



International  
Competition  
Network

# **ANTI-CARTEL ENFORCEMENT TEMPLATE**

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

**COSTA RICA**

**date of update: April, 2009**

# 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

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| <b>A. Law(s) covering cartels:</b> | <ul style="list-style-type: none"><li>• National Constitution. Article 46</li><li>• Act N° 7472. December 20th, 1994<br/>“Law of Promotion of Competition and Effective Defense of Consumers”</li><li>• Implementing Regulation of the Act 7472</li><li>• Act N° 6227. May 2nd, 1978<br/>“General Law of the Public Administration”<br/>(Rules as a supplementary act in any matters not foreseen in the Act 7472)</li><li>• Act No. 7983. February 11th, 2000<br/>“Social Protection of the Workers”<br/>(Mergers between old age pensions operators)</li><li>• Act No. 7979. January 6th 2000<br/>“Amendment of the Author Rights Act and Patents, Industrial Patterns and Designs Act”<br/>(Articles 2 and 19, which forbid discriminatory price practices and limits the productive and trade activities)</li><li>• Act N° 8508. April 28th, 2006.<br/>“Administrative Litigation Code”</li></ul> |
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|   | <ul style="list-style-type: none"> <li>Act N°8642. June 4<sup>th</sup> 2008</li> </ul> " General Law of Telecommunications"<br>www.coprocom.go.cr |
| <b>B. Implementing regulation(s) (if any):</b>  | 25234-MEIC from May 1998<br>www.coprocom.go.cr  |
| <b>C. Interpretative guideline(s) (if any):</b> | None  |
| <b>D. Other relevant materials (if any):</b>    | - Competition Policy guideline<br>- Competition Informative Guide;<br>- Glossary of competition terms<br>www.coprocom.go.cr                       |

## 2. Scope and nature of prohibition on cartels

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| <b>A. Does your law or case law define the term “cartel”?</b><br><br>If not, please indicate the term you use instead.   | No, Costa Rican law only refers to cartels as actions, contracts, agreements, arrangements or combinations thereof between or among competitor economic agents.   |
| <b>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas<sup>1</sup>) and other types of “cartels”?</b> |   |
| <b>C. Scope of the prohibition of hardcore cartels:</b>  | Our act has some exceptions and reserves for the application to some economic agents.<br>Those exceptions established in the article 9 consist in:<br>- The agents that render public services under concession in the terms provided by laws and the concession.<br>- State monopolies created by Law.<br>- Municipal governments. |
| <b>D. Is participation in a</b>  | Yes, according to section 11, the participation in cartels are  |

<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.

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| <b>hardcore cartel illegal per se?</b>  | void and null by law (per se rule).  |
| <b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b> | Our Law considers the participation in a hardcore cartel as an administrative offence, but the victim, - once the procedure has ended in the administrative jurisdiction - has the right to file a civil lawsuit in order to compensate financially the damage produced by the cartel members. |

### 3. Investigating institution(s)

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| <b>A. Name of the agency, which investigates cartels:</b> | <p>COMMISSION FOR THE PROMOTION OF COMPETITION (COMISIÓN PARA LA PROMOCIÓN DE LA COMPETENCIA COPROCOM)</p> <p>SUPERINTENDENCE OF TELECOMUNICATIONS (SUTEL) in Telecommunication matters.</p>  |
| <b>B. Contact details of the agency:</b>                  | <p><b>COPROCOM</b><br/> Address: Del Colegio Lincoln 100 oeste, 100 sur y 200 oeste. Edificio IFAM. Urbanización Los Colegios. Second floor.<br/> Telephone: (506) 2235-82-22<br/> Fax: (506) 2236-75-24<br/> E-mail: coprocom@meic.go.cr<br/> Homepage address:<br/> <a href="http://www.coprocom.go.cr">http://www.coprocom.go.cr</a><br/> This material is available only in Spanish, but there are a few papers in english.</p> <p><b>SUTEL</b><br/> Address: San José, La Sabana, Edificio ARESEP.<br/> Telephone: (506) 2220-0102<br/> Fax: (506) 2296-6420</p> |
| <b>C. Information point for potential complainants:</b>   | <p>Technical Support Unit<br/> Address: Del Colegio Lincoln 100 oeste, 100 sur y 200 oeste. Edificio IFAM . Urbanización Los Colegios.<br/> Phone: (506)235-82-22<br/> Fax: (506)236-75-24<br/> E-mail: coprocom@meic.go.cr</p> <p><b>SUTEL</b><br/> Address: San José, La Sabana, Edificio ARESEP.<br/> Telephone: (506) 2220-0102<br/> Fax: (506) 2296-6420</p>   |

