



International
Competition
Network

ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques

Tunisia

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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:	the law 64-91 of july 29 1991 related to competitions and prices and the texts that modified the law 1993,1995,1999,2003,2005 arabic and french www.infocommerce.gov.tn
B. Implementing regulation(s) (if any):	there is no implementing regulations
C. Interpretative guideline(s) (if any):	On Antitrust Behaviour arabic
D. Other relevant materials (if any):	decisions of the competition council, annual reports annual reports of the general directorate arabic www.infocommerce.gov.tn

2. Scope and nature of prohibition on cartels

A. Does your law or case law define the term "cartel"?	are prohibit concerted practices, the collusions and formal or informal ententes which have unfair objet or effect and they tend to: - to make obstacle to the fixing of the prices by the rule of offer and supply
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If not, please indicate the term you use instead.	<ul style="list-style-type: none"> - to limit the access to the market to other enterprises or the free exercise of the competition - to limit or to control production, the investments or the technical progress - to share the markets or the sources of provision
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”?	although differentiation is not indicated in the law, the council of competition distinguish between very serious cartel by taking into account several criteria (revolved, scope, damage caused to the economy)
C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]	are not regarded as anti competitive, the agreements and the practices whose authors justify that they cause a technical or economic progress. the competition authorities have a discretionary power to give justifications for this kind of trust by taking into account the sector concerned, the general interest or the policy of the government on the matter
D. Is participation in a hardcore cartel illegal <i>per se</i>?	yes the procedure in the treatment of the businesses of trust in the Tunisian law of the competition is penal.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	penal

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	General directorate of Competition and Economic Investigations -competition council the two authorities have the same responsibilities
B. Contact details of the agency:	General directorate of Competition and Economic Investigations adress: 6, venezuela street 1002 tunis tunisia tel: 00216 71 781 471 fax: 00216 71 797 727 email: khelifa.tounekti@email.ati.tn website: www.infocommerce.gov.tn arabic, french,english competition council tel 00216 71 961 902

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.

	<p>fax 00216 71 962 237 email:ghazi.jeribi@email.ati.tn rue du lac biwa les berges du lac Tunis, République Tunisienne</p>
C. Information point for potential complainants:	<p>Ministry of trade and handicrafts kheireddine pacha avenue 1002 tunis tunisia General directorate of competition and economic investigations 6 rue du venezuela 1002 tunis tunisia tel 00216 71 781 471 competition council</p>
D. Contact point where complaints can be lodged:	<p>Ministry of trade and handicrafts kheireddine pacha avenue 1002 tunis tunisia genral directorate of competition and economic investigations 6 rue de venezuela 1002 tunis tunisia tel 00216 71 781 471 competition council</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.	<p>the assistance of the police can be requested</p>

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>competition council</p>
B. Contact details of the agency:	<p>see 3-b above</p>
C. Contact point for questions and consultations:	<p>see 3-b above</p>
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	<p>The competition council decides on the cases of anticompetitive behaviour emanating of although the prerogatives of investigation are the same ones for all the agencies. The role of the latter is different: for the general direction the treatment of the files is done according to following stages': the service of investigation carries out the enrichment of the indices collected at the time of the check operations, or complaint - to decide the opening of an investigation if it considers convenient</p>

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

	<p>enrichment is done by the decentralized services which elaborate a preliminary report on the existence of the practice, its extent and its impact on competition the report will be transmitted to the minister, as a guarantor of the economic law and order who will decide either of his transmission to the council or of the classification of the file</p> <p>for the council of competition decides on the cases emanated either of the entreprises, organizations or on the files emanating from the minister of trade. the president of the council transmits the files to the general reporter that assigns to transmit them to the reporters and to decide the opening of the investigation (the phase of the instruction) the reporter must notify the parts and ask the communication of the documents judged useful the parts must be heard, their declarations must be inserted in verbal suits of audition the reporter is held to elaborate a report, this report is notified to the parts that must formulate their observations within one month all procedures are contradictory in front of the council</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>it is to signal that the procedures in the tunisian law are especially characterized by the hold in account of the penal and economic aspects the procedeeengins leads only to pecuniary sanction (fine) and is not able to the object of an imprisonment.</p>

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p>	<p>complaints, notification, investigations, clues</p>
<p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</p>	<p>complaints should be submitted in writing no</p>
<p>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?]</p>	<p>the law limit the list of complaints: entreprises associations minister public collectivities chamber of commerce and industry consumer defence organisation, natural persons are not entitled to submit complaints</p>
<p>D. Is the investigating agency obliged to take action on each complaint that it receives or does it</p>	<p>the suites to be given to the complaints by the DG as an administrative power : - the administration finds convenient to carry out a survey - it considers it useless to open of an investigation while</p>

have discretion in this respect?	justifying this answer - to require additional information for the decision-making for the council of competition, as an authority of judgement, is held to come to a conclusion about each received 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?	yes
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 time

