



**International  
Competition  
Network**

# **ANTI-CARTEL ENFORCEMENT TEMPLATE**

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

**Taiwan Fair Trade Commission  
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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

<b>A. Law(s) covering cartels:</b>	Fair Trade Act - available in English and Chinese (Mandarin) at <a href="http://www.ftc.gov.tw">www.ftc.gov.tw</a>
<b>B. Implementing regulation(s) (if any):]</b>	Enforcement Rules to the Fair Trade Act - available in English and Chinese at <a href="http://www.ftc.gov.tw">www.ftc.gov.tw</a>
<b>C. Interpretative guideline(s) (if any):</b>	Public Notice on the Period for Handling Filings for Approval of Concerted Action by Enterprises Fair Trade Commission Policy Statements on Trade Associations Guidelines for Reviewing Cases Involving Enterprise's Voluntary Cessation or Correction of Violating Acts Fair Trade Commission Guidelines on Cases Involving Foreign Elements Fair Trade Commission Guidelines on the Procedure of Public Hearings Guidelines for Oral Arguments in Cases Before the Fair Trade Commission Principles on Approving Exemptions for Concerted Pricing by Small or Medium-sized Enterprises Fair Trade Commission Policy Statements on the Business Practices of Financial Industry

	<p>Fair Trade Commission Policy Statements in Distribution Industry</p> <p>Fair Trade Commission Policy Statements on the Business Practices Cross-Ownership and Joint Provision among 4C Enterprises (e-commerce)</p> <p>Fair Trade Commission Guidelines on Technology Licensing Arrangements</p> <p>Introductions and Guidelines to the Cable Television-Related Industry, as Stipulated in the Fair Trade Act</p> <p>All of the above are available in English and Chinese at <a href="http://www.ftc.gov.tw">www.ftc.gov.tw</a></p>
<p><b>D. Other relevant materials (if any):]</b></p>	<p>Fair Trade Law and Relevant Rules (published in both Chinese and English) June 2006/ 105 pages(free)</p> <p>Fair Trade Law and Relevant Rules of Taiwan, Republic of China (English version only) December 2002/ 57 pages (free)</p> <p>A Brief Introduction to the Fair Trade Commission (published both in Chinese and English) June 2007/ 42 pages (free)</p> <p>Introduction to the Competition Policy Information and Research Center (published both in Chinese and English) June 2007/ 42 pages. (free)</p> <p>Introduction to APEC Competition Policy and Law Database (published both in Chinese and English) December 2001/ 16 pages.(free)</p> <p>Cases and Materials on the Fair Trade Law of the Republic of China (Vol. 1 – Vol. 8, English version only) (NT\$600)</p> <p>Competition Policy Newsletter Launched in January 1997, bi-monthly (free)</p> <p>Publications listed as "Free" are available without any charge by calling 886-2-2351-7588 ext. 380, or writing to the Fair Trade Commission: 13 Fl., No. 2-2, Jinan Road, Sec. 1, Taipei, Taiwan</p> <p>Publications listed with prices are for sale, payable in either NT dollars or US dollars. Please make payment through post offices to the Fair Trade Commission, postal account 16128636. The price for each publication does not include shipping charges. For more details about the shipping charges, please consult the Competition Policy Information and Research Center directly.</p> <p>The books listed with prices can be bought or ordered directly at the following bookstores:</p> <p>iWu-Nan Company No.558, Sinfu Rd., Taiping City, Taichung County 411 Taiwan (R.O.C.) Tel: 886-4-23953100 Fax: 886-4-22582345</p> <p>Taiwan Television Bookstore 10 Pateh Rd., Sec. 3, Taipei, Taiwan Tel: (02) 2578-1515</p>

	<p>Fax: (02) 2579-9623</p> <p>Some of the FTC's publications are out of stock, but they can be referenced at the Competition Policy Information and Research Center (CPIRC).</p> <p>All the listed publications are available at the Competition Policy Information and Research Center for reference.</p> <p>Competition Policy Information and Research Center 2F, No.30 Peiping East Road, Taipei, Taiwan</p> <p>Tel: (886-2)2397-0339 Fax: (886-2)2327-8155</p>
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## 2. Scope and nature of prohibition on cartels

