



**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

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

**Taiwan Fair Trade Commission
[date of updating of the
template: 29/03/2016]**

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.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]¹

1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]	Fair Trade Act – available in English and Chinese (Mandarin) at www.ftc.gov.tw
B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	Enforcement Rules to the Fair Trade Act Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases Regulations for Calculation of Administrative Fines for Serious Violations of Articles 9 and 15 of the Fair Trade Act Regulations Governing the Amount of Gifts and Prizes Offered by Businesses Regulations on Payment of Rewards for Reporting of the Illegal Concerted Actions

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

	<p>Regulations Governing Management and Utilization of the Antitrust Fund</p> <p>All of the above are available in English and Chinese at www.ftc.gov.tw</p>
<p>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>Fair Trade Commission Disposal Directions (Guidelines) on Approval of Concerted Pricing among Small or Medium-sized Enterprises</p> <p>Fair Trade Commission Disposal Directions (Guidelines) on Handling Administrative Settlements</p> <p>Fair Trade Commission Disposal Directions (Guidelines) on Cases Involving Foreign Elements</p> <p>Fair Trade Commission Guidelines on Oral Arguments in cases</p> <p>Fair Trade Commission Guidelines on the Procedure of Public Hearings</p> <p>Guidelines for Concerted Petroleum Purchasing by Individual Petrol Stations</p> <p>Fair Trade Commission Policy Statements on the Business Practices of Financial Industry</p> <p>Fair Trade Commission Policy Statements on Distribution Industry</p> <p>Fair Trade Commission Policy Statements on the Business Practices of Cross-Ownership and Joint Provision among 4C Enterprises (e-commerce)</p> <p>Fair Trade Commission Guidelines on Technology Licensing Arrangements</p> <p>Fair Trade Commission Policy Statements on the Cable Television-Related Industry</p> <p>Fair Trade Commission Policy Statements on the Telecommunication Industry</p> <p>All of the above are available in English and Chinese at www.ftc.gov.tw</p>
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>A Brief Introduction to the Fair Trade Commission (Chinese-English bilingual publication) May 2015/ 40 pages</p> <p>Introduction to APEC Competition Policy and Law Database (published both in Chinese and English) May 2010/ 20 pages.</p> <p>Cases and Materials on the Fair Trade Law of the Republic of China (Vol. 1 – Vol. 13, English version only)</p> <p>Competition Policy Newsletter from January 1997 to December 2007, bi-monthly (free)</p> <p>Taiwan FTC Newsletter launched in January 2008, bimonthly</p> <p>Publications listed as "Free" are available without any charge by calling 886-2-2351-7588 ext. 380, or writing to the Fair</p>

	<p>Trade Commission: 13 Fl., No. 2-2, Jinan Road, Sec. 1, Taipei, Taiwan</p> <p>The books listed with prices can be bought or ordered directly at the following bookstores:</p> <p>Wu-Nan Book Co. Ltd. No.6, Chung-Shan Rd., Taichung City 400, Taiwan (R.O.C.) Tel: 886-4-2226-0330 Fax: 886-4-2225-8234</p> <p>Government Publications Bookstore 1F., No. 209, Sung-Chiang Rd., Taipei 104, Taiwan Tel: 886-2-2518-0207</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. Competition Policy Information and Research Center 12 Fl., No. 2-2, Jinan Road, Sec. 1, Taipei, Taiwan Tel: (886-2)2351-7588 ext 471 Fax: (886-2)2397-5075</p>
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2. Scope and nature of prohibition on cartels

A. Does your law or case law define the term "cartel"? [Please quote.]

If not, please indicate the term you use instead. [Please quote.]

Cartel conduct is defined as a "concerted action" under Article 14 of the Fair Trade Act which states as follows:

The term "concerted action" as used in this Act means that competing enterprises at the same production and/or marketing stage, by means of contract, agreement or any other form of mutual understanding, jointly determine the price, technology, products, facilities, trading counterparts, or trading territory with respect to goods or services, or any other behavior that restricts each other's business activities, resulting in an impact on the market function with respect to production, trade in goods or supply and demand of services.

