



International
Competition
Network

ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques

SLOVENIA

date of completion: 05.07.2013

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>1. Prevention of the Restriction of Competition Act (hereinafter: the CPA), available at: http://www.varstvo-konkurence.si/en/legislation_and_documents/ in Slovenian and in English but in English without all the latest amendments.</p> <p>2. Criminal Code, available at: http://zakonodaja.gov.si/rpsi/r00/predpis_ZAKO5050.html, only in Slovenian.</p> <p>3. Liability of Legal Persons for Criminal Offences Act, available at: http://zakonodaja.gov.si/rpsi/r09/predpis_ZAKO1259.html, only in Slovenian.</p>
B. Implementing regulation(s) (if any):	<p>Decree on the procedure for granting immunity from fines and reduction of fines in cartel cases (Official Gazette of the Republic of Slovenia, No. 112/09; hereinafter: the Leniency Decree), available at: http://www.varstvo-konkurence.si/en/legislation_and_documents/ in Slovenian and in English.</p>
C. Interpretative guideline(s) (if any):	<p>None.</p>
D. Other relevant materials (if any):	<p>Other relevant procedural or other law are as follows:</p> <p>1. General Administrative Procedure Act, available at: http://zakonodaja.gov.si/rpsi/r03/predpis_ZAKO1603.html, only in Slovenian.</p>

	<p>2. Administrative Dispute Act, available at: http://zakonodaja.gov.si/rpsi/r02/predpis_ZAKO4732.html, only in Slovenian.</p> <p>3. Civil Procedure Act, available at: http://zakonodaja.gov.si/rpsi/r02/predpis_ZAKO1212.html, only in Slovenian.</p> <p>4. Minor Offences Act, available at: http://zakonodaja.gov.si/rpsi/r07/predpis_ZAKO2537.html, only in Slovenian.</p> <p>5. Criminal Procedure Act, available at: http://zakonodaja.gov.si/rpsi/r02/predpis_ZAKO362.html, only in Slovenian.</p>
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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 CPA defines the term “cartel” in Art. 76 as agreements or concerted actions between two or more competitors whose purpose is to prevent, impede or distort competition in the Republic of Slovenia through actions which include particularly setting purchase or sale prices or other business conditions, limitation of production or sale, or division of the market.</p> <p>The CPA also addresses cartels in Art. 6 as prohibited restrictive agreements as follows:</p> <p>“Article 6 (Prohibition of restrictive agreements)</p> <p>(1) Agreements between undertakings, resolutions of business associations and concerted actions of undertakings whose object or effect is the prevention, restriction or distortion of competition in the Republic of Slovenia shall be prohibited and shall be null and void.</p> <p>(2) The prohibition shall apply in particular to agreements which:</p> <ul style="list-style-type: none"> - directly or indirectly fix purchase or selling prices, or other trading conditions; - limit or control production, markets, technical progress or investment; - apply dissimilar conditions to comparable transactions with other trading parties, thereby placing them at a competitive disadvantage; - 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 connection with the subject of their contracts; - share a market or source of supply. <p>(3) The first paragraph shall, however, be declared inapplicable if these agreements contribute to improving production or distribution of goods, or to promoting technical and economic progress, while allowing consumers a fair share of the resulting</p>
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	<p>benefit. These agreements, however, shall not:</p> <ul style="list-style-type: none"> - impose on the undertakings in question restrictions which are not indispensable to the attainment of these objectives; and - afford such undertakings the possibility of eliminating the competition in respect of a substantial part of the products or services which are the subject of the agreement. <p>(4) An undertaking invoking the preceding paragraph shall bear the burden of proving that the conditions listed in the preceding paragraph have been fulfilled."</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"?	As the most serious prohibitive agreements are considered price fixing, market sharing and limiting production. The CPA itself does not make any distinction, but in the case-law these kinds of agreements are considered almost always as having as their object a restriction of competition.
C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]	<p>The prohibition of cartels applies to all sectors of the economy. Available defences are the same as for other agreements that might be prohibited under Art. 6 of the CPA. If the conditions under Art. 6(3) are fulfilled, there is no infringement. The Art. 6(1) of the CPA shall, however, be declared inapplicable if these agreements contribute to improving production or distribution of goods, or to promoting technical and economic progress, while allowing consumers a fair share of the resulting benefit. These agreements, however, shall not:</p> <ul style="list-style-type: none"> - impose on the undertakings in question restrictions which are not indispensable to the attainment of these objectives; and - afford such undertakings the possibility of eliminating the competition in respect of a substantial part of the products or services which are the subject of the agreement.
D. Is participation in a hardcore cartel illegal per se?	Yes.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	The participation in a cartel is a combination of administrative offence, misdemeanour and criminal offence.