<p><b>A. Does your law or case law define the term "cartel"?</b></p> <p><b>If not, please indicate the term you use instead.</b></p>	<p>Cartel conduct is defined as a "concerted action" under Article 7 of the Fair Trade Act which states as follows:</p> <p>The term "concerted action" as used in this Law means the conduct of any enterprise, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise, to jointly determine the price of goods or services, or to limit the terms of quantity, technology, products, facilities, trading counterparts, or trading territory with respect to such goods and services, etc., and thereby to restrict each other's business activities.</p> <p>The term "concerted action" as used in the preceding paragraph is limited to horizontal concerted action at the same production and/or marketing stage which would affect the market function of production, trade in goods, or supply and demand of services.</p> <p>The term "any other form of mutual understanding" as used in Paragraph 1 means other than contract or agreement, a meeting of minds whether legally binding or not which would in effect lead to joint actions.</p> <p>By means of its charter, a resolution of a general meeting of members or a board meeting of directors or supervisors, or any other means, to restrict activities of enterprises is also deemed as horizontal concerted action as used in Paragraph 2.</p>
<p><b>B. Does your legislation or case law distinguish between very serious cartel behaviour ("hardcore cartels" – e.g.: price fixing, market sharing, bid rigging or</b></p>	<p>No. However, Article 36 of the Enforcement Rules to the Fair Trade Act provides as follows:</p> <p>When assessing fines in accordance with the Law, all circumstances shall be taken into consideration, and the following items shall be noted:</p> <ol style="list-style-type: none"> <li>1. motivation, purpose, and expected improper benefit of</li> </ol>

<p><b>production or sales quotas<sup>1</sup>) and other types of “cartels”?</b></p>	<p>the acts;</p> <ol style="list-style-type: none"> <li>2. the degree of the act's harm to market order;</li> <li>3. the duration of the act's harm to market order;</li> <li>4. benefits derived on account of the unlawful act;</li> <li>5. scale, operating condition, and market position of the enterprise;</li> <li>6. whether or not the type of unlawful act involved in the violation has been the subject of correction or warning by the Central Competent Authority;</li> <li>7. types of, number of, and intervening time between past violations, and the punishment for such violations; and</li> <li>8. remorse shown for the act and attitude of cooperation in the investigation.</li> </ol>
<p><b>C. Scope of the prohibition of hardcore cartels:</b></p>	<p>There is no specific exemption for hardcore cartels under the Fair Trade Act.</p> <p>Article 14 of the Fair Trade Act provides as follows:</p> <p>No enterprise shall have any concerted action; unless the concerted action that meets one of the following requirements is beneficial to the economy as a whole and in the public interest, and the application with the central competent authority for such concerted action has been approved :</p> <ol style="list-style-type: none"> <li>1. unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency;</li> <li>2. joint research and development on goods or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency;</li> <li>3. each developing a separate and specialized area for the purpose of rationalizing operations;</li> <li>4. entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports;</li> <li>5. joint acts in regards to the importation of foreign goods for the purpose of strengthening trade;</li> <li>6. joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand orderly, while in economic downturn, the market price of products is lower than the average production costs so that the enterprises in a particular industry have difficulty to maintain their business or encounter a situation of overproduction; or</li> <li>7. joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small-medium enterprises.</li> </ol> <p>After receipt of the application referred to in the preceding Article, the Central Competent Authority shall make a decision of approval or rejection within three months, the period of which</p>

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

	may be extended once if necessary.
<b>D. Is participation in a hardcore cartel illegal <i>per se</i>?</b>	<p>Article 7(2) of the Fair Trade Act provides that, a concerted action under Article 7 of this Law is limited to a horizontal concerted action among enterprises at the same stage of production and/or marketing, through which the market functions of production, trade in goods, or supply and demand of services are capable of being affected. In other words, if companies engaged in a concerted action collectively have a market share capable of affecting market supply and demand, such concerted action may violate this Law. Market share is one of the factors that have to be considered in determining capability to affect market supply and demand. But in practice, Fair Trade Commission takes <i>per se</i> rules to hardcore cartels.</p> <p>A concerted action may also be authorised in certain circumstances. (See 2C above.)</p>
<b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b>	A combination of civil, administrative and criminal.

### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels:</b>	Taiwan Fair Trade Commission
<b>B. Contact details of the agency:</b>	<p>Fair Trade Commission, Executive Yuan, R.O.C</p> <p>Address:12-14 F, No. 2-2 Jinan Rd., Sec. 1, Taipei City 100, Taiwan (R.O.C.)</p> <p>Tel:886-2-23517588</p> <p>E-mail: <a href="mailto:ftcpub@ftc.gov.tw">ftcpub@ftc.gov.tw</a></p>
<b>C. Information point for potential complainants:</b>	<a href="http://www.ftc.gov.tw">www.ftc.gov.tw</a>
<b>D. Contact point where complaints can be lodged:</b>	<p>To field input and inquiries from the public, the FTC has established a Service Center. The center has a full-time staff (FTC personnel appointed on a rotating basis) and offers a range of services.</p> <p>Address and Telephone</p> <p>Telephone: 886-2-2351-7588 ext. 380 886-2-2351-7567</p> <p>Address: 13F, No. 2-2, Sec. 1, Jinan Road, Taipei, Taiwan</p> <p>Telephone: 886-7-251-0022</p> <p>Southern Region Service Center</p>

	Address: 5F, No. 436, Chengchung 1 Road, Kaohsiung, Taiwan
<b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b>	Not applicable

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

<b>A. Name of the agency making decisions in cartel cases:</b>	Taiwan Fair Trade Commission
<b>B. Contact details of the agency:]</b>	Fair Trade Commission, Executive Yuan, R.O.C Address:14 F, 2-2 Ji-Nan Rd. Sec. 1,Taipei 100, Taiwan, R.O.C Tel:886-2-23517588 E-mail: ftcpub@ftc.gov.tw
<b>C. Contact point for questions and consultations:</b>	See 4B above
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	The FTC investigates and handles cases pertaining to horizontal restraints that impede competition. It reviews applications for authorisation of "concerted actions" and determines whether to approve such applications. It reviews the necessity of adding to or revising the types of exceptions allowed in relation to concerted actions.  The FTC will relax restrictions on concerted actions entered into by enterprises in the form of joint ventures, strategic alliances, and methods in order to increase market competitiveness. In addition, the FTC will introduce leniency programs to improve efficiency in law enforcement, combat hard-core cartels, and enhance market competition.
<b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>	Matters involving criminal prosecution are investigated initially by the FTC and referred to the District Attorney for prosecution in the District Court.

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

## 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating investigations in cartel cases:</b>	Complaint or self initiated investigation
<b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b>	No specific format. Complaints can be made in writing, by email or phone. However, complainants are encouraged to put their complaint in writing if a formal response or decision is required.
<b>C. Legal requirements for lodging a complaint against a cartel:</b>	Not applicable
<b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</b>	All complaints received by the Fair Trade Commission are examined to determine whether they are within the relevant jurisdiction and whether they contravene relevant Articles under the legislation.
<b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b>	All complaints received by the Fair Trade Commission are responded to in writing.
<b>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</b>	While no specific statutory time limit applies, generally an initial assessment of all matters will be made within 7 days and the complainant will be informed whether or not further investigation is warranted.

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

<b>A. What is the official name of your leniency policy (if any)?</b>	While no formal leniency policy exists, the FTC has in place "Guidelines for Reviewing Cases Involving Enterprise's Voluntary Cessation or Correction of Violating Acts".
<b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e.</b>	Where an enterprise has voluntarily ceased or corrected the violating act prior to the Commission's investigation on its own initiative or based on a complaint, the Commission may stop

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

<b>reduction in the sanction / fine), depending on the case?</b>	the investigation or decide not to make any disposition, unless the violating act seriously affects the trading order or is a concerted action that has been implemented.
<b>C. Who is eligible for full leniency?</b>	See 6B. Generally this would apply only to the first applicant. Where an enterprise voluntarily ceases or corrects the violating act after the Commission commences the investigation on its own initiative or after a complaint, the Commission shall, as a matter of principle, make a disposition in accordance with the Law.
<b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b>  <b>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</b>	Yes. See 6A and 6B.
<b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b>	Trade associations or businesss organisations.
<b>F. What are the conditions of availability of full leniency:</b>	This is at the discretion of the Commission but is only available if the trade association or business organization voluntarily abolishes such policy or restriction afterward.
<b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b>	See 6F.
<b>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</b>	N/A
<b>I. Are there formal requirements to make a leniency application?</b>	No.
<b>J. Are there distinct procedural steps within</b>	No.