The term "any other form of mutual understanding" as used in the preceding Paragraph means other than contract or agreement, a meeting of minds whether legally binding or not which would in effect lead to joint actions.

The mutual understanding of the concerted action may be presumed by considerable factors, such as market condition, characteristics of the good or service, cost and profit considerations, and economic rationalization of the business conducts.

The act of a trade association or other groups, as referred to in Article 2 Paragraph 2, to restrict activities of enterprises 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 concerted action as used in this Act.

<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 quotas²) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</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"> 1. motivation, purpose, and expected improper benefit of the acts; 2. the degree of the act's harm to market order; 3. the duration of the act's harm to market order; 4. benefits derived on account of the unlawful act; 5. scale, operating condition, and market position of the enterprise; 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; 7. types of, number of, and intervening time between past violations, and the punishment for such violations; and 8. remorse shown for the act and attitude of cooperation in the investigation.
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</p>	<p>There is no specific exemption for hardcore cartels under the Fair Trade Act.</p> <p>Paragraph 1, Article 15 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"> 1. unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency; 2. joint research and development on goods or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency; 3. each developing a separate and specialized area for the purpose of rationalizing operations; 4. entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports; 5. joint acts in regards to the importation of foreign goods for the purpose of strengthening trade; 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; 7. joint acts for the purpose of improving operational efficiency

² 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>or strengthening the competitiveness of small and medium enterprises; or</p> <p>8. joint acts required for the purposes of improving industrial development, technological innovation, or operational efficiency.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p>	<p>Paragraph 1, Article 14 of the Fair Trade Act provides that, a concerted action under this Act is limited to means 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>The definition of concerted action supports a <i>de minimis</i> interpretation, for enterprises engaged in the concerted action have less than 10% the total market share in the relevant market are deemed not to have result in an impact on the market function with respect to production, trade in goods or supply and demand of service. However, hardcore cartel is not qualified.</p> <p>A concerted action may also be authorised in certain circumstances. (See 2C above.)</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>A combination of civil, administrative and criminal.</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</p>	<p>Fair Trade Commission</p>
<p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</p>	<p>Fair Trade Commission</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: ftcpub@ftc.gov.tw</p>
<p>C. Information point for potential</p>	<p>www.ftc.gov.tw</p>

³ For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

complainants:	
D. Contact point where complaints can be lodged:	<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> <p>Address: 5F, No. 436, Chengchung 1 Road, Kaohsiung, Taiwan</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.	Not applicable

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

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	Fair Trade Commission
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	<p>Fair Trade Commission</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: ftcpub@ftc.gov.tw</p>
C. Contact point for questions and consultations:	See 4B above
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	The FTC investigates and handles cases pertaining to competing enterprises at the same production and/or marketing stage that impede competition. It reviews applications for authorisation of "concerted actions" and determines whether to approve such applications. It reviews

⁴ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	<p>the necessity of adding to or revising the types of exceptions allowed in relation to concerted actions.</p> <p>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 November 2011, the FTC adopts and introduces leniency programs to improve efficiency in law enforcement, deter hard-core cartels, prevent the spread of injury, and enhance market competition.</p>
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	Matters involving criminal prosecution are investigated initially by the FTC and referred to the District Attorney for prosecution in the District Court.

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	Complaint or self-initiated investigation
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]	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.
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?]	Not applicable
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]	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.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	All complaints received by the Fair Trade Commission are responded to in writing.
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	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.

reject it?

6. Leniency policy⁵

A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]	Regulations on Immunity and Reduction of Administrative Fines against Concerted Actions (Leniency Regulations) The document is available at http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=647&docid=12223
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Yes. The leniency program adopted in Taiwan belongs to administrative enforcement with sanctions on corporations, and not a criminal enforcement system with criminal liability. "Full immunity" is granted only to the first applicant and the subsequent applicants, four in total to be accepted, may only be offered the treatment of a reduction in fines.
C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?	An enterprise will be eligible for full immunity application where: 1. It is the first applicant to provide concrete content of the violation and evidence that is sufficient for the FTC to initiate an investigation. (Article 3 of the Leniency Regulations) 2. There is no full immunity application before the FTC initiates the investigation. During the investigation process, it is the first applicant to provide evidence that can assist the FTC investigate and establish the involved members' violation of Paragraph 1, Article 15 of the Fair Trade Act. (Articles 5 and 7 of the Leniency Regulations)
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	Yes. The first applicant may be rewarded under the following circumstances: (1) before the FTC starts the investigation, the applicant requirements are that the evidence submitted must be able to assist the FTC to initiate an investigation. (2) cartel members that file their application for immunity from fines after the FTC has launched the investigation (during the course of the FTC's investigation of a cartel) must provide evidence that can assist the FTC in establishing the involved enterprises in violation of Paragraph 1, Article 15 of the Fair Trade Act. The first applicant is granted full immunity, while the subsequent applicants are given a level of fine reduction in accordance with the times the applications are