3. Investigating institution(s)

A. Name of the agency,	Slovenian Competition Protection Agency (hereinafter: the
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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:	Agency).
B. Contact details of the agency:	<p>Slovenian Competition Protection Agency Kotnikova 28 SI-1000 Ljubljana Slovenia</p> <p>T: +386 1 478 3597 F: +386 1 478 3608 E: gp.avk(at)gov.si W: http://www.varstvo-konkurence.si/en/, available in Slovenian and in English</p>
C. Information point for potential complainants:	<p>Slovenian Competition Protection Agency Kotnikova 28 SI-1000 Ljubljana Slovenia</p> <p>T: +386 1 478 3597 F: +386 1 478 3608 E: gp.avk(at)gov.si W: http://www.varstvo-konkurence.si/en/, available in Slovenian and in English</p>
D. Contact point where complaints can be lodged:	<p>Slovenian Competition Protection Agency Kotnikova 28 SI-1000 Ljubljana Slovenia</p>
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	In case of opposition, the Agency may ask for police assistance in the conduct of the investigation in the premises of the undertaking which is the subject of the investigation.

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:	In cartel cases which are conducted by the police and the Office of the State Prosecutor, the criminal courts make decisions on the merits.
B. Contact details of the agency:	n.a.
C. Contact point for questions and consultations:	n.a.
D. Describe the role of the investigating agency in	n.a.

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?	There are no special provisions on the role of the Agency if criminal proceedings are initiated against a cartel pursuant to the Criminal Code and the Criminal Procedure Act.

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	The Agency initiates procedure <i>ex officio</i> but the basis for the initiation of the procedure is information which the Agency gathers from complaints and leniency.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	No specific form is required but it should be in writing and signed.
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?]	No special legal requirements.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	The Agency initiates procedure <i>ex officio</i> when it learns of circumstances from which arises a probability that the provisions of Art. 6 of the CPA and/or Art. 101 of the TFEU have been violated.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	No, because the Agency initiates the procedure <i>ex officio</i> .
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?	No, because the Agency initiates the procedure <i>ex officio</i> .

6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	<p>The official name of leniency policy is »remission and reduction of fines« and it is defined in the Art. 76 of the CPA pursuant to the Decree on the procedure for granting immunity from fines and reduction of fines in cartel cases (Official Gazette of the Republic of Slovenia, No. 112/09; hereinafter: the Leniency Decree), available at: http://www.varstvo-konkurence.si/en/legislation_and_documents/ in Slovenian and in English.</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>The Slovene jurisdiction offers full and/or partial leniency pursuant to the CPA and only full leniency pursuant to the Criminal Code.</p>
C. Who is eligible for full leniency?	<p>In the Administrative procedure, the fine may be waived in case of agreements or concerted actions between two or more competitors whose purpose is to prevent, impede or distort competition in the Republic of Slovenia through actions which include particularly setting purchase or sale prices or other business, limitation of production or sale, or division of the market (hereinafter: cartel), if he fulfils all below listed conditions:</p> <ul style="list-style-type: none"> - the perpetrator entirely and completely discloses its involvement in alleged cartel; - the perpetrator is the first to provide evidence which the Agency deems sufficient to make it possible to initiate investigations into an alleged cartel or to determine a violation of Art. 6 of the CPA or Art. 101 of the TFEU in connection with the alleged cartel; - the perpetrator collaborates with the Agency throughout the entire course of the procedure; - the perpetrator ceases to participate in the alleged cartel immediately after beginning to collaborate with the Agency in connection with the waiver of fines, unless the Agency deems this to be contrary to the interest of the investigation; - the perpetrator did not force others to participate in the alleged cartel, or force them to continue to operate in such alleged cartel. <p>In the criminal procedure, the fine may be waived to perpetrator who informed the criminal act before it was known or before the perpetrator was aware that it was known and he cooperates at</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.

