



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

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

FINLAND

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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

1. Information on the law relating to cartels

A. Law(s) covering cartels:	<p>Act on Competition Restrictions (480/1992), including amendment (318/2004)</p> <p>http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=legislation&sivu=act-on-competition-restrictions-amended</p> <p>(in Finnish, Swedish, English)</p>
B. Implementing regulation(s) (if any):	<p>Act on the Finnish Competition Authority (711/1988)</p> <p>http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=legislation&sivu=act-on-the-fca</p> <p>(in Finnish, Swedish, English)</p>
C. Interpretative guideline(s) (if any):	<p>FCA's Guidelines on the Application of Articles 8 and 9 of the Act on Competition Restrictions (reduction and non-imposition of competition infringement fine)</p> <p>http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=legislation&sivu=guidelines-leniency</p> <p>(in Finnish, Swedish, English)</p>

	<p>FCA's Guidelines on the Application of Article 5 to Horizontal Restraints</p> <p>http://www.kilpailuvirasto.fi/cgi-bin/suomi.cgi?luku=horka-suuntaviivat&sivu=suuntaviivat-horka</p> <p>(in Finnish, Swedish)</p> <p>FCA's Guidelines on the Interpretation of the Criterion of Significance of Article 4 and the Interpretation of Article 12</p> <p>http://www.kilpailuvirasto.fi/cgi-bin/suomi.cgi?luku=suuntaviivat-de-minimis&sivu=suuntaviivat-de-minimis</p> <p>(in Finnish, Swedish)</p>
<p>D. Other relevant materials (if any):</p>	<p>Not applicable.</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>Agreements between business undertakings, decisions by associations of business undertakings and concerted practices by business undertakings which have as their object the significant prevention, restriction or distortion of competition or which result in the prevention, restriction or distortion of competition (Article 4 of the Act on Competition Restrictions).</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>The Act on Competition Restrictions includes no express distinction, but contains a list of agreements, decisions or practices which are, in particular, prohibited. These are agreements, decisions or practices which</p> <ol style="list-style-type: none"> 1. directly or indirectly fix purchase or selling prices or any other trading conditions; 2. limit or control production, markets, technical development, or investment; 3. share markets or sources of supply; 4. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or 5. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connections with the subject of such contracts. Similarly, the FCA's Guidelines on the Application of Article 5 of the Act on

¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

	Competition Restrictions on horizontal competition restraints classify cooperation agreements whose objective is to e.g. fix prices, limit production or sale or share markets or clients as the most serious competition restrictions.
C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]	<p>No specific exceptions exist. However, Article 5 of the Act on Competition Restrictions provides for a general exception to the prohibition of horizontal agreements, if the efficiencies of the agreements outweigh their negative effects. In practice, the exception will not be applicable to hardcore cartels.</p> <p>According to Article 12 of the Act on Competition Restrictions the Finnish Competition Authority ("FCA") may decide not to take action if, regardless of the competition restriction, competition in the said market can be deemed to be effective as a whole. The FCA will thus allocate its resources towards the most harmful competition restraints. In general, hardcore cartels will fall within the category of harmful competition restraints and are thus, in principle, always prohibited and taken action upon.</p>
D. Is participation in a hardcore cartel illegal <i>per se</i>?	Yes.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	It is an administrative offence.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	The Finnish Competition Authority ("FCA")
B. Contact details of the agency:	<p>The Finnish Competition Authority Pitkäsillanranta 3 A, PO Box 332 FIN-00531 Helsinki Tel. +358-9-73141 Fax +358-9-7314 3328 http://www.kilpailuvirasto.fi (in Finnish, Swedish and English) e-mail: Kirjaamo@Kilpailuvirasto.fi</p>
C. Information point for potential complainants:	<p>Ms. Kirsi Leivo Director, Industries 1 Tel. + 358 9 7314 3351 e-mail: Kirsi.Leivo@kilpailuvirasto.fi</p>

D. Contact point where complaints can be lodged:	Complaints can be lodged by hand, by mail or by e-mail. For contact information, cf. point 3 B above.
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	Yes. The State Provincial Offices may assist the FCA e.g. in investigating competition restrictions and conducting inspections.