⁵ 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?</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>filed. The level of fine reductions applied to applicants is determined in accordance with the chronological order in which applications were received.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>An enterprise that has not coerced other enterprises to participate in the cartel or has restricted others from exiting the cartel is qualified for leniency. However, the originator or ringleader/ leader of the cartel is not qualified. (Article 2 of the Leniency Regulations)</p> <p>The term "enterprise," as defined in Article 2 of the Fair Trade Act, refers to 1) a company; 2) a sole proprietorship or partnership; 3) any other person or organization engaging in transactions through the provision of goods or services, and 4) a trade association organized by businesses, or any other organization lawfully established to promote the interests of its members is deemed as an enterprise as referred to in this Act.</p> <p>According to the Article 9 of the Leniency Regulations, the board directors, representatives, managers of an involved enterprise or others with the authority to represent the enterprise who by the definition set forth in Paragraphs 1 and 2 of Article 15 or Article 16 of the Administrative Penalty Act are to be jointly penalized but meet the following requirements may be granted immunity or reduction of fines at the same time:</p> <ol style="list-style-type: none"> 1. The involved enterprise complies with the two preceding articles and may be granted immunity or reduction of fines. 2. The said parties provide honest and full statements with regard to the unlawful act. 3. The said parties follow the instruction of the central competent authority and provide honest, full and continuous assistance during the investigation before the case is concluded.
<p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the</p>	<p>In addition to comply with the requirements in response to question 6C, the first applicant will be granted immunity fines under one of the following circumstances:</p> <ol style="list-style-type: none"> 1. Before the FTC initiates the investigation, the enterprise is the first to apply, agrees to the attached conditions prescribed in the Article 6 of the Leniency Regulations, and fulfills all the conditions attached. 2. After the FTC starts the investigation, the enterprise is the first to apply, agrees to the attached conditions prescribed in the Article 6 of the Leniency Regulations, and fulfills all the conditions attached. <p>(Article 7 of the Leniency Regulations)</p>

infringement, restitution, etc.]	
G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations ?]	<p>After the start of investigation, the subsequent applicants filing their applications for the reductions of fines must provide the concrete content of the violation and evidence submitted that can assist the FTC's investigation and establish the involved members' violation of Article 15 of the Act.</p> <p>In addition to the above-mentioned requirements, the enterprises also agreeing to the attached conditions prescribed in the Article 6 of the Leniency Regulations, and fulfilling all the conditions attached shall be granted reduction of the fine to be imposed.</p> <p>The subsequent applicants are granted different levels of fine reductions according to the chronological order in which applications were received. The subsequent qualified applicants can only enjoy certain fine reductions (the respective fine reductions for the applicants are: 30%~50% off, 20%~30% off, 10%~20% off, and 10% or less off).</p> <p>(Article 8 of the Leniency Regulations)</p>
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.]	<p>Once the FTC approves the leniency application with conditions attached, applicants must cooperate and provide full and continuous assistance during the investigation. The beneficiaries may not disclose to any other parties their intention to file the application or any content of the application during the investigation. They also cannot destroy, forge, alter or conceal any information or evidence related to the concerted action in question. The applicants are required to withdraw from the concerted action in question immediately upon filing the application or at the time specified by the FTC. If necessary, applicants must allow its staff members or representatives having participated in activities related to the concerted action in question to be questioned by the FTC.</p> <p>(Article 6 of the Leniency Regulations)</p>
I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include	<p>Yes. The leniency application could be made either in writing or orally for the record prepared by the FTC. (Article 11 of the Leniency Regulations) leniency application forms are available at http://www.ftc.gov.tw/upload/36c2d318-dd1e-49d4-b0f0-8e517f0c6774.pdf</p>