	<p>investigation and at elimination of consequences and he did not force others to participate in the restriction of competition, or force them to continue to operate in such restriction of competition.</p> <p>The competent authority for criminal procedure is Public prosecutor's office; therefore, hereafter the questions are replied only in relation to the procedure pursuant to the CPA.</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>The perpetrator may be eligible for leniency if he discloses his involvement in a cartel or if he is the first to provide evidence which the Agency deems sufficient to make it possible to initiate investigations into an alleged cartel or to determine a violation of Art. 6 of the CPA or Art. 101 of the TFEU in connection with the alleged cartel. Otherwise the date (the moment) at which participants in the alleged cartel come forward with information is not specifically relevant for the outcome of leniency applications.</p> <p>With this respect the Leniency Decree further elaborates this issue in Art. 11:</p> <p>(1) A perpetrator who submits an application and is the first to provide evidence which, in the Agency's view, enables an inspection to be conducted in administrative or minor offences procedure in connection with an alleged cartel, shall also enclose information relevant to the inspection.</p> <p>(2) The fact whether an inspection is successful or whether it is actually conducted shall have no effect on the potential granting of immunity from fine to a perpetrator.</p> <p>(3) If a perpetrator submits an application for immunity under para. 1 of this article and the Agency is already in possession of information needed to conduct an inspection or the Agency has already conducted an inspection, it shall inform the perpetrator thereof in writing and return the application to the perpetrator.</p> <p>(4) A perpetrator submitting an application after the Agency has conducted an inspection and being the first to submit evidence which, in the Agency's view, enables it to find an infringement in administrative or minor offences procedure, shall accompany it with evidence which the Agency has not yet obtained in the procedure and is sufficient to find an infringement. The perpetrator's application shall only be considered if none of the perpetrators has fulfilled the conditions for immunity from fine.</p> <p>(5) The Agency shall assess whether the submitted evidence is sufficient to find an infringement, taking into account the evidence and facts in its possession at the time of deciding the application.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>The beneficiary of the leniency program can be an undertaking, sole entrepreneur, an individual independently pursuing an activity and a responsible person of a corporate body or a responsible independent contractor.</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>The conditions of availability of full leniency are:</p> <ul style="list-style-type: none"> - the perpetrator entirely and completely discloses its involvement in alleged cartel;

	<ul style="list-style-type: none"> - the perpetrator is the first to provide evidence which the Agency deems sufficient to make it possible to initiate investigations into an alleged cartel or to determine a violation of Art. 6 of the CPA or Art. 101 of the TFEU in connection with the alleged cartel; - the perpetrator collaborates with the Agency throughout the entire course of the procedure; - the perpetrator ceases to participate in the alleged cartel immediately after beginning to collaborate with the Agency in connection with the waiver of fines, unless the Agency deems this to be contrary to the interest of the investigation; - the perpetrator did not force others to participate in the alleged cartel, or force them to continue to operate in such alleged cartel.
G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):	<p>If the perpetrator does not fulfil all the conditions for full leniency, he could be entitled for the reduction of the fine if he fulfils all below listed conditions:</p> <ul style="list-style-type: none"> - the perpetrator provides evidences of his collaboration in alleged cartel which have substantially added value compared to evidences with which the Agency already disposes. - the perpetrator collaborates with the Agency throughout the entire course of procedure. - the perpetrator ceases to participate in the alleged cartel immediately after beginning to collaborate with the Agency in connection with the waiver or reduction of fines, unless the Agency deems this to be contrary to the interest of the investigation.
H. Obligations for the beneficiary after the leniency application has been accepted:	<p>After the leniency application has been accepted main obligations for the beneficiary are (Art. 76 of the CPA):</p> <ul style="list-style-type: none"> - the perpetrator collaborates with the Agency throughout the entire course of the procedure; - the perpetrator ceases to participate in the alleged cartel immediately after beginning to collaborate with the Agency in connection with the waiver of fines, unless the Agency deems this to be contrary to the interest of the investigation. <p>The cooperation is further elaborated in Art. 7 of the Leniency Decree:</p> <p>(1) A perpetrator shall cooperate with the Agency from the time of submitting an application throughout the administrative or minor offences procedures and shall:</p> <ul style="list-style-type: none"> - promptly provide the Agency with all relevant information and evidence relating to the alleged cartel that comes into his/her possession or is available to him/her; - provide the Agency with all information that may contribute to the establishment of the facts; - ensure that current and, if possible, former employees and members of management or supervisory bodies cooperate with the Agency; - not destroy, falsify or conceal information or evidence relating to the alleged cartel, and