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

A. Name of the agency making decisions in cartel cases:	<p>The Finnish Competition Authority</p> <ul style="list-style-type: none"> - orders of termination of competition infringement ("cease-and-desist orders") - obligations to deliver on non-discriminatory terms - interlocutory injunctions - decisions not to take action ("non action decisions") - decisions on immunity from competition infringement fine - decisions accepting commitments <p>The Market Court</p> <ul style="list-style-type: none"> - imposition of competition infringement fine - decisions on reduction of competition infringement fine
B. Contact details of the agency:	<p>The FCA, cf. point 3 B above</p> <p>The Market Court Erottajankatu 1-3 PO BOX 118, FIN-00131 Helsinki tel. +358-10- 364 3300 fax +358-10- 364 3314 e-mail: markkinaoikeus@om.fi http://www.oikeus.fi/markkinaoikeus/15578.htm (in Finnish, Swedish, English)</p>
C. Contact point for questions and consultations:	Cf. point 3 B above.
D. Describe the role of the investigating agency in the process leading to	The FCA investigates the cartel case and conducts, if necessary, an inspection in the business premises of the cartel members. If the cartel conduct has not been terminated, the

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

the sanctioning of the cartel conduct.	FCA issues a decision ordering the cartel members to terminate their illegal conduct. Moreover, the FCA makes a proposal to the Market Court on the imposition of a competition infringement fine for the cartel conduct.
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	Not applicable.

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	In general, investigations are initiated on the basis of a complaint, a leniency application or ex officio.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	<p>No formal criteria are required for lodging a complaint but the complaint should ideally contain at least the following facts:</p> <ul style="list-style-type: none"> • contact information of the complainant • information about the market that the alleged competition restriction concerns (what is the product or service at issue and how could the relevant product and geographical markets be defined) • information about how competition is restricted and who is responsible for the restriction (parties to the restriction) • information or assessment of who will suffer as a result of the competition restriction and what is the harm caused by the restriction • information about the market position of the parties to the competition restriction and the ones suffering from the restriction as well as their the significance in the market (e.g. their market shares) • copies of documents or other material, which in the opinion of the complainant serves as proof of the existence of the restriction, its harmfulness etc.
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?]	There are no specific legal requirements for lodging a complaint, i.e. anyone who has information about an alleged cartel may lodge a complaint. Nevertheless, only a person whose rights, interests or obligations are affected by the conduct which might violate the Act on Competition Restrictions will be considered as a complainant.
D. Is the investigating agency obliged to take action on each complaint	Article 12 of the Act on Competition Restrictions confers the FCA the right to allocate its resources in a way it sees appropriate e.g. to investigate the most harmful competition

<p>that it receives or does it have discretion in this respect?</p>	<p>restrictions. In principle, the FCA shall initiate the necessary proceedings to eliminate the competition restriction or its harmful effects if the competition restriction restrains competition in a manner referred to in Article 4 or 6 of the Act on Competition Restrictions or Article 81 or 82 of the EC Treaty. However, the FCA may decide not to take action if, regardless of the competition restriction, competition in the said market can be deemed to be effective as a whole. Consequently, the FCA has a certain discretionary power as to which competition restrictions to investigate and is not obliged to take action on each complaint that it receives.</p>
<p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p>	<p>The FCA is only required to adopt a decision addressed to the complainant, if the competition restriction may affect the complainant's rights, interests or obligations. Nonetheless, the FCA always informs all persons who have lodged a complaint at the FCA about the fact that the complaint does not give cause to further actions on the side of the FCA.</p>
<p>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?</p>	<p>There is no specific time limit for taking the decision on whether to investigate or reject the complaint. However, the FCA is bound by the rules governing good administration which include the duty to swift and appropriate action.</p>

6. Leniency policy³

<p>A. What is the official name of your leniency policy (if any)?</p>	<p>FCA's Guidelines on the Application of Articles 8 and 9 of the Act on Competition Restrictions (reduction and non-imposition of competition infringement fine) The guidelines are available at http://www.kilpailuvirasto.fi/cgi-bin/english.cgi?luku=legislation&sivu=guidelines-leniency</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>The Finnish jurisdiction provides full leniency (immunity) as well as partial leniency (reduction of fines).</p>
<p>C. Who is eligible for full leniency?</p>	<p>Only one undertaking can, in principle, obtain immunity for the same infringement. Thus the FCA will grant full leniency only to the first undertaking that satisfies the conditions in Article 9(1) of the Act on Competition Restrictions for obtaining leniency. But the Market Court is not restricted from deciding to reduce the</p>

