



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

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

BULGARIA

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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:	<p>Law on Protection of Competition (promulgated in SG, Issue 102 of 28.11.2008, in force as of 02.12.2008) (LPC)</p> <p>Homepage address: www.cpc.bg</p> <p>Languages: Bulgarian, English</p> <p>The Law on Protection of Competition is available on the homepage:</p> <p>http://www.cpc.bg/system/storage/ZZK~2.doc (in Bulgarian) and</p> <p>http://www.cpc.bg/system/storage/ZZK_eng.doc (in English)</p> <p>Administrative Procedure Code (rules applicable on the appeal of the Commission on Protection of Competition decisions) – promulgated in SG 30/2006, last amended SG 94/2008</p> <p>Civil Procedure Code – promulgated in SG 59/2007, last amended in SG 12/2009 (applicable for issues not specified in the Administrative Procedure Code);</p>
B. Implementing regulation(s) (if any):	<p>Programme on Immunity from Fines or Reduction of Fines in case of participation of an undertaking in a secret cartel (Leniency Programme), Rules on its application, Applications forms and Guidance to the applications forms – adopted by Decision of CPC n. 112/10.02.2009</p>

	<p>http://www.cpc.bg/system/storage/Leniency%20Decision%20EN.doc</p> <p>Methodology for setting fines under the Law on Protection of Competition - adopted by Decision of CPC n. 71/03.02.2009</p> <p>http://www.cpc.bg/system/storage/Fine%20Setting%20Methodology%20final.doc</p> <p>Procedural rules regulating the access, use and storage of documents constituting production, trade or other secret protected by law –adopted by Decision of CPC n. 161/19.02.2009</p> <p>http://www.cpc.bg/system/storage/resh-161-pravila_access%20to%20file.doc</p> <p>Rules on agreements of minor importance which do not appreciably restrict competition – adopted by Decision of CPC n. 125/12.02.2009</p> <p>http://www.cpc.bg/system/storage/Rules.De.Minimis-EN.doc</p> <p>Internal rules regulating the protection of the identity of the persons who has given statements or has provided data for an infringement under LPC – adopted by Decision of CPC n. 133/10.02.2009</p> <p>http://www.cpc.bg/system/storage/ProtectedWitness_eng.doc</p> <p>(All decisions are available on the homepage in the Legislation – Secondary legislation section in Bulgarian and English)</p>
C. Interpretative guideline(s) (if any):	None
D. Other relevant materials (if any):	<p>Decisions of the Commission on Protection of Competition – available on the home page in Bulgarian and summaries in English</p> <p>http://www.cpc.bg/public/index.php?id=115</p> <p>Decisions of the Supreme Administrative Court are available on its homepage after registration</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>The legal definition of “Cartel” is included in the supplementary provisions of LPC- § 1p. 5. Pursuant to the Law, a “Cartel” shall mean an agreement and/or concerted practice between two or more undertakings – competitors on the relevant market, aimed at restricting competition through price fixing or fixing pricing conditions for purchase or sale, allocation of production quotas or sales or allocation of markets, including in rigging of public bids or tenders or public procurement award procedures.</p> <p>Besides, the LPC in Art.15, paragraph 1, contains a general prohibition of all agreements between undertakings,</p>
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	<p>decisions by associations of undertakings, as well as concerted practices of two or more undertakings having as their object or effect the prevention, restriction or distortion of competition on the relevant market, such as those which:</p> <ol style="list-style-type: none"> 1. directly or indirectly fix prices or other trading conditions; 2. share markets or sources of supply; 3. limit or control production, trade, technical development or investment; 4. apply to certain partners dissimilar conditions for equivalent transactions, thereby placing them at a competitive disadvantage; 5. make the conclusion of contracts subject to acceptance by the other party of supplementary obligations or to the conclusion of additional contracts which, by their nature or in accordance with commercial usage, have no connection