	<ul style="list-style-type: none"> – not disclose the fact that the application has been submitted or any of its content before the Agency has issued a statement of objections in an administrative procedure, without written permission from the Agency. <p>(2) Prior to submitting an application, a perpetrator shall not:</p> <ul style="list-style-type: none"> – destroy, falsify or conceal evidence on the alleged cartel referred to in the application; – directly or indirectly disclose the intention to submit an application to the Agency or disclose the content of the contemplated application, except to the Member States' competition authorities and the European Commission.
I. Are there formal requirements to make a leniency application?	<p>A perpetrator must submit an application in accordance with the provisions of the Leniency Decree to the Agency on a given form (Art. 3 of the Leniency Decree). Beside it is strictly regulated how to file an application in Art. 4 of the Leniency Decree:</p> <p>(1) A perpetrator shall submit an application:</p> <ul style="list-style-type: none"> – to the address of the Agency by mail in a sealed enveloped bearing the following mark "Do not open, business secret, for the leniency programme"; – to the Agency personally in writing; – to the Agency personally by making an oral statement on the record, unless otherwise provided by the Leniency Decree; – by faxing it to the special number published on the Agency website. <p>(2) If a perpetrator submits an application at the Agency personally by making an oral statement, he/she shall substantiate it and submit all evidence to the Agency.</p> <p>(3) A perpetrator may also submit an application by notifying the authorised persons conducting an inspection about his/her intention to submit an application relating to the infringement that is the subject of the inspection and shall submit the application within 15 days in one of the ways referred to in para. 1 of this article.</p> <p>(4) A list of attachments, a list of evidence as given in Annexes 7, 8 or 9, which are integral parts of the Leniency Decree, and evidence accompanying the application shall form integral parts of the application.</p> <p>(5) A perpetrator shall submit to the Agency one original and two copies of the application. Confirmation of receipt shall be made by the Agency on one copy of the application and it shall be returned to the perpetrator or contact person in case of hypothetical application. The application shall constitute an integral part of the file in minor offences procedure, while the copy of the application shall constitute an integral part of the file in an administrative procedure.</p>
J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency –	<p>The undertaking can make two types of submissions</p> <ul style="list-style-type: none"> - immediately provide all required data (real submission); or - provide evidence in hypothetical terms in which the identity of the perpetrator and other members of the cartel or a detailed description of the infringement are not stated, but it contains

<p>PGL – and further steps leading to a final leniency agreement / decision)?]</p>	<p>data on a contact person (hypothetical submission).</p> <p>Pursuant to Art. 5 of the Leniency Decree:</p> <p>(1) The Agency shall record the date, hour and minute of receipt on the application and on its copy and shall forward an acknowledgement of receipt, given in Annex 6 of the Leniency Decree, which is an integral part of the Leniency Decree, to the perpetrator or contact person in the case of a hypothetical application at their request.</p> <p>(2) The date on which, during an investigation, an perpetrator notifies the authorised persons conducting the investigation about the intended submission of an application relating to the infringement that is the subject of the inspection shall also be deemed the date of submitting the application if it is submitted to the Agency within 15 days on the form given in Annex 1 of the Leniency Decree. At the perpetrator's request, the authorised person shall hand an acknowledgement of notification, given in Annex 5 of the Leniency Decree, which is an integral part of this Leniency Decree.</p> <p>(3) Applications referring to the same infringement shall be considered in order of their receipt. Applications for immunity from fines shall be considered separately from applications for a reduction of fines. Applications for a reduction of fines shall be considered after applications for immunity from fines have been decided.</p> <p>(4) If an application meets the conditions for immunity from a fine, the applications of other perpetrators for a reduction of fines shall be considered in order of their receipt. If an application for immunity from a fine which fails to meet the conditions for immunity from a fine does not also refer to a reduction of the fine, the Agency shall inform the perpetrator thereof in writing and return the application to the perpetrator. If an application for reduction of a fine fails to meet the conditions for reduction, the Agency shall inform the perpetrator thereof in writing and return the application to the perpetrator.</p> <p>The Agency shall decide on immunity from or reduction of a fine by way of a minor offences decision. In the minor offences decision, the Agency shall indicate the amount of the fine that would have been imposed on the perpetrator if no immunity or reduction had been granted, specify the amount of the imposed fine and the percentage of the fine reduction (Art. 9 of the Leniency Decree)</p> <p>In addition, in Art. 9 of the Leniency Decree a marker is foreseen:</p> <p>(1) If not in possession of information that would enable the submission of a complete application for immunity from a fine, a perpetrator may apply for a marker on a form given in Annex 4. The application for a marker may not be submitted personally by making an oral statement at the Agency.</p> <p>(2) When requesting a marker, a perpetrator shall justify the submission of the application for the marker.</p> <p>(3) The Agency may grant a marker if it considers that the application is substantiated; the Agency shall also determine</p>
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	<p>the period in which the perpetrator must complete the application. If the Agency does not grant a marker, it shall inform the perpetrator thereof in writing and return the application for a marker to the perpetrator.</p> <p>(4) In the interim period, a marker shall protect the perpetrator's place in the queue of applications.</p> <p>(5) A perpetrator granted a marker may not complete an application by making a hypothetical application.</p> <p>(6) If a perpetrator fails to complete an application within the time limit specified by the Agency, the marker shall be deleted from the ranking order of applications and the application for marker shall be returned to the perpetrator.</p> <p>(7) If a perpetrator completes an application within the time limit specified by the Agency, the application shall be considered in the ranking order granted by the marker. The former application shall be deemed to have been submitted on the date of submission of an application for a marker.</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>Pursuant to Art. 8 of the Leniency Decree, if the Agency establishes that an application for reduction of a fine complies with the conditions set out in Art. 76(1) of the CPA, it shall inform the perpetrator thereof and inform him of the obligation to cooperate. If the Agency establishes that an application for reduction of a fine complies with conditions set out in Article 76(2) of the CPA, it shall inform the perpetrator in writing about the range of potential eligible fine reduction and inform him of the obligation to cooperate.</p> <p>If the Agency establishes that an application for reduction of a fine complies with conditions set out in Art. 76(2) of the CPA, it shall inform the perpetrator in writing about the range of potential eligible fine reduction and inform him of the obligation to cooperate.</p> <p>Such information is issued as soon as possible, but in any ways before the Statement of Objections.</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>The legal basis to grant leniency is Art. 76 of the CPA.</p> <p>Pursuant to Art. 9 of the Leniency Decree, the Agency shall decide on immunity from or reduction of a fine by way of a minor offences decision.</p> <p>A decision in relation to compliance with the leniency conditions (Art. 8 of the Leniency Decree) is made by an authorized officer, whereas the final decision on immunity from or reduction of a fine is made by a misdemeanour panel composed of 3 members (Art. 12.s of the CPA).</p>
M. Does your legislation have a marker system? If yes, please describe it.	<p>Yes, in Art. 12 of the Leniency Decree:</p> <p>(1) If not in possession of information that would enable the submission of a complete application for immunity from a fine, a perpetrator may apply for a marker on a form given in Annex 4. The application for a marker may not be submitted personally by making an oral statement at the Agency.</p> <p>(2) When requesting a marker, a perpetrator shall justify the submission of the application for the marker.</p>