<p>particular information/data, must they be in writing or can they be made orally, etc.]</p>	
<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</p>	<p>No. The procedural steps within the leniency program are available at the http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=203</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>See response to question 6F & 6G.</p> <p>In accordance with Article 13 of the Leniency Regulations, the FTC shall immediately issue a letter of approval on immunity or reduction of fines with conditions attached when deciding to approve the applications from enterprises with conditions attached.</p> <p>The letter of approval stated in the preceding paragraph shall be in writing and contain the following information:</p> <ol style="list-style-type: none"> 1. The priority status of the enterprise for immunity or reduction of fines and the circumstances under which the priority status may be changed; 2. The time at which the enterprise shall withdraw from the concerted action in question; 3. The concrete contents of the attached conditions stated in Subparagraph 2, Paragraph 2 of Article 6; 4. The specified period within which the enterprise is to provide or supplement related evidence; 5. The circumstances under which the central competent authority may revoke its approval to grant the immunity or reduction of fines.
<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</p>	<p>Immunity and a reduction in fine are granted in the final decision on the basis of Articles 16 and 17 of the Leniency regulations, respectively.</p> <p>The leniency granted is laid down in a formal decision. When the investigation is concluded, the FTC shall grant full fine immunity or fine reduction to enterprises that it considers meeting the requirements and legal obligations.</p> <p>The Commissioners' Meeting within the FTC decides about leniency applications.</p>

decides about leniency applications?	
M. Do you have a marker system? If yes, please describe it.	<p>Yes.</p> <p>The marker system only applies to applicants for full immunity; therefore, it does not apply to subsequent applicants since they can only request a fine reduction.</p> <p>Enterprises intending to apply for fine immunity but currently having no the information and evidence stated in Article 3 to 5 of the Leniency Regulations and therefore unqualified to file the application may present a written or oral statement to apply to the FTC and request for preservation of the priority status for fine immunity that they may be granted. A marker shall provide the information and evidence according to Articles 3 to 5 of the Leniency Regulations within the specified period or they shall lose the priority status preserved.</p> <p>(Article 11 of the Leniency Regulations)</p>
N. Does the system provide for any extra credit⁶ for disclosing additional violations? [e.g. a hardcore cartel in another market]	No
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	<p>Yes.</p> <p>Article 20 of the Leniency Regulations states that "The identity of an enterprise applying for immunity or reduction of fines shall be kept confidential unless the enterprise agrees otherwise in advance.</p> <p>Covers shall be made for conversation records or original documents carrying information on the identity of the applicant. The same measure shall be taken for other documents that may indicate the identity of the applicant.</p> <p>Unless otherwise stipulated, the conversation records and documents stated in the preceding paragraph may not be provided to any agencies, groups or individuals other than investigation and judicial agencies."</p>
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	No
Q. Contact point	The FTC Service Center offers the consultation services in general information

⁶ 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>where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</p>	<p>of the leniency program. Address:13F, No. 2-2 Jinan Rd., Sec. 1, Taipei City 100, Taiwan (R.O.C.) Tel:886-2-23517588 ext. 380 or 886-2-2351-0022 E-mail: ftcpub@ftc.gov.tw A leniency application can be lodged with the case handlers depending on the industry characteristics of a case.</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>No</p>
<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>No</p>
<p>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</p>	<p>See 6O above.</p>