³ For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

	fine for other applicants even by 100%.
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>The FCA will grant full leniency to an undertaking which</p> <ul style="list-style-type: none"> • provides the Competition Authority with information of a competition restriction which allows the Authority to intervene with the restriction, • provides the above mentioned information before the Authority has obtained the information from elsewhere, • the undertaking delivers all information and documents in its position, • cooperates fully with the authority • has ended or immediately ends involvement in the restriction (cartel) after handing in information. <p>A condition for obtaining immunity is that the FCA has no prior evidence of the cartel that allows it to intervene with the restriction. The fact that the FCA has already started an investigation would imply that it has already some kind of evidence of the infringement and leniency would no longer be available. Nonetheless, should this evidence not be sufficient to conduct an inspection, a business undertaking could still apply for immunity while providing information that would allow the FCA to conduct an inspection.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	Business undertakings.
<p>F. What are the conditions of availability of full leniency:</p>	<p>In order to qualify for full leniency, the business undertaking must</p> <ul style="list-style-type: none"> • provide the Competition Authority with information of a competition restriction which allows the Authority to intervene with the restriction, • provide the above mentioned information before the Authority has obtained the information from elsewhere, • deliver all information and documents in its position, • cooperate fully with the authority • have ended or must immediately end involvement in the restriction (cartel) after handing in information.
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>The Market Court may reduce the competition infringement fine imposed on a business undertaking or an association of business undertakings or may not impose any fine if the business undertaking or an association of business undertakings has considerably assisted the FCA in the investigation of a competition restriction.</p> <p>The reduction or non-imposition of fines may become relevant both when a business undertaking contacts the FCA on its own initiative and reveals it has committed a forbidden infringement, and when the FCA has already commenced investigations in a competition restriction case. The competition infringement fine may be reduced or not be imposed at all under Article 8 in cases where a business undertaking supplies information of its own activities, and in cases where a business undertaking only supplies information of the involvement of other business undertakings in a competition restriction.</p>

	<p>To benefit from a reduction of the competition infringement fine, a business undertaking shall actively participate in the investigation of the competition restriction and, on its own initiative, supply the FCA with information which the FCA does not have in its possession or which the FCA may be at a disadvantage to obtain.</p> <p>Mere passive response to the FCA's questions does not qualify as considerable assistance as regards the investigation of a competition restriction.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>A business undertaking shall cooperate with the FCA during the whole investigation of the competition restriction. The cooperation shall take place on a continuous basis and expeditiously. During the investigation, a business undertaking shall supply the FCA with all the evidence of the suspected infringement obtained or available to them. The representatives of the business undertaking shall be at the FCA's disposal and answer swiftly any requests which may assist in the investigation of the competition restraint. The business undertaking cannot be deemed to have fulfilled its cooperation obligation if a large number of its employees or the key employees as regards the competition restraint do not cooperate with the FCA. However, the lack of cooperation of a single employee does not necessarily result in a business undertaking not obtaining immunity.</p> <p>A business undertaking shall not, by its own actions, complicate the investigation of the restraint. The business undertaking shall e.g. avoid revealing to other cartel members that it has applied for immunity from fines. A business undertaking is encouraged to contact the FCA if it discovers that the other cartel members have obtained information of its leniency application before the FCA has had a chance to intervene with the restraint.</p>
<p>I. Are there formal requirements to make a leniency application?</p>	<p>A leniency application may be given orally as well as in writing. The undertaking may also hand in a corporate statement (written or oral).</p> <p>It is also possible to submit a hypothetical application. The application made anonymously by a lawyer must include the industry involved and the type of competition restraint. Furthermore, the anonymous information shall be so precise that it may be verified that the competition restraint involves an alleged cartel of which the FCA possesses none of the information referred to in Article 9(1) of the Act on Competition Restrictions (cf. point 6 F above).</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>If the FCA has had no prior evidence of the existence of the alleged cartel and the information supplied is comprehensive and precise enough, the FCA shall inform the business undertaking in writing that the undertaking has met the conditions set out in Article 9(1)(1) and (2). This can be considered a PGL. At the end of the investigation, the FCA shall issue a separate decision on whether the business undertaking fulfils all the abovementioned conditions (cf. point 6 F above).</p> <p>If the leniency application has been made anonymously by a lawyer and the FCA has not previously been in possession of sufficient evidence on which to intervene with a competition</p>

