b>	There is no specific legal term for cartels, prohibited are agreements between undertakings, concerted practices, and decisions by associations of undertakings which have as their object or effect the restriction of competition.
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<p><b>term you use instead. [Please quote.]</b></p>	<p>In the narrow sense the term "cartel" is understood as horizontal competition restricting cooperation of undertakings, in other words agreements between undertakings, concerted practices of undertakings or decisions by associations of undertakings operating as competitors at the same level of the production or distribution chain.</p>
<p><b>B. Does your legislation or case law distinguish between very serious cartel behaviour ("hardcore cartels" – e.g.: price fixing, market sharing, bid rigging or production or sales quotas<sup>2</sup>) and other types of "cartels"? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</b></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 of 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><b>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</b></p>	<p>Agreements, practices and decisions which are of minor importance are not prohibited, i.e in the case when the market share of participating undertakings does not exceed abovementioned percentages and the object or effect agreements, practices and decisions exchange information which restricts competition, agree on the application of dissimilar conditions to equivalent agreements, thereby placing other trading parties at a competitive disadvantage or make entry into an agreement subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of such agreement.</p>
<p><b>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.]</b></p>	<p>Yes.</p>
<p><b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a</b></p>	<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</p>

<sup>2</sup> In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

<b>combination of these?</b>	<p>criminal offence and is punishable for a member of the management board or of the supervisory board of a legal person, as well as for the legal person itself as a crime.</p> <p>There is also a possibility to issue a mandatory precept to a natural or legal person if the person as an administrative measure if it is needed.</p> <p>If it is necessary to impose a 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>
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### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</b>	<p>The pre-trial investigation of competition restricting agreements, practices and decisions is carried out by officials of Estonian Competition Board.</p> <p>A Prosecutor's Office, in whose territorial jurisdiction the criminal offence was committed ( Northern Circuit Prosecutor's Office, Southern Circuit Prosecutor's Office, Viru Circuit Prosecutor's Office, Western Circuit Prosecutor's Office) shall direct pre-trial proceedings and ensure the legality and efficiency thereof and represent public prosecution in court.</p>
<b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b>	<p>Estonian Competition Board</p> <p>Address: Lökke 4, 15184 Tallinn Estonia</p> <p>Tel: +372 680 3942 Fax: +372 680 3943 E-mail: <a href="mailto:compet@konkurentsiamet.ee">compet@konkurentsiamet.ee</a> Website: <a href="http://www.konkurentsiamet.ee">http://www.konkurentsiamet.ee</a> (in Estonian and English)</p> <p>Northern Circuit Prosecutor's Office</p> <p>Address: Tatari 39 Tallinn 10134 Estonia</p> <p>Tel: +372 628 2600 Fax: +372 628 2601 e-mail: <a href="mailto:info.pohja@prokuratuur.ee">info.pohja@prokuratuur.ee</a></p> <p>Southern Circuit Prosecutor's Office Kalevi 1 Tartu, 51010 Phone: (+372) 7 500 579 Fax: (+372) 7 500 751 e-mail: <a href="mailto:info.louna@prokuratuur.ee">info.louna@prokuratuur.ee</a></p> <p>Viru Circuit Prosecutor's Office Järveküla road 69</p>

	<p>Kohtla-Järve 30322  Phone: (+372) 33 44 173  Fax: (+372) 33 44 173  e-mail: iviru.info@prokuratuur.ee</p> <p>Western Circuit Prosecutor's Office  Pikk 6b  80013, Pärnu  Phone: (+372) 44 77 535  Fax: (+372) 44 77 532  e-mail: laane.info@prokuratuur.ee</p>
<b>C. Information point for potential complainants:</b>	<p>Ms. Aini Proos  tel + 372 6803 942  fax +372 6803 943  aini.proos@konkurentsiamet.ee</p>
<b>D. Contact point where complaints can be lodged:</b>	<p>Ms. Aini Proos  tel + 372 6803 942  fax +372 6803 943  aini.proos@konkurentsiamet.ee</p>
<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>	<p>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 forensic institution.</p>

