



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

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

BARBADOS

completion of the template:

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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:	Fair Competition Act. CAP. 326C http://www.ftc.gov.bb Language: English
B. Implementing regulation(s) (if any):	Fair Trading Commission Act. CAP. 326B http://www.ftc.gov.bb Language: English
C. Interpretative guideline(s) (if any):	Guide to Anti-competitive Conduct http://www.ftc.gov.bb/library/2003-10-07_guide_anti-competitive_conduct.pdf Language: English
D. Other relevant materials (if any):	Not Applicable

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>The FCA does not define the term "cartel".</p> <p>The term used is "anti-competitive agreements".</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 legislation does distinguish between very serious cartel behaviour ("hardcore cartels" e.g. price-fixing, market sharing, bid-rigging) and other types of "cartels".</p> <p>The FCA has specific provisions which address particular kinds of "anti-competitive agreements" in detail. e.g. section 33 deals with price-fixing; section 34 deals with action to restrain competition; and section 35 deals with bid-rigging.</p> <p>The FTC would as a matter of policy consider some types of anti-competitive behaviour to be more damaging than others.</p>
<p>C. Scope of the prohibition of hardcore cartels:</p>	<p>One exception is where the person or entity attempting to influence the conduct of another person or entity and the person or entity in respect of whom the attempt to influence is made are affiliated companies or as the case may be, principal and agent.</p> <p>Exceptions include a situation where the conduct could restrain competition but is shown to be necessary for the introduction or maintenance of product standards and competence for the protection of the public; standards of competence as it applies to a trade or profession or the collection and dissemination of information relating to the service.</p> <p>With respect to bid-rigging there is an exception with respect to affiliated companies who submit a joint bid.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>?</p>	<p>Participation in a hardcore cartel is not illegal <i>per se</i>.</p> <p>Liability is either civil or criminal</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>Participation in a hardcore cartel is a combination of civil and administrative offense.</p>

3. Investigating institution(s)

<p>A. Name of the agency,</p>	<p>Fair Trading Commission</p>
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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.

which investigates cartels:	
B. Contact details of the agency:	Fair Trading Commission "Manor Lodge" Lodge Hill St. Michael BB12002 Barbados Tel: (246) 424-0260 Fax:(246) 424-0300 http://www.ftc.gov.bb Language: English
C. Information point for potential complainants:	http://www.ftc.gov.bb info@ftc.gov.bb
D. Contact point where complaints can be lodged:	info@ftc.gov.bb Tel: (246) 421-2382 (421-2FTC)
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	No. The FTC solicits information from stakeholders as needed.

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:	Not Applicable
B. Contact details of the agency:	Not Applicable
C. Contact point for questions and consultations:	Not Applicable
D. Describe the role of the investigating agency in	Not Applicable

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

the process leading to the sanctioning of the cartel conduct.	
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	Not Applicable

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases:	Investigations in cartel cases can be initiated on the basis of: (a) own initiative of the FTC (b) complaint (verbal, written, e-mail) (c) direction of the Minister responsible for competition policy
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	There is no specific format by which complaints must be lodged.
C. Legal requirements for lodging a complaint against a cartel:	There are no specific legal requirements regarding who can lodge a cartel complaint with the FTC. The complainant may be a person, an undertaking or interested party.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	The FTC has discretion in the handling of a complaint. It is not obliged to take action on each complaint it receives. Upon receipt of a complaint a preliminary assessment of the merits of the complaint is conducted. On the basis of the findings of that assessment, the FTC may: (a) inform the complainant in writing of its intention to initiate an investigation into the complaint.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	If the FTC concludes in its preliminary assessment that the complaint does not warrant an investigation, the complainant is informed in writing of the reasons for not pursuing an investigation.
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	There is no limit from the date of the receipt of a complaint by the competition agency for taking a decision on whether to investigate or reject a complaint. The Commission within one (1) week of the receipt of the complaint acknowledges receipt of the complaint in writing.

6. Leniency policy³

<p>A. What is the official name of your leniency policy (if any)?</p>	<p>The Barbados FTC does not have a leniency policy.</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>Not Applicable</p>
<p>C. Who is eligible for full leniency?</p>	<p>No officially articulated policy at this time.</p>
<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>No officially articulated policy at this time.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>No officially articulated policy at this time.</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>No officially articulated policy at this time.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>No officially articulated policy at this time.</p>
<p>H. Obligations for the beneficiary after the leniency application has</p>	<p>No officially articulated policy at this time.</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.

been accepted:	
I. Are there formal requirements to make a leniency application?	No officially articulated policy at this time.
J. Are there distinct procedural steps within the leniency program?	No officially articulated policy at this time.
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?	No officially articulated policy at this time.
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?	No officially articulated policy at this time.
M. Does your legislation have a marker system? If yes, please describe it.	No officially articulated policy at this time.
N. Does the system provide for any extra credit⁴ for disclosing additional violations?	No officially articulated policy at this time.
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	No leniency policy
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	No officially articulated policy at this time.
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:	No officially articulated policy at this time.
R. Does the policy address	No officially articulated policy at this time.