	<p>restraint, the FCA shall inform the agent of the anonymous business undertaking that immunity from fines under Article 9 is possible. In order to obtain immunity, the business undertaking shall provide the information under 9(1)(1) and declare its identity and its involvement in the cartel no later than a date fixed with the FCA. As the anonymous provision of information is only intended for detecting whether another cartel member has already exposed the cartel, the final supply of information and revealing of identity shall usually take place soon after the anonymous provision of information.</p>
<p>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?</p>	<p>After a business undertaking has contacted the FCA in order to obtain immunity under Article 9, the FCA shall first investigate whether the undertaking meets the conditions set out in Article 9(1) and (2). If the FCA has had no prior evidence of the existence of the alleged cartel and the information supplied is comprehensive and precise enough, the FCA shall inform the business undertaking in writing that the undertaking has met the conditions set out in Article 9(1) and (2). Cf. also point 6 J above.</p>
<p>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?</p>	<p>The FCA shall issue a separate decision on whether the business undertaking fulfils all the conditions for full leniency. This decision is not separately subject to appeal.</p> <p>Leniency applications are processed by the Cartels Unit, but the Director-General of the FCA makes the decision about granting leniency. Nonetheless, if the applicant fulfils the conditions for obtaining leniency, the Director-General has no discretionary power, but is obliged to grant leniency.</p>
<p>M. Does your legislation have a marker system? If yes, please describe it.</p>	<p>The moment when the information under Article 9(1) is provided is decisive for the forming of an order of priority between the business undertakings in a competitive situation.</p> <p>If the application is made anonymously, the anonymous provision of initial information establishes a priority for a business undertaking, provided that the undertaking supplied the information under Article 9(1) to the FCA no later than a date fixed with the FCA. The business undertaking is then deemed to have provided the information under Article 9(1) at a date when the anonymous provision of information through an agent took place. If the business undertaking does not supply the information or reveal its identity and involvement by the fixed date, the undertaking loses its priority granted on the basis of the anonymous provision of information.</p>
<p>N. Does the system provide for any extra credit⁴ for disclosing additional violations?</p>	<p>No.</p>

⁴ Also known as: “leniency plus”, “amnesty plus” or “immunity plus”. This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>According to Finnish legislation all documents written by public authorities or submitted to them are public unless there is a legitimate reason to classify the document confidential. However, the FCA can decline to reveal the name of the applicant as long as it might jeopardize the investigations. After conducting dawn raids it is likely that the name of the applicant will become public.</p>
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>The decision to reject a leniency application is not separately subject to appeal. It is unclear whether the "leniency question" can be appealed as part of the decision regarding the alleged infringement.</p>
<p>Q. Contact point where a leniency application can be lodged:</p>	<p>FCA, Industries 1, Pitkäsillanranta 3 A, 00530 Helsinki, Finland Director, Ms. Kirsi Leivo, Tel. + 358 9 7314 3351 Head of Research, Mr. Mika Hermas, Tel. + 358 9 7314 3344 Telefax number for leniency applications: + 358 9 7314 3400</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>There are no express provisions in the Act on Competition Restrictions empowering the FCA to revoke its decision to grant leniency.</p>
<p>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</p>	<p>No.</p>

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

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information,⁶ searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires</p>	<p>According to Article 10 of the Act on Competition Restrictions, a business undertaking or association of business undertakings shall be obliged, at the request of the FCA, to provide the Authority with all the information and documents needed for the investigation of the content, purpose and impact of a competition restriction and for clarifying the competitive conditions. The corresponding information and documents shall also be provided to a State Provincial Office when it investigates competition restrictions or competitive conditions.</p>
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⁵ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