<b>the leniency program?</b>	
<b>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</b>	N/A
<b>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</b>	N/A
<b>M. Does your legislation have a marker system? If yes, please describe it.</b>	No
<b>N. Does the system provide for any extra credit<sup>4</sup> for disclosing additional violations?</b>	No
<b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b>	No
<b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b>	No
<b>Q. Contact point where a leniency application can be lodged:</b>	Fair Trade Commission, Executive Yuan, R.O.C Address:12-14 F, No. 2-2 Jinan Rd., Sec. 1, Taipei City 100, Taiwan (R.O.C.) Tel:886-2-23517588 E-mail: <a href="mailto:ftcpub@ftc.gov.tw">ftcpub@ftc.gov.tw</a>
<b>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</b>	No

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

<b>revoke leniency?</b>	
<b>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</b>	No

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

<b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>6</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b>	<p>Article 27 of the Fair Trade Act provides as follows:</p> <p>"In conducting investigations under this Law, the Fair Trade Commission may proceed in accordance with the following procedures:</p> <ol style="list-style-type: none"> <li>1. to notify the parties and any related third party to appear to make statements;</li> <li>2. to notify relevant agencies, organizations, enterprises, or individuals to submit books and records, documents, and any other necessary materials or exhibits, and</li> <li>3. to dispatch personnel for any necessary on-site inspection of the office, place of business, or other locations of the relevant organization or enterprises.</li> </ol> <p>An investigator carrying out its duties under this Law shall present the documents supporting its duties; the person to be investigated may refuse the investigation where the investigator fails to present such documents.</p>
<b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</b>	No.
<b>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)?</b>	No.

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

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

<p><b>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p>	<p>No</p>
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## 8. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases:</b></p>	<p>During the course of an investigation conducted, a party or a related person, in claiming or defending its legal rights and interests, may apply to read, transcribe, photocopy or photograph relevant materials or files except the following:</p> <ol style="list-style-type: none"> <li>1. Drafts of an administrative decision or any other working document prepared for a case.</li> <li>2. Materials related to national defense, military affairs, diplomatic affairs, and any other official secrets that are required to be kept confidential by laws or regulations.</li> <li>3. Materials relating to personal privacy, professional secrets, or business secrets that are required to be kept confidential by laws or regulations.</li> <li>4. Materials where disclosure is likely to infringe the rights and interests of a third party.</li> <li>5. Materials where disclosure is likely to seriously obstruct the performance of the official duties in maintaining social order, public security, or any other public interests.</li> </ol> <p>"Regulations Governing Access to Materials and Files of the Fair Trade Commission" made pursuant to Article 27-1 of the Fair Trade Act are available in Chinese and English on the FTC's website.</p> <p>Article 102 of the Administrative Procedure Act states that "An administrative authority shall, before rendering an administrative disposition to impose restraint on the freedom or right of a person or to deprive him of the same, give the person subject to the disposition an opportunity to state his opinions, unless ... it has been decided that a hearing will be held ...."</p> <p>In some instances the FTC may direct that parties deliver oral arguments on a matter under deliberation. Procedures are outlined in detail in the FTC's "Guidelines for Oral Arguments in Cases Before the Fair Trade Commission" which is available on the website in Chinese and English.</p>
<p><b>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order</b></p>	<p>The FTC will seek to maintain the confidentiality of information provided to it to the extent permissible by law. Generally this will apply to all matters under investigation. However, the FTC may be compelled by law to produce that information or the information may become a public document following court proceedings.</p>

or provided under informal co-operation?	
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## 9. Limitation periods and deadlines

<b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</b>	<p>No civil claim for damages shall be allowed unless the right is exercised within two years after the claimant knows both the act and the person liable for the damages; nor shall the claim be allowed after a lapse of ten years from the time of the infringing conduct.</p> <p>Article 27 of the Administrative Penalty Act states that '[t]he power to impose sanction of administrative penalty is barred by limitation if not exercised upon the lapse of a period of three years.</p> <p>The period specified in the preceding paragraph shall commence from the day the act in breach of duty under administrative law finishes, except where the consequence of such act occurs at a later day, in which case the period shall commence from the day the consequence occurs.'</p>
<b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</b>	<p>After receipt of an application for authorisation of a concerted action, the Central Competent Authority shall make a decision of approval or rejection within three months, the period of which may be extended once if necessary.</p>
<b>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</b>	<p>Article 14 of the Administrative Appeal Act states that an administrative appeal shall be filed within 30 days from one day after the date which administrative action is served or the expiration date of its publication period.</p>

## 10. Types of decisions

<b>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</b>	<p>Decisions that can be made include:</p> <ol style="list-style-type: none"> <li>1. findings of fact;</li> <li>2. orders to cease conduct;</li> <li>3. orders to impose fines; and</li> <li>4. orders to impose jail terms in matters prosecuted by the District Attorney in the District Court.</li> </ol>
<b>B. Please list which types of decisions on the</b>	<p>See 10A.</p>

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).	
C. Can interim measures <sup>7</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both <sup>8</sup> .) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	No.