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

<b>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</b>	<p>In the case of administrative procedure the Director General can make a mandatory precept which may contain one or several 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 Director General may also terminate an 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 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</li> </ol>
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<sup>3</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	<p>freedoms of third parties;</p> <p>6) an action concerning the same matter has been filed with a competition authority of another Member State of EU or 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 county court. (Harju County Court, Viru County Court, Pärnu County Court, Tartu County Court)</p> <p>Under the Code of Criminal Procedure § 24, a criminal matter shall be heard by the county or city court in whose territorial jurisdiction the criminal offence was committed.</p>
<p><b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b></p>	<p>See 3/B above.</p> <p>Harju County Court Address: Liivalaia 24, 15034, Tallinn Estonia Phone: +372 6200 177 Fax: +372 6200 000 E-mail: talk.info@just.ee</p> <p>Viru County Court Address: 1.Mai 2, 20308, Narva Phone: +372 35 99 800 Fax: + 372 35 99 801 E-Mail: virumknarva.info@just.ee</p> <p>Pärnu County Court Address: Kuninga 22, 80099, Pärnu Phone: +372 44 795 00 Fax: +372 44 79 590 E-Mail: parnumk.info@just.ee</p> <p>Tartu County Court Address: Kalevi 1, 51010, Tartu Phone: +372 7 500 615 Fax: +372 7 500 611 E-Mail: tartumk.info@just.ee</p>
<p><b>C. Contact point for questions and consultations:</b></p>	<p>Ms. Aini Proos tel +372 6803 942 fax +372 6803 943 aini.proos@konkurentsiamet.ee</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>Estonian Competition Board as an investigative body shall perform the procedural acts provided for in the Code of Criminal Procedure independently 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>A Prosecutor's Office shall direct pre-trial proceedings and</p>

	<p>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>Competition Board is 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 Board may initiate case investigation either based upon its own initiative or pursuant to a complaint. The Competition Board and Prosecutors' 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 the provisions prohibiting anti-competitive cooperation of the Estonian Competition act and the Penal Code or article 81 of the EC Treaty).</p> <p>The Competition Board may also initiate administrative procedure either based upon its own initiative or pursuant to an application if 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.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]</b></p>	<p>There is no specific requirements for the complaints. A report of a criminal offence can be submitted to the Competition Board 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 Board for the commencement of administrative proceedings or an application submitted to the Competition Board 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> </ol>

	<p>4) the desired manner of delivery of an administrative act or other document, and the details necessary for delivery;</p> <p>5) other data prescribed by legislation.</p>
<p><b>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</b></p>	<p>Any legal or natural person may make a complaint to the Competition Board or to Prosecutor's Office or application to the Competition Board.</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? [Please elaborate.]</b></p>	<p>The criminal proceedings is 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 Board has to assess the grounds of the complaint within ten days. If it is needed It may collect preliminary data on 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 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 Board and the Competition Board has to investigate the case. If the application is clearly unjustified it shall be returned to the applicant without review without a delay.</p>
<p><b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b></p>	<p>The Competition Board or 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 Board or Prosecutor's Office shall notify also the person concerning whom the complaint was submitted of refusal to commence criminal proceedings.</p>
<p><b>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</b></p>	<p>See 5/D above.</p>