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

<p>a court warrant.</p>	<p>Article 20 of the Act on Competition Restrictions confers an authorised official of the FCA and a State Provincial Office the right to conduct an inspection in order to supervise compliance with the Act on Competition Restrictions and any subsequent rules issued under it. At the request of the Commission of the European Communities, the FCA is obliged to conduct an inspection as prescribed in the European Communities rules.</p> <p>The officials of the FCA are allowed to enter any business premises, storage areas, land and vehicles in their possession. Moreover, the officials have the power to examine the books, financial accounts, computer files and other documents of a business undertaking or an association of business undertakings which may be relevant for ensuring compliance with the Act on Competition Restrictions and with any subsequent rules issued under it, and to take copies of the documents under investigation.</p> <p>The officials also have the right to request oral explanations on the spot and to make a record of the replies obtained and have the power to seal business premises and books or records for the period and to the extent necessary for the inspection.</p> <p>A court warrant is not required for conducting an inspection in business premises of an undertaking, but a decision by the FCA is sufficient.</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>Private residences of CEOs and the like may only be searched while conducting an inspection at the request of the European Commission, if the latter has by decision ordered an inspection to be conducted in other than business premises. Such an inspection requires an authorisation granted by the Market Court.</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.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No.</p>

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<p>Article 12 of the Administrative Procedure Act (434/2003) provides the party the right to an attorney or counsel in an administrative matter and therefore also in a competition case.</p> <p>Before the matter is decided, a party shall according to Section 34 of the Administrative Procedure Act be reserved an opportunity to express an opinion on the matter and to submit an explanation on the demands and information which may have an effect on the authority's decision.</p> <p>Moreover, the FCA has on the request of a party an obligation to reserve a party the opportunity to submit his/her demands of information orally, if this is necessary for the investigation of the matter and a written procedure would cause unreasonable inconvenience to the party. The other parties shall be summoned to be present at the same time, if this is unavoidable in view of safeguarding the rights or interests of the parties. Similarly, the FCA may on the request of a party reserve an opportunity for the oral submission of information necessary for the investigation of the matter also in other situations (cf. Section 37 of the Administrative Procedure Act).</p> <p>When the FCA conducts an inspection, the party has the right to be present during the inspection and to express opinions and ask questions on points pertaining to the inspection. The party has a right to be informed, in so far as possible, of the purpose of the investigation, the procedure therein and the follow-up measures. The inspection shall be carried out without causing undue inconvenience to the object of the inspection or the person possessing it. Furthermore, the inspector shall without delay draw up a report of the inspection, indicating the progress of the inspection and the essential observations made by the inspector. The inspection report shall be served on parties entitled to be present during the inspection (cf. Section 39 of the Administrative Procedure Act).</p> <p>According to Section 11 of the Act on the Openness of Government Activities (621/1999), a party has the right of access also to the contents of a document which is not in the public domain, if they may influence or may have influenced the consideration of his/her case, unless there is a legitimate reason to deny access to the document in question.</p> <p>The party also has the right not to self-incriminate, as Finland has ratified the European Human Rights Convention.</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</p>	<p>Documents containing business secrets will according to Article 24(20) of the Act on the Openness of Government Activities in general remain secret.</p> <p>According to Finnish legislation all documents written by public authorities and documents submitted to them are public unless there is a legitimate reason to classify the document confidential. (Cf. The Act on the Openness of Government Activities, in particular Section 1 and Sections 22-24). Nevertheless, the information supplied by the applicant can also be kept confidential to the public and the parties as long</p>

	as the publication can jeopardize the investigation. (Cf. Section 24(6) of the Act on the Openness of Government Activities). Once the investigation has been concluded and the decision given, the information (apart from business secrets) is, in principle, public. This is applicable to all the information regardless of the manner in which it has been provided.
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9. Limitation periods and deadlines

A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?	<p>Fines may only be imposed for cartel conduct, if the issue has been referred to the Market Court within five years from the date of expiry of the competition restriction or from the date the FCA has been informed of a competition restriction. After the expiry of this date, it is thus no longer possible to impose fines for the competition restriction in question.</p> <p>Apart from that the FCA is bound by the rules governing good administration which include the duty to swift and appropriate action.</p>
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?	No statutory limits exist apart from the limitation period for the imposition of fines, but the FCA is bound by the rules governing good administration which include the duty to swift and appropriate action. Cf. point 9 A above.
C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?	<p>Cf. point 9 B above.</p> <p>The decision by the Market Court to impose a competition infringement fine may be appealed to the Supreme Administrative Court within 30 days of notice of the decision.</p>