	<p>(3) The Agency may grant a marker if it considers that the application is substantiated; the Agency shall also determine the period in which the perpetrator must complete the application. If the Agency does not grant a marker, it shall inform the perpetrator thereof in writing and return the application for a marker to the perpetrator.</p> <p>(4) In the interim period, a marker shall protect the perpetrator's place in the queue of applications.</p> <p>(5) A perpetrator granted a marker may not complete an application by making a hypothetical application.</p> <p>(6) If a perpetrator fails to complete an application within the time limit specified by the Agency, the marker shall be deleted from the ranking order of applications and the application for marker shall be returned to the perpetrator.</p> <p>(7) If a perpetrator completes an application within the time limit specified by the Agency, the application shall be considered in the ranking order granted by the marker. The former application shall be deemed to have been submitted on the date of submission of an application for a marker.</p>
<p>N. Does the system provide for any extra credit⁴ for disclosing additional violations?</p>	<p>No.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>Yes, but under conditions of Art. 6 of the Leniency Decree:</p> <p>(1) An application shall be deemed a business secret. The Agency may only disclose information and evidence from an application to a company under an infringement procedure after a statement of the objections has been issued in an administrative procedure and in accordance with Art. 18(7) of the CPA.</p> <p>(4) An application shall be transmitted to the Member States' competition authorities pursuant to Art. 12 of Council Regulation (EC) No. 1/2002 of 6 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 001 of 4 January 2003, hereinafter: Regulation 1/2003/EC), provided that</p> <ul style="list-style-type: none"> – a perpetrator consents to the transmission of information; or – a perpetrator has also submitted an application for immunity from or reduction of a fine for the same infringement to the competition authority of the Member State that has requested information or provided that the competition authority of the Member State that requested information has made a written statement, a copy of which shall be transmitted to the perpetrator by the Agency, that the information obtained shall not be used for the imposition of sanctions on the perpetrator, persons subject to the application, employees or former