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>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>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>No officially articulated policy at this time.</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 a court warrant.</p>	<p>The Commission has the following investigative measures as set out under section 7 of the Fair Competition Act:</p> <p>(1) The Commission for the purpose of ascertaining whether any person has engaged or is engaging in conduct constituting or likely to constitute a contravention of this Act, may:</p> <p>(a) enter or search premises</p> <p>(b) inspect and remove for the purpose of making copies, any documents or extracts there from the possession or under the control of any person;and</p> <p>(c) upon completing the search authorised by the warrant leaves a receipt listing documents or extracts there that are removed for the purpose of this section.</p> <p>(2) section 27 and 28 of the Fair Trading Commission Act apply with such modifications and adaptations as are necessary, to a search or seizure executed under this Act.</p> <p>Yes. Such measures do require a court warrant.</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>Yes.</p> <p>The Fair Competition Act under section 7 (3) states that:</p> <p>The occupier or person in charge of any premises entered pursuant to this section shall provide the authorised officer with all reasonable facilities and assistance for the effective exercise of his functions under this section.</p> <p>Yes. It requires authorization by a court.</p>
<p>C. May evidence not falling under the scope of the authorisation allowing</p>	<p>No.</p>

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>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>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> <p>There have been no significant legal challenges to the use of investigative measures authorized by the courts as the powers of search and seizure have not been utilized in the conduct of any investigation.</p> <p>As such no investigative measures that need to be authorised in the court have been challenged.</p>

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<p>The defendant does not have an automatic right of access to documents in the possession of the enforcing authority. The contents of documents submitted and identified as being confidential cannot be revealed to another party. The defendant has a right to a written statement of the case against him.</p> <p>The defendant has a right to have legal representation before the enforcing authorities and in the courts</p> <p>The defendant has a right of appeal to the findings or notice served on a business enterprise. The defendant can also respond orally or in writing to the notice or findings issued by the Commission.</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>Protection is granted to all documents marked as confidential or business secrets. This is done regardless of whether the information was provided under compulsory order or provided under informal co-operation.</p> <p>Section 48 (1) states:</p> <p>The Commission may prohibit the publication or communication of any information furnished or obtained, documents produced, obtained or tendered, or evidence given to the Commission in connection with the Commission's operations.</p>

9. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of</p>	<p>There is no limitation period by which the investigation/proceeding must begin or for a decision on the merits of a case to be made.</p>
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<p>the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</p>	
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>There is no statutory or other deadline for the completion of an investigation or to make a decision on the merits.</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</p>	<p>There is no statutory or other deadline to challenge the commencement or completion of an investigation.</p> <p>The defendant has the right within 15 days after receipt of a notice or finding from the Commission to appeal to a Judge in Chambers.</p>

10. Types of decisions

<p>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</p>	<p>The type of decisions that can be made include:</p> <p>(a) directive to immediately cease and desist the anti-competitive practice.</p> <p>(b) fines can be imposed if the anti-competitive practice continues before a court of law.</p>
<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>The types of decisions are the same under section 1 as at section 10(a)</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</p>	<p>The Court could issue a notice to cease the anti-competitive practice during the proceedings in cartel cases.</p> <p>The condition would be that the practice was causing particular harm to a third party.</p>

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

decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	
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11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

A. Grounds for the imposition of procedural sanctions / fines:	Section 39 of the Fair Competition Act states that: Subject to section 7(4) any person who, in any manner, impedes, prevents or obstructs any investigation or inquiry by the Commission under this Act or any authorised officer in the execution of his duties under the Act is guilty of an offence and is liable on summary conviction to a fine of \$40,000 or to imprisonment for a term of 6 months or to both.
B. Type and nature of the sanction (civil, administrative, criminal, combined):	Combined civil and criminal sanctions.
C. On whom can procedural sanctions be imposed?	Any person or entity who obstructs an inquiry or investigation; fails to supply requested documents or information; and or provides false and mis-leading information.
D. Criteria for determining the sanction / fine:	Proof or evidence confirming that a person or entity has breached any of the provisions of Part VIII of the Fair Competition Act.
E. Are there maximum and / or minimum sanctions / fines?	There are both maximum and minimum sanctions and fines that can be imposed under the Act.

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):	Combined civil and criminal. Sanctions can be imposed on representatives of businesses (e.g. businesses and individuals can be fined and individuals of companies can be imprisoned).
On whom can sanctions	

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.

be imposed?	
B. Criteria for determining the sanction / fine:	<p>The only criteria is that a person or entity had engaged in anti-competitive practices.</p> <p>Each type of offence has a related sanction. There is no criteria available for determining the duration or gravity of the offence.</p>
C. Are there maximum and / or minimum sanctions / fines?	Yes. There are maximum and minimum sanctions/fines.
D. Guideline(s) on calculation of fines:	<p>Under section 37 (2) the courts must consider the following in its determination of quantum of fines:</p> <p>(a) the nature and extent of the default;</p> <p>(b) the nature and extent of any loss suffered by any person as a result of the default;</p> <p>(c) the circumstances of the default; and</p> <p>(d) any previous determination against the person.</p> <p>Section 37 (3) also states that:</p> <p>The Court may, in addition to a penalty imposed under this section, order the payment of compensation to a person who has suffered loss as a result of any anti-competitive agreement or practice.</p>
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?	<p>A challenge to a decision imposing a sanction/fine does not have an automatic suspensory effect on that sanction/fine. But the following obtains.</p> <p>Under section 36 (2):</p> <p>The Judge in Chambers may</p> <p>(a) confirm, modify or reverse the Commission's findings or any part thereof; or</p> <p>(b) direct the Commission to reconsider; either generally or in respect of any specified matters, the whole or any specified part of the matter which the appeal relates.</p> <p>No specific criteria are set out to apply for a suspension.</p>

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	<p>Yes.</p> <p>There is a right of appeal to a decision that there has been a violation of a prohibition of cartels.</p> <p>The grounds of appeal could be questions of administrative law or fact; and breaches of procedural requirements.</p>
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requirements?	
B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]	It is made before the High Court