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| <b>D. Contact point where complaints can be lodged:</b>   |  |
| <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> |  |

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

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| <b>A. Name of the agency making decisions in cartel cases:</b>   |   |
| <b>B. Contact details of the agency:</b>   |   |
| <b>C. Contact point for questions and consultations:</b>   |   |
| <b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b> | The Technical Support Unit, within the COPROCOM, is in charge of the investigation and it is under the supervision of the Commission for Promotion of Competition (COPROCOM). |
| <b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>                | Not applicable.   |

#### 5. Handling complaints and initiation of proceedings

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| <b>A. Basis for initiating investigations in cartel cases:</b> | COPROCOM has the authority to initiate a procedure whether ex officio or based on a complaint, and has 3 possibilities: Filing a procedure, shelving the case, begin a preliminary |
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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.)

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|   | investigation in order to achieve more evidence.   |
| <b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b>   | <p>The complaint shall be submitted in a written form. It must be signed for the complainants as a required. For the investigation is very important that the complaint contain all the details about the injurious activity.</p> <p>But if the complaint is made in other ways, COPROCOM can also star an investigation ex officio.</p>   |
| <b>C. Legal requirements for lodging a complaint against a cartel:</b>  | <p>The legal requirements for lodging a complaint against any competition restraint are regulated in the General Law of the Public Administration, section 285. The complaint must include: the pretension indicating the damages, its economic estimation, origin and nature; the legal fundamentals, date and signature.</p> <p>According with section 275, any individual could present a complaint, but it has to demonstrate legitimate interest which is the existence of a subjective right that might be affected or injured due to the possible cartel actions.</p> <p>The Technical Support Unit is in charge to analyze every complaint, verify the formalities and make a recommendation to COPROCOM.</p> <p>This advice usually is:</p> <ol style="list-style-type: none"> <li>1. To archive the complaint in case the pretension is not related to COPROCOM's jurisdiction or the individual or economic agent doesn't have legitimating interest.</li> <li>2. To initiate a preliminary investigation on the targeted market, or</li> <li>3. If the evidence is enough, COPROCOM can start the administrative procedure.</li> </ol> |
| <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>                               | No, the Commision is not obliged to take action on each complaint that it receives, because the Commission has to qualify the complaint when it is received.   |
| <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>                        | Yes, it is required to adopt a formal reasoned decision about the rejection of the complaint.  |
| <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> | All the procedure must be concluded in 2 months counted from the start, but according the Administrative Act the final desition taken out of that limit is valid, but disciplinary measures can be taken against the server in charge of the file.   |

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

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| <b>A. What is the official name of your leniency policy (if any)?</b>   | Our jurisdiction doesn't offer any kind of leniency program yet. |
| <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>  |  |
| <b>C. Who is eligible for full leniency?</b>  | Not apply.   |
| <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><br><br><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> | Not apply.   |
| <b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b>   | Not apply.   |
| <b>F. What are the conditions of availability of full leniency:</b>   | Not apply.   |
| <b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b>  | Not apply.   |
| <b>H. Obligations for the</b>   | No apply.  |

<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.

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| <b>beneficiary after the leniency application has been accepted:</b>   |            |
| <b>I. Are there formal requirements to make a leniency application?</b>  | Not apply. |
| <b>J. Are there distinct procedural steps within the leniency program?</b>   | Not apply. |
| <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>  | Not apply. |
| <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> | Not apply. |
| <b>M. Does your legislation have a marker system? If yes, please describe it.</b>  | Not apply. |
| <b>N. Does the system provide for any extra credit<sup>4</sup> for disclosing additional violations?</b>   | Not apply. |
| <b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b>   | Not apply. |
| <b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b>   | Not apply. |
| <b>Q. Contact point where a leniency application can be lodged:</b>  | Not apply. |
| <b>R. Does the policy address the possibility of</b>   | Not apply. |

<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.