7. Settlement

<p>A. Does your competition regime allow settlement?</p> <p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	<p>Yes.</p> <p>There is no settlement procedure for restrictive agreements under the Fair Trade Act. However, Article 136 of the Administrative Procedure Act states that “where an administrative authority is unable to determine the facts or the legal relations as the basis for an administrative disposition notwithstanding an inquisition process having been conducted ex officio, it may enter into a compromise or an administrative contract with a citizen in lieu of administrative disposition in order to settle the dispute and to effectively achieve the purpose of administration.”</p>
<p>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p>	<p>See 7A above. Restrictive agreements (e.g. hardcore cartels and other types of cartels) are eligible for settlement.</p>
<p>C. What is the reward of the settlement for the parties?</p>	<p>See 7A above.</p>
<p>D. May a reduction for settling be cumulated with a leniency reward?</p>	<p>See 7A above.</p>
<p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p>	<p>No.</p>
<p>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</p>	<p>No.</p>
<p>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</p>	<p>See 7A above.</p>
<p>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</p>	<p>See 7A above.</p>
<p>H. Is there a possibility for settled parties to appeal a settlement decision at court?</p>	<p>According to Article 106(1) of the Administrative Litigation Act, settled parties may appeal a settlement decision at court.</p>

8. Commitment

<p>A. Does your competition regime allow the possibility of commitment?</p> <p>If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].</p>	<p>Article 28 of the Fair Trade Act provides: in conducting investigations into an enterprise's conduct that may violate the provisions of the Act, if such enterprise makes commitments to take specific measures to cease and rectify its alleged illegal conduct within the time prescribed by the competent authority, the competent authority may suspend the investigation.</p>
<p>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there commitments which are excluded from the commitment possibility?</p>	<p>See 7B</p>
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	<p>No. In determining the case which are suitable for suspension of Investigation, however, Article 6 of the Fair Trade Commission Disposal Directions (Guidelines) on Suspension of Cases under Investigation provides the criteria as follows:</p> <ol style="list-style-type: none"> 1. Condemnation of the alleged illegal conduct. 2. The conduct has made and will continuously make the disadvantages to the market competition. 3. Its commitments of the extent to restore or promote market competition. 4. The possibility of the enterprise fulfilling its commitments. 5. The administrative resources to the FTC has conducted and resume conducting during investigation. 6. The cost of the FTC to monitor whether such enterprise fulfills its commitments. 7. The possibility and advantages/disadvantages for the FTC to take other administrative measures.
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	<p>See 8A</p>
<p>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</p>	<p>See 8A</p>
<p>I. Does a commitment decision necessitate that the parties acknowledge their liability for</p>	<p>See 8A</p>

the violation?	
J. Describe how your authority monitors the parties' compliance to the commitments.	See 8A
K. Is there a possibility for parties to appeal a commitment decision at court?	See 7H

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

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids ⁸ , electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>Article 27 of the Fair Trade Act provides as follows:</p> <p>In conducting investigations under this Act, the competent authority may proceed in accordance with the following procedures:</p> <ol style="list-style-type: none"> 1. to notify the parties and any related third party to appear to make statements; 2. to notify the parties and any related third party to submit books and records, documents, and any other necessary materials or exhibits; and 3. to dispatch personnel for any necessary onsite inspection of the office, place of business, or other locations of the parties and any related third party. <p>The competent authority may seize articles obtained from the investigation that may serve as evidence. The scope, and duration of holding the seized articles are limited to the need of investigation, inspection, verification, or any other purpose of preserving evidence.</p> <p>An investigator carrying out its duties under this Law shall present the documents supporting such duties; the person to be investigated may refuse the investigation where the investigator fails to present such documents.</p>
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	No
C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used	No

⁷ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁸ “Searches/raids” means all types of search, raid or inspection measures.

<p>as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No</p>

10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</p>	<p>Pursuant to Article 46(1) of the Administrative Procedure Act, the party or an affected person may apply to an administrative authority for examining, transcribing, copying or taking photographs of relevant materials or records; provided that the materials or records are necessary for claiming or protecting his legal interest.</p> <p>An application made under the preceding paragraph to an administrative authority may not be denied except for information specified as follows:</p> <ol style="list-style-type: none"> 1. Drafts and other preliminary operational documents prepared before an administrative decision is made; 2. Information relating to national defense, military, diplomacy and any other general official secrets, which is legally required to be kept in confidence; 3. Information relating to personal privacy, occupational secrets and trade secrets, which is legally required to be kept in confidence; 4. Information [the disclosure of which] is likely to result in infringement of the right of any third party; and 5. Information [the disclosure of which] is likely to result in serious impairment to the social security, public safety or the normal performance of any function in connection with the public interest. <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>
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	<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. 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? Please indicate the relevant legal provisions.</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>