## 6. Leniency policy<sup>4</sup>

<p><b>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</b></p>	<p>At the present time we do not have very detailed and specified condition for the leniency, so there is no official name for leniency policy.</p> <p>However Code of Criminal Procedure Procedure Act contains the provisions which will enable the Prosecutors` Office or the court to terminate the criminal proceedings if certain conditions are met.</p> <p>Criminal proceedings can be terminated by the court upon the Prosecutor's Office's request of termination in event of lack of public interest in proceedings and in case of negligible guilt (Code of Criminal Procedure art 202).</p> <p>Also The Public Prosecutor's Office may, by its order, terminate criminal proceedings with regard to a person suspected or accused with his or her consent if the suspect or the accused has significantly facilitated the ascertaining of facts relating to a subject of proof of a criminal offence which is important from the point of view of public interest in the proceedings and if, without the assistance, detection of the criminal offence and collection of evidence would have been precluded or especially complicated. (Code of Criminal Procedure art 205).</p> <p>The abovementioned provisions are the main legal basis for the leniency conditions in the cases of anti-competitive cooperation of the undertakings. For the uniform application of the provisions of Code of Criminal Procedure the Chief Public Prosecutor may give general instructions. In order to ensure the effective implementation of the leniency program, the Chief Public Prosecutor has been working extensively on drafting the leniency conditions with cooperation og Competition Board.</p>
<p><b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</b></p>	<p>The Code of Criminal Procedure provides full leniency (immunity from sanctions by termination on criminal proceedings with regard to a person).</p> <p>The reduction of sanctions (punishment) is possible by taking into account mitigating circumstances provided in the Penal Code.</p>
<p><b>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</b></p>	<p>The condition for application provisions of Code of Criminal Procedure (see 6/A) has not yet been fully clarified by the Chief Public Procecutur or by the enforcement practice.</p> <p>According to Chief Public Procecutors` general instruction to art 202 of Code of Criminal Procedure there is always existence of public interest in the continuation of the criminal proceedings in the cases of anti-competetive agreements, decision and practices and the proceedings can not be terminated with regard to a person, except if</p> <ol style="list-style-type: none"> <li>1) the person first informs investigative body (Competition Board or Procecutors`Office) of the cartel;</li> <li>b) the information is provided before investigative body</li> </ol>

<sup>4</sup> For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

	<p>obtained information from other sources;  c) person immediately ends involvement in the cartel, unless it is required by the interest of the proceedings and the person has permission of the investigative body;  d) person delivers to the investigative body all information and documents in its possession and co-operates with investigator during the whole proceedings of the cartel;  e) person is not the initiator of the cartel, has not played a decisive role in the cartel and did not take steps to coerce other persons to participate in the cartel.</p> <p>Detailed conditions and terms for the implementation of art 205 of the Code of the Criminal Procedure in relation of anti-competetive cooperation is not developed yet.</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>See 6/C above.</p>
<p><b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b></p>	<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, so natural and legal person can be subject of the leniency policy.</p>
<p><b>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</b></p>	<p>See 6/A and 6/C above.</p>
<p><b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of</b></p>	<p>The reduction of sanctions (punishment) is possible on the grounds of general criteria for sanctioning by taking into account mitigating circumstances provided in the Penal Code.</p>

<p><b>written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</b></p>	
<p><b>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</b></p>	<p>See 6/A and 6/C above.</p>
<p><b>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</b></p>	<p>No. See 6/A and 6/C above.</p>
<p><b>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency – PGL – and further steps leading to a final leniency agreement / decision)?]</b></p>	<p>See 6/A and 6/C above.</p>
<p><b>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</b></p>	<p>See 6/A and 6/C above.</p>
<p><b>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</b></p>	<p>See 6/A and 6/C above.</p>
<p><b>M. Does your legislation have a marker system? If yes, please describe it.</b></p>	<p>No.</p>

<b>N. Does the system provide for any extra credit<sup>5</sup> for disclosing additional violations? [e.g. a hardcore cartel in another market]</b>	No.
<b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b>	See 6/A and 6/C above.
<b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b>	No.
<b>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</b>	Ms. Deevi Asbaum tel + 372 6803 955 fax + 372 6803 943 deevi.asbaum@konkurentsiamet.ee
<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>	No.
<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>6</sup>

<b>A. Briefly describe the investigative measures available to the enforcing agency such as requests</b>	In the administrative proceedings under the Competition Act Competition Board is entitled to:  1) request information from all natural and legal persons and
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<sup>5</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.

<sup>6</sup> "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

**for information,<sup>7</sup> searches/raids<sup>7</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.**

the representatives thereof and all state agencies and local governments and the officials thereof to be submitted. Competition Board must provide a written request, which must set out the purpose of and the legal grounds for the request of information.

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 Board or on the site. If individuals are asked to provide explanations at Competition Board, they are summoned to the Competition Board by written summons.

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 Board has the right to request submission of the original document to verify the authenticity of the copy.