6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	law number 64-91 on prices and competition(artc19) the leniency policy was recently introduced in the tunisian law in 2003
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	yes
C. Who is eligible for full leniency?	first one to come
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? In this context, is the date (the moment) at which participants in the cartel come forward with information (before or	it is dependant on the enforcing agency having no knowledge of the cartel no date

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>after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>businesses</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>there is no conditions</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>there is no conditions</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>the beneficiary is obliged to cooperate fully with the investigating agency during the proceedings</p>
<p>I. Are there formal requirements to make a leniency application?</p>	<p>no</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>we begin the leniency program after taking the opinion of government commissary</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>at the judgment of the Competition Council</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>there is no legal basis for the power to agree to grant leniency. the leniency is mentioned in the final decision made by the competition council general assembly decide about leniency applications</p>
<p>M. Does your legislation have a marker system? If</p>	<p>no</p>

yes, please describe it.	
N. Does the system provide for any extra credit⁴ for disclosing additional violations?	no
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	no
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	no leniency is not a right
Q. Contact point where a leniency application can be lodged:	there is only one proceedings no two separate proceedings see: 3B
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?	no
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

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶,	the agents charged of the findings of infringements are authorized to: - to penetrate during the usual hours of work in the professional local , they can also accomplish their missions under transportation of the goods. - to make all useful noted and make themselves produce, on first
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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.

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>electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>requisition and without displacement, the document pieces or books which are necessary to their research and to take copies certified in conformity with the original</p> <ul style="list-style-type: none"> -to seize against receipt, documents that are necessary for the establishment of the proof of their infringement or for the research of co-authors or the accomplices of the offender - to proceed, in the authorized conditions, to the visits as well as to the seizure of documents in private local , with the previous authorization of the district attorney of republic. the visits in the private dwelling must take place consistently between 6.00 and 20.00 with reference to the procedures of the penal code. - to consult and to get, without opposition of the business secrets; all documents and information by the administration, the public corporation and the local collectivities on presentation of a written demand of the ministry charged of trade and that, under reserves of secrets and information protected by special laws.
<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>yes</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>only seized pieces and documents must be used, investigator must prove that their data was collected lawfully this of evidence can not be used in another case</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>the rights of defence in the competition law are granted:</p> <ul style="list-style-type: none"> - the party must be informed about the pursuits engaged against him, one month from the date of the notification - the rights of access to documents - legal representation <p>the competition council fixed the nature of documents with reference to the need of protection of business secrets</p> <ul style="list-style-type: none"> - the party has the right to be heard - the right to be not self-incriminate
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<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>there is no difference depending on the way of collection of information</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 be made?</p>	<p>the prescription period of infringement is three years</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>no</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>the commencement or the completion of the investigation cannot be challenged the revision of the decision may be requested from the administrative court through submission of claim within 30 days from the date of the notification of the decision</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 understanding is justified by an economic or technical progress and that it procures to the users an equitable part of the profit that results some if the understanding is considered an antitrust practice to the sense of the article, the advice of the competition can:</p> <ul style="list-style-type: none"> - inflict a fine - give out an injunction to quit the practice while obliging the contravening to submit to particular conditions -the competition can decide the inadmissible request if the
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	evoked facts don't enter in the fields of its expertise, or are not pushed by elements of proof
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 decions
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?	the advice of the competition council can, in case of emergency, and after having heard the parties and the government's commissioner, to order the necessary and susceptible temporary measures to prevent an imminent and irreparable prejudice capable from affecting the general interest economic or the sectors concerned or the consumer's interest or the one of one of the parts, and that, until it enacts on the bottom of litigation.

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

A. Grounds for the imposition of procedural sanctions / fines:	Opposition of the exercising of procedural rights of the investigators.
B. Type and nature of the sanction (civil, administrative, criminal, combined):	administrative and penal
C. On whom can procedural sanctions be imposed?	- the parties of the cartel - a physical person who take part by indirect means a determining part in the violation of the law
D. Criteria for determining	see 11/a above

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.

the sanction / fine:	
E. Are there maximum and / or minimum sanctions / fines?	yes imprisonment from 16 days to 3 months fine of 50-5000 dinars

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):	administrative and criminal
On whom can sanctions be imposed?	see 11/a above
B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]	the amount of the fine is determined on: - the gravity of the violation - the duration of unlawful situation - the benefits that result from the infringement - the market share of the company
C. Are there maximum and / or minimum sanctions / fines?	the maximum fine may not exceed 5% of the turnover during the preceding year
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?	when there is a challenge to a decision imposing a sanction /fine it haven't automatic suspensory effect on that sanction the parties can request the suspensory effect from the president of the administrative court

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	revision of the decision on the merits of the case may be requested from the administrative court within 30 days from the date of notification grounds of appeal: questions of law fact procedural fact in the appeal step: all the decision is reviewed
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procedural requirements?	
B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]	the administrative court.