11. 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 on the merits of the case must be made?</p>	<p>According to Article 32 of the Fair Trade Act, 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>In accordance with Article 41 of the Fair Trade Act, the power to impose sanctions, inter alia, on cartel is expired upon the lapse of five years.</p> <p>Article 27 of the Administrative Penalty Act states that the 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>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</p>	<p>After receipt of an application for authorisation of a concerted action, the competent authority shall make a decision of approval or rejection within three months, the period of which may be extended once if necessary.</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or</p>	<p>Article 106 of the Administrative Litigation Act states that an administrative litigation shall be filed within 2 months from one day after the date which administrative action is served.</p>

completion of an investigation or a decision regarding sanctions? (see also 15A)	
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12. Types of decisions

A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]	Decisions that can be made include: 1. findings of fact; 2. orders to cease conduct; 3. orders to impose fines; and 4. orders to impose jail terms in matters prosecuted by the District Attorney in the District Court.
B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).	See 12A
C. Can interim measures ⁹ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both ¹⁰ .) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	No

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

A. Grounds for the imposition of	Refusing the investigation without justification, or refusing to
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⁹ 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].

¹⁰ Only for agencies which answered “yes” to question 2.B. above

<p>procedural sanctions / fines [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.]:</p>	<p>appear, to respond or to render relevant materials such as books and records, documents, or exhibits by the set time limit.</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p>	<p>Administrative</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>Anyone subject to an investigation.</p>
<p>D. Criteria for determining the sanction / fine:</p>	<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"> 1. motivation, purpose, and expected improper benefit of the acts; 2. the degree of the act's harm to market order; 3. the duration of the act's harm to market order; 4. benefits derived on account of the unlawful act; 5. scale, operating condition, and market position of the enterprise; 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; 7. types of, number of, and intervening time between past violations, and the punishment for such violations; and 8. remorse shown for the act and attitude of cooperation in the investigation
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>At first instance a fine of NTD \$50,000 to NTD \$500,000 and for continued refusal a fine between NTD \$100,000 and NTD \$1 million. (Article 44 of the Fair Trade Act)</p>

14. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil,</p>	<p>Civil, Administrative and Criminal sanctions are available.</p>
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<p>administrative, criminal, combined):</p> <p>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</p>	<p>Sanctions can be imposed on individuals, businesses and their representatives including trade associations and their directors.</p>
<p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</p>	<p>The system has been changed from one where criminal sanctions applied directly to conduct prohibited under Article 15 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 14D.)</p>
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>Yes - Administrative fine for concerted actions is NTD \$100,000 - NTD \$50 million max. and for continued non-compliance NTD \$200,000 - NTD \$100 million and three years jail detention.</p> <p>In addition, the FTC may impose an administrative fine of up to 10% of the total sales income of an enterprise in the previous fiscal year without being subject to the limit of the administrative fine set forth in the Paragraph1, Article 40 of the Fair Trade Act if the enterprise is deemed by the FTC as being in serious violation of Article 15 (referred to concerted actions.)</p>
<p>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<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"> 1. motivation, purpose, and expected improper benefit of the acts; 2. the degree of the act's harm to market order; 3. the duration of the act's harm to market order; 4. benefits derived on account of the unlawful act; 5. scale, operating condition, and market position of the enterprise; 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; 7. types of, number of, and intervening time between past violations, and the punishment for such violations; and 8. remorse shown for the act and attitude of cooperation in the investigation.
<p>E. Does a challenge to a decision imposing a sanction / fine have an automatic</p>	<p>No. Article 116 of the Administrative Litigation Act provides that the enforcement of an administrative action shall not be stopped by the commencement of an administrative litigation.</p>

<p>suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	
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15. Possibilities of appeal

<p>A. Does your law provide for an appeal against 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>	<p>Yes. Grounds of appeal include questions of fact or law and failure to follow procedural requirements.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</p>	<p>Civil & Criminal cases: District Court - High Court – Supreme Court Administrative cases: Administrative Appeal Review Committee - Administrative High Court - Administrative Supreme Court</p>