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 Board must be authorised by a directive of the director-general of the Competition Board. 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 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;

- \* 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;

- \* request the undertaking or a representative or employee thereof to submit explanations.

Acting as an investigative body in the criminal proceedings pursuant to Code of Criminal Procedure, Competition Board has the rights during the pre-trial phase of the procedure under usual criminal procedure rules.

Competition Board has a right to:

- 1) demand the submission of a document necessary for the adjudication of a criminal matter;
- 2) perform hearing of witnesses;

<sup>7</sup> "Searches/raids" means all types of search, raid or inspection measures.

	<p>3) perform the interrogation of suspect;</p> <p>4) perform confrontation, comparison of statements to circumstances, and presentation for identification;</p> <p>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);</p> <p>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;</p> <p>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);</p> <p>8) make arrangement of conduct of expert assessment.</p>
<p><b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</b></p>	<p>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 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>

## 8. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases: [e. g.: right of access to documents in the possession of the enforcing authority, right to a written statement of</b></p>	<p>In administrative procedure the person has following rights:</p> <p>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);</p>
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<p><b>the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc. Please indicate the relevant legal provisions.]</b></p>	<p>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);</p> <p>3) to provide his or her opinion and objections in a written, oral or any other suitable form (Administrative Procedure Act art 20).</p> <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 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? [Please indicate the relevant legal provisions.]</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 Board or his or her deputy and documents prepared by the Director General of the Competition Board or his or her deputy or any other official of the Competition Board 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 Board does not have the right to disclose the business secrets, including information subject to banking secrecy, of an</p>

	<p>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 Board 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 81 or Article 82 of the EC Treaty. Officials of the Competition Board 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>
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## 9. Limitation periods and deadlines

<p><b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</b></p>	<p>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>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> <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 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><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 the administrative or 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</p>

	<p>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 Public Prosecutor'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 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>
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## 10. Types of decisions

<p><b>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</b></p>	<p>See 4/A above.</p>
<p><b>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</b></p>	<p>See 4/A above.</p>
<p><b>C. Can interim measures<sup>8</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>9</sup>.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking</b></p>	<p>No.</p>

<sup>8</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>9</sup> Only for agencies which answered "yes" to question 2.C. above

such a decision?

## 11. Sanctions for procedural breaches (non-compliance with procedural obligations)<sup>10</sup>

### A. Grounds for the imposition of procedural sanctions / fines:

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 Board 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 50 000 kroons, i.e approx 3196 euros).

In criminal procedure the procedural sanctions can be imposed in following cases:

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 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;

2) In the event of 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;

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.

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

<sup>10</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.

	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.
<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 fifty kroons ( approx. 3,2 euros).

## 12. Sanctions on the merits of the case

<b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b>  <b>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?]</b>	<p>Criminal sanctions shall be imposed on legal persons and natural persons (a member of the management board, of a body substituting for the management board or of the supervisory board of a legal person).</p> <p>A member of the management board, of a body substituting for the management board or of the supervisory board of a legal person, who violates a prohibition against agreements, decisions or concerted practices prejudicing free competition be punished by a pecuniary punishment or up to 3 years' imprisonment.</p> <p>A legal person shall be punished by a pecuniary punishment for the committing of the same offence.</p>
<b>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</b>	<p>For the 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>In case of a legal person, the court may impose a pecuniary punishment of fifty thousand to two hundred and fifty million</p>

	kroons ( 3196 to 15977912 euros) on the legal person.
<b>C. Are there maximum and / or minimum sanctions / fines?</b>	See 12/B above.
<b>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b>	The principal punishments imposed for criminal offences is provided in the Penal Code.
<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>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 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 enters into force as of the date they are made.</p>

### 13. Possibilities of appeal

<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>A mandatory precept or decision of the Director General of Competition Board can be challenged in 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 legitimate interest in the matter. There is no provisions in the Code of Administrative Court Procedure indicating specific grounds of appeal.</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 court of appeal). The appeal can be made on the question of application of law as well as fact or breaches of pocedural requirements.</p>
<b>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</b>	See 13/A above.