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>employees of the perpetrator or persons subject to the application; and</p> <ul style="list-style-type: none"> – the level of protection against disclosure afforded by the receiving Member State is equal to that conferred by the Republic of Slovenia. <p>(3) Information on applications for immunity from or reduction of fines or information contained in such applications and received from the Member States' competition authorities pursuant to Art. 11 of Regulation 1/2003/EC may not be used by the Agency to initiate a procedure relating to the infringement concerned.</p>
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	Yes, if the application does not fulfil the leniency conditions (Art. 5(4) of the Leniency Decree), the Agency issues a decision, which may be appealed.
Q. Contact point where a leniency application can be lodged:	<p>Leniency contact points:</p> <ul style="list-style-type: none"> - e-mail: leniency.mg(at)gov.si; - phone: +386 1 431 02 79. <p>Possible methods of application:</p> <ul style="list-style-type: none"> - by mail in closed envelope bearing the following mark: »ne odpiraj, poslovna skrivnost, za program prizanesljivosti« (»do not open, business secrets, for the leniency programme«) addressed to: Slovenian Competition Protection Agency, Kotnikova 28, SI-1000 Ljubljana, Slovenia; - in writing, in person at the Agency; - orally, in person at the Agency stated for the record – previous appointment required (request for making an oral statement must be substantiated); - by fax: +386 1 478 34 75 (currently it is not possible to submit application by fax!); - during inspections: inspected company can inform authorised Agency employees during the inspection that it wishes to make a formal application (only in connection with the cartel that is the subject of the inspection!).
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>Yes.</p> <p>Pursuant to Art. 8 of the Leniency Decree, the Agency establishes that an application for reduction of a fine complies with the conditions set out in Art. 76(1) or Art. 76(2) of the CPA and it informs the perpetrator thereof and informs him of the obligation to cooperate. If afterwards the perpetrator does not fully cooperate (Art. 7 of the Leniency Decree), the Agency revokes its decision that the perpetrator fulfils the required conditions in the final decision (Art. 9 of the Leniency Decree) which may be appealed.</p>
S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?	No.

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, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>The undertaking against which a procedure has been initiated must enable the authorised person of the Agency to examine the undertaking's business books, business documentation, and administrative and business records to the extent required for identifying all facts relevant for the issuing a decision within the procedure. In the carrying out of investigative action the authorised person of the Agency may use photocopying means and computer equipment available at the undertaking against which procedure has been initiated to make copies and computer records of the aforementioned documents. Letters, notifications and other methods of communication related to the procedure between the undertaking against which procedure has been initiated and its legal representative shall be excluded from the investigative action. The undertaking against which procedure has been initiated must at the request of the Agency submit computer records or copies of its business books, business documentation, and administrative and business records. The authorised person of the Agency may request from the members of the management board, supervisory board, proxies, and any other person employed at the undertaking against which procedure has been initiated to give an oral or written explanation on the circumstances with respect to the investigative action. When a written explanation is requested, the authorised person shall specify a deadline for the preparation of the written explanation.</p> <p>With respect of necessity of court warrant, the Constitutional Court of the Republic of Slovenia issued Decision No. U-I-40/12 of April 11, 2013, in which the court said that the CPA is unconstitutional in the part where a written authorization for investigative action is issued by the Agency's director. The court, therefore, considers that a court warrant is necessary to initiate an investigation pursuant to the CPA. For the time being, the CPA has not been amended accordingly; however, the court left the Agency with a possibility to apply the existing CPA rules until the CPA is amended.</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>Pursuant to Art. 33 of the CPA, private locations, such as residential premises of members of the undertaking's governing or supervisory bodies of employees or other associates of the undertaking against which proceedings have been initiated can be searched but the Agency shall always obtain a court order to search the premises from a judge of the competent court.</p> <p>During the inspection of residential premises, two persons of legal age must be present as witnesses.</p>
<p>C. May evidence not falling under the scope of the</p>	<p>The evidence not falling under the scope of the authorisation allowing the investigation may not be seized and/or used as evidence in another case because the Art. 28 of the CPA</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.

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)?	defines that the order of the investigation shall contain the subject of the investigation.
D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.	No. Please see 7.A as well.

8. Procedural rights of businesses / individuals

A. Key rights of defence in cartel cases:	<p>An undertaking against which procedure is initiated has the right to put forward facts and evidence in the procedure, and to express his legal opinions, reply to statements and proposals by other participants in the procedure, as well as to the facts and evidence which the Agency takes into consideration <i>ex officio</i>. There is a right to review the case file documents and make transcripts and copies at their own expense. After the investigation has been completed the investigators shall prepare an investigation report (Art. 34 of the CPA). This report shall be served on the undertaking which was subject to the investigation. The investigation report shall contain:</p> <ul style="list-style-type: none"> - place and date of the preparation of the report; - name and title of the authorized person preparing the report; - a brief description of the course of the investigation; - a list of statements given by representatives or employees in the undertaking which was subject to investigation; - a list of documents and other items which the Agency obtained during the investigation. <p>Before the Agency issues a decision establishing the existence of violation of Art. 6 of the CPA and/or Art. 101 of the TFEU, it must inform the undertakings involved via Statement of Objectives.</p> <p>The decision of the Agency may not be based on the facts and evidence in respect of which the person against whom the procedure has been initiated has not been given the possibility to reply.</p>
B. Protection awarded to business secrets (competitively sensitive)	<p>There is no difference between the information that is provided under a compulsory legal order or under informal cooperation.</p> <p>Furthermore, in connection with business secrets the CPA</p>