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

A. Grounds for the imposition of procedural sanctions / fines:	Refusing the investigation without justification, or refusing to appear, to respond or to render relevant materials such as books and records, documents, or exhibits by the set time limit.
B. Type and nature of the sanction (civil, administrative, criminal, combined):	Administrative
C. On whom can procedural sanctions be imposed?	Anyone subject to an investigation.
D. Criteria for determining the sanction / fine:	Article 36 of the Enforcement Rules to the Fair Trade Act provides as follows:  When assessing fines in accordance with the Law, all circumstances shall be taken into consideration, and the following items shall be noted:  1. motivation, purpose, and expected improper benefit of the

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

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

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

	<p>acts;</p> <ol style="list-style-type: none"> <li>2. the degree of the act's harm to market order;</li> <li>3. the duration of the act's harm to market order;</li> <li>4. benefits derived on account of the unlawful act;</li> <li>5. scale, operating condition, and market position of the enterprise;</li> <li>6. whether or not the type of unlawful act involved in the violation has been the subject of correction or warning by the Central Competent Authority;</li> <li>7. types of, number of, and intervening time between past violations, and the punishment for such violations; and</li> <li>8. remorse shown for the act and attitude of cooperation in the investigation</li> </ol>
<b>E. Are there maximum and / or minimum sanctions / fines?</b>	At first instance a fine of NTD \$20,000 to NTD \$250,000 and for continued refusal a fine between NTD \$50,000 and NTD \$500,000. (Article 43)

## 12. Sanctions on the merits of the case

<b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b>  <b>On whom can sanctions be imposed?</b>	<p>Civil, Administrative and Criminal sanctions are available.</p> <p>Sanctions can be imposed on individuals, businesses and their representatives including trade associations and their directors.</p>
<b>B. Criteria for determining the sanction / fine:</b>	<p>The system has been changed from one where criminal sanctions applied directly to conduct prohibited under Article 14 to a new system that applies administrative sanctions before judicial sanctions (e.g., criminal incarceration). Violations of these provisions of the Law will now be subject to administrative disposition by the Commission in the first instance. Only if the respondent fails to take corrective measures will the matter be referred to the judicial or prosecution authorities and be subject to potential criminal punishment. (See also 12D.)</p>
<b>C. Are there maximum and / or minimum sanctions / fines?</b>	<p>Yes - Administrative NTD \$50,000 - NTD \$25 million max. and for continued non-compliance NTD \$100,000 - NTD \$100 million and three years jail detention.</p>
<b>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are</b>	<p>Article 36 of the Enforcement Rules to the Fair Trade Act provides as follows:</p> <p>When assessing fines in accordance with the Law, all circumstances shall be taken into consideration, and the following items shall be noted:</p> <ol style="list-style-type: none"> <li>1. motivation, purpose, and expected improper benefit of the acts;</li> </ol>

<p><b>available]</b></p>	<ol style="list-style-type: none"> <li>2. the degree of the act's harm to market order;</li> <li>3. the duration of the act's harm to market order;</li> <li>4. benefits derived on account of the unlawful act;</li> <li>5. scale, operating condition, and market position of the enterprise;</li> <li>6. whether or not the type of unlawful act involved in the violation has been the subject of correction or warning by the Central Competent Authority;</li> <li>7. types of, number of, and intervening time between past violations, and the punishment for such violations; and</li> <li>8. remorse shown for the act and attitude of cooperation in the investigation.</li> </ol>
<p><b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</b></p>	<p>No. Article 93 of the Administrative Appeals Act provides that the enforcement of an administrative action shall not be stopped by the commencement of an administrative appeal. However, this Article also states that a person may apply to the decision maker to stay the whole or part of the decision.</p> <p>Section 116 of the Administrative Litigation Act is expressed in similar terms.</p>

### 13. Possibilities of appeal

<p><b>A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</b></p>	<p>Yes. Grounds of appeal include questions of fact or law and failure to follow procedural requirements.</p>
<p><b>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</b></p>	<p>Civil &amp; Criminal cases: District Court - High Court - Supreme Court</p> <p>Administrative cases: Appeal and Decision Committee - Administrative High Court - Administrative Supreme Court</p>