10. Types of decisions

A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.	<p>The FCA may</p> <ul style="list-style-type: none"> - find an infringement of the Act on Competition Restrictions - order the termination of a competition infringement ("cease-and-desist order") - oblige a business undertaking to deliver on non-discriminatory terms - issue interlocutory injunctions - decide not to take action ("non action decisions") - decide on immunity from the competition infringement fine - make a proposal to the Market Court on the imposition of a
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	<p>competition infringement fine</p> <p>The Market Court</p> <ul style="list-style-type: none"> - may impose a competition infringement fine - decide on the reduction of the competition infringement fine
<p>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</p>	<p>Cf. point 10 A above.</p>
<p>C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>If the application or implementation of a competition restriction shall be prevented at once, the FCA may issue an interlocutory injunction to that effect. The FCA shall make a decision on the principal issue or a proposal on the imposition of a competition infringement fine to the Market Court within 60 days from issuing an interlocutory injunction. If the FCA fails to make a decision on the principal issue or fails to make a proposal by the time limit laid down, the injunction will lapse. Prior to issuing an interlocutory injunction, the FCA shall grant the business undertaking or the association of business undertakings an opportunity to be heard, unless the urgency of the matter or some other specific reason demands otherwise.</p>

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

<p>A. Grounds for the imposition of procedural sanctions / fines:</p>	<p>The FCA may impose a conditional fine to enforce the obligation to provide information or to produce documents referred to in Article 10 of the Act on Competition Restrictions and the obligations during an inspection (Article 20). The Market Court shall order a conditional fine to be paid.</p> <p>Under Chapter 16, Section 8, of the Penal Code a person who provides an authority with false documents shall be sentenced to a fine or to imprisonment for at most six months.</p> <p><u>A sentence for providing false documents to a public authority</u></p>
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⁷ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

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

⁹ In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

	shall be passed also on a person pursuing an activity under the specific supervision of an authority, the representative or employee of such a person, and an auditor of the corporation under supervision, who during a statutory inspection or when otherwise fulfilling a statutory reporting duty provides the supervising authority with legally relevant false oral information.
B. Type and nature of the sanction (civil, administrative, criminal, combined):	The conditional fine is an administrative sanction whereas the sentence for providing false documents to a public authority is a criminal sanction.
C. On whom can procedural sanctions be imposed?	The procedural sanctions can be imposed on the undertakings (parties) participating in the proceedings. Only natural persons can be sentenced for providing false documents to a public authority.
D. Criteria for determining the sanction / fine:	The nature and extent of the obligation, the party's capability to pay and other factors which affects the case are taken into consideration when the conditional fine is determined.
E. Are there maximum and / or minimum sanctions / fines?	For the conditional fine, cf. point 11 D above. The sentence for providing false documents to a public authority is a fine or imprisonment for at most six months.

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be imposed?	Administrative. Sanctions may be imposed on business undertakings and associations of business undertakings.
B. Criteria for determining the sanction / fine:	In fixing the amount of the fine, regard shall be had to the gravity, extent and duration of the competition restriction. Other factors that may be taken into account are the particular harmfulness of the competition restriction for the society and other business undertakings, the possible repetition of a prohibited practice and the size of the turnover of the offender. Moreover, the role as cartel leader is considered as an aggravating factor. In addition, the level of benefits accrued from the cartel to its members should also be considered in the assessment of the fine. The sanction should, in principle, exceed the potential benefit of the cartel.

C. Are there maximum and / or minimum sanctions / fines?	The amount of the competition infringement fine shall not exceed 10 per cent of the total turnover of the business undertaking or an association of business undertakings concerned in the preceding year.
D. Guideline(s) on calculation of fines:	No guidelines on calculation of fines have been issued.
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?	No. The Market Court's decision imposing a competition infringement fine shall be followed, notwithstanding an appeal, unless the Supreme Administrative Court rules otherwise.

13. Possibilities of appeal

A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	<p>An appeal may be lodged against a decision by the FCA finding a violation of a prohibition of cartels within 30 days of notice of that decision.</p> <p>Any person to whom a decision is addressed or whose right, obligation or interest is directly affected by a decision taken by the FCA may lodge an appeal against the decision.</p> <p>The decision may be appealed on questions of law or fact as well as on breaches of procedural requirements.</p>
B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]	<p>An appeal against a decision taken by the FCA shall be lodged before the Market Court, if the decision is appealed on questions of law or fact.</p> <p>If the decision is appealed on breaches of procedural requirements, the appeal shall be lodged before an administrative court.</p>