<p>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>stipulates the following (Art. 18 of the CPA):</p> <p>In general parties have the right to review the case file but they may not review or make copies of the following:</p> <ul style="list-style-type: none"> - internal Agency documents regarding the file, including correspondence between the Agency and the European Commission or competition protection authorities of the EU Member States; - data which constitute business secrets; - data relating to the secrecy of the source; - minutes of discussion and voting; - draft decisions. <p>The burden of proof regarding the existence of business secrets shall be borne by the undertaking claiming it to be such. Upon request from the Agency, the undertaking must produce a version of the document that is not containing business secrets.</p> <p>The Agency may disclose data which constitute a business secret to the undertaking against which charges are being brought, if it deems that its disclosure might objectively prevail over the interests of protecting such information as a business secret in order to ensure the right to defence. In this context the Agency may postpone the review of data constituting a business secret, although not longer than the time of service of the Statement of Objectives.</p> <p>If the decision which concludes the proceedings contains business secrets, such data shall be deleted from the statement of grounds for the decision served on the other participants in the procedure.</p> <p>If the Statement of Objectives contains data which constitutes a business secret, such data shall be deleted from the Statement of Objectives for the decision served on the other participants in the procedure.</p> <p>In addition, pursuant to the Art. 6 of the Leniency Decree, a leniency application shall be deemed a business secret.</p>
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9. Limitation periods and deadlines

<p>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</p>	<p>Pursuant to Art. 37(4), the Agency must issue a decision establishing the existence of violation of Art. 6 of the CPA and/or Art. 101 of the TFEU within two years from issue of the order on the commencement of the procedure.</p>
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be made?	
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?	Pursuant to Art. 37(4), the Agency must issue a decision establishing the existence of violation of Art. 6 of the CPA and/or Art. 101 of the TFEU within two years from issue of the order on the commencement of the procedure.
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>The Slovenian law does not provide the possibility to challenge the commencement (Art. 24(2) of the CPA) or completion of the investigation or a decision regarding sanctions.</p> <p>Such possibility is possible in a judicial protection against the final decision before the Supreme Court of the Republic of Slovenia (Art. 56 of the CPA). There is a time limit of 30 days from the day of receipt of the decision (Art. 28 of the Administrative Dispute Act). For fines (misdemeanour procedure) a complaint should be lodged in 8 days (Art. 60(1) of the Minor Offences Act) before the Local Court of Ljubljana (Art. 214(5) of the Minor Offences Act).</p> <p>If the Agency does not issue a decision in the merits of the case in the term of two years from the commencement of the procedure, the party who is involved in the procedure may bring a lawsuit to the Supreme Court of the Republic of Slovenia in the term of 30 days.</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.	The Agency may issue a decision in which it finds that an infringement has been committed and it can demand from an undertaking to cease such violation. The same decision may impose upon the undertaking the obligation to take reasonable measures to eliminate the violations and their consequences (Art. 37 of the CPA).
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).	The same as under A.
C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore	If there is a possibility of violation of Art. 6 of the CPA or Art. 101 of the TFEU, the Agency may issue an order introducing interim measures in cases of emergency. The condition for taking such a decision is that there exists the danger of severe damage to the effectiveness of the competition on the market. In the order introducing interim measures, the Agency shall

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].

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?	specify the duration of such measures. The Agency may extend interim measures (Art. 38 of the CPA).
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11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

A. Grounds for the imposition of procedural sanctions / fines:	<p>If an undertaking refuses to allow access into its business premises or prevents access to business books or other documentation, if it obstructs the investigation, or if such behaviour of the undertaking can be reasonably expected, an authorized person may enter the premises and access business books or other documentation against undertaking's will, with the help of the police. The costs of the entry and access and any resulting damage shall be borne by the undertaking (Art. 31 of the CPA).</p> <p>If an undertaking hinders authorized persons in the performance of the investigation, the Agency may issue an order imposing a fine in the amount of up to 1 % of the undertaking's annual sales in the preceding financial period (Art. 31(2) of the CPA).</p> <p>If an undertaking to which the Agency has addressed a request to provide data via special order provides inaccurate, incomplete or misleading data, or if it fails to provide such data within the specified time, the Agency may issue an order imposing a pecuniary penalty of up to 50.000 EUR (Art. 27(4) of the CPA). At the same time as issuing the order of penalty mentioned, the Agency shall issue an order specifying a new deadline for provision of information. The Agency shall treat undertakings which continue to refuse to cooperate in the same manner as described above until the sum of pecuniary penalties from individual orders reaches 1 % of the undertaking's annual sales in the preceding financial period (Art. 27(5) of the CPA).</p>
B. Type and nature of the sanction (civil, administrative, criminal, combined):	Administrative.
C. On whom can procedural	On undertaking against which procedure has been initiated and on other undertakings which do not want to provide all the