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| <p>leniency being revoked?<br/>If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p> |                   |
| <p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>                    | <p>Not apply.</p> |

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

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| <p>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.</p> | <p>The Comission for the Promotion of Competition request information and documents relating to the agents of the market under investigation, including confidential and public information, experts opinion etc.</p> |
| <p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>   | <p>COPROCOM doesn't have the authority to breaking and entering, so, it's not possible to carry out the investigative measures mentioned in the question.</p>   |
| <p>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>  | <p>No apply</p>   |
| <p>D. Have there been</p>  | <p>Not apply.</p>   |

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

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

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| <p><b>significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p> |  |
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## 8. Procedural rights of businesses / individuals

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| <p><b>A. Key rights of defence in cartel cases:</b></p>   | <p>We have to classify our files in confidential and public documents which means that the targeted party does not have access to the confidential documents.</p> <p>The party shall be notified of a suspected violation of the law number 7472, and they can examine the facts with enough time to make a statement of its position concerning them.</p> <p>The party has the right to legal representation.</p> <p>The party and other persons participating in the proceedings may request limitation of access to the documents or to the making of copies or to the taking of notes from the investigation files.</p> <p>Also, there is a hearing where the parties express their defense arguments.</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 if the information is provided under a compulsory legal order or provided under informal co-operation, although, sensitive information has to be kept confidential.</p>  |

## 9. Limitation periods and deadlines

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| <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>According to the article 30 of the Law number 7472, any proceeding must be started in 6 months.</p> |
| <p><b>B. What is the deadline,</b></p>   | <p>We have only 2 months to conclude a case, but it can be</p>   |

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| <p><b>statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</b></p>   | <p>extended for two more months.</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 time to initiate the procedure to prosecute transgressions lapses in six months, counted from the time the injured party (or the agency) learned about the fault. However, in case of continuous facts, this period shall be counted from the occurrence of the last fact.</p> |

## 10. Types of decisions

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| <p><b>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</b></p>  | <p>1. The imposition of fines,<br/>2. The order to bring the infringement to an end.</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>None</p>  |
| <p><b>C. Can interim measures<sup>7</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>8</sup>.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</b></p> | <p>Yes, COPROCOM is legitimate to order interim measures.</p>                            |

<sup>7</sup> In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

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

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

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| <b>A. Grounds for the imposition of procedural sanctions / fines:</b>                  | <ul style="list-style-type: none"> <li>• The party provide late provisions of request information.</li> <li>• The Criminal Code penalises perjury made in administrative procedures. Disobedience of the resolutions or orders of Commission constitute a crime as foreseen in Article 305 of the Criminal Code from 15 days up to 1 year.</li> </ul>   |
| <b>B. Type and nature of the sanction (civil, administrative, criminal, combined):</b> | Administrative, and criminal if the agent disobeys the order again.   |
| <b>C. On whom can procedural sanctions be imposed?</b>                                 | The sanctions can be imposed either the parties who are related with the process or the ones COPROCOM has requiered information.  |
| <b>D. Criteria for determining the sanction / fine:</b>                                | See above 11/A.   |
| <b>E. Are there maximum and / or minimum sanctions / fines?</b>                        | <p>Payment of a fine, up to sixty-five times the amount of the lowest minimum monthly wage, for false statemets or for having furnished false information to the Commission for the Promotion of Competition.</p> <p>Payment of a fine, up to fifty times the amount of the lowest minimum monthly wage, for delaying the delivery of the information requested by the Commission for the Promotion of Competition.</p> |

## 12. Sanctions on the merits of the case

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| <b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b><br><br><b>On whom can sanctions be imposed?</b> | Our process only has administrative santions.               |
| <b>B. Criteria for determining</b>  | The Commission for Promotion of Competition shall take into |

<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.

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| <b>the sanction / fine:</b>   | <p>account the following assessment criteria when imposing the fines:</p> <ul style="list-style-type: none"> <li>-The seriousness of the transgression</li> <li>-The threat or damage caused.</li> <li>-Evidences of intention</li> <li>-Market participation of transgressor</li> <li>-Size of affected market</li> <li>-Period of time of the practice or concentration</li> <li>-Recurrence of infringement</li> <li>-Payment capacity.</li> </ul> |
| <b>C. Are there maximum and / or minimum sanctions / fines?</b>   | In the case of transgressions considered particularly serious, COPROCOM can impose as penalty a fine equal to the highest of ten per cent (10%) of the annual sales of the transgressor during the previous fiscal year or ten per cent (10%) of the value of the assets of the transgressor.   |
| <b>D. Guideline(s) on calculation of fines:</b>   | We don't have guideline for calculation of fines.   |
| <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> | The resolutions shall be executed once they are served, except when a suspension of the effects proceeds in the terms and conditions set forth in Article 148 of the General Law of Public Administration.  |

### 13. Possibilities of appeal

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| <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> | An appeal for reversal can be filed against these decision, in accordance with 64 of the Act number 7472.   |
| <b>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</b>   | Once administrative proceedings have been exhausted, the final resolutions can be, directly appeal for illegality before the Administrative Litigation jurisdiction, following the procedure detailed in Article 64 of the Law. |