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.

sanctions be imposed?	documentation that was requested by the Agency.
D. Criteria for determining the sanction / fine:	The amount of the fine depends on the circumstances of each specific case and it is issued within the limits that are defined in the CPA.
E. Are there maximum and / or minimum sanctions / fines?	The maximal amount of the first fine for the undertaking which did not provide all the requested documentation is 50.000 EUR (Art. 27(4) of the CPA). The maximal sum of amounts of the fines for the undertaking which did not provide all the requested documentation is 1 % of the undertaking's annual sales in the preceding financial period (Art. 27(5) of the CPA).

12. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed?</p>	<p>It is an administrative procedure and sanctions (order to bring the infringement to an end, imposition of behavioural or structural remedies) are of the administrative nature. But the imposition of fine must be made in the misdemeanour procedure, which is more criminal oriented (it is a part of penal law). There are also criminal sanctions pursuant to Art. 225 of the Criminal Code (whereas the perpetrator shall be sentenced to imprisonment in a range from 6 months to 5 years) and pursuant to Arts. 25 and 26 of the Liability of Legal Persons for Criminal Offences Act (whereas the perpetrator shall be sentenced to a fine of at least 50.000 EUR or up to a maximum 200 times the amount of damage caused or unlawful property benefit obtained through the criminal offence).</p> <p>In the Administrative procedure sanctions may be imposed on undertakings (including sole entrepreneur or an individual independently pursuing an activity), association of undertakings and also on individuals as responsible persons of the legal entity which committed the infringement.</p> <p>In the criminal procedure sanctions may be imposed on natural persons and on legal entities.</p>
<p>B. Criteria for determining the sanction / fine:</p>	<p>The Minor Offences Act defines in Art. 17(5) that for misdemeanours in the competition rules a fine up to 10 % of the undertaking's or group of undertakings' annual sales in the preceding financial period shall be levied on a legal entity, sole entrepreneur or individual independently pursuing an activity.</p> <p>Pursuant to Art. 73 of the CPA, a fine of up to 10 % of the undertaking's annual sales in the preceding financial period shall be levied on a legal entity, sole entrepreneur or individual independently pursuing an activity if they act contrary to Art. 6 of the CPA and/or Art. 101 of the TFEU.</p> <p>A fine of between 5.000 and 10.000 EUR shall be levied on the responsible person of a legal entity or a responsible independent contractor for the offence cited in the preceding paragraph.</p> <p>If the nature of the offence is particularly serious given the amount of resulting damages or amount of unlawfully acquired pecuniary benefits or the perpetrator's intent or purpose to</p>

	<p>exploit, the responsible person of a legal entity or sole entrepreneur shall be fined between 15.000 and 30.000 EUR.</p> <p>The Agency may make use of summary proceedings to proclaim a fine in any amount within the limits defined in the CPA (Art. 77 of the CPA).</p> <p>Under some special conditions a leniency is possible (see above 6. Leniency Policy).</p>
C. Are there maximum and / or minimum sanctions / fines?	The maximal amount of the fine is 10 % of the undertaking's annual sales in the preceding financial period. The maximal amount of the fine for the responsible person of a legal entity is 30.000 EUR (Art. 73 of the CPA).
D. Guideline(s) on calculation of fines:	No.
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>The challenge to a decision imposing a fine has an automatic suspensory effect (Art. 59(2) of the Minor Offences Act), but a challenge towards a decision imposing an order to bring the infringement to an end and possible remedies does not automatically suspend the effects of the contested decision. The plaintiff must prove that execution of the decision would cause him irreplaceable damage and that the suspension would not be against public interest (Art. 32 of the Administrative Dispute Act).</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 requirements?	<p>Yes, there is a judicial review in the administrative dispute (Art. 54 of the CPA).</p> <p>A decision can be contested (Art. 27 of the Administrative Dispute Act):</p> <ul style="list-style-type: none"> - if the decision has violated a substantive provision of the CPA; - if a violation has been committed of the provisions governing the proceedings, - if there was an erroneous or incomplete establishment of the facts; - if there are reasons that lead to the nullity of the decision.
B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]	Before the Supreme Court of the Republic of Slovenia (Art. 56 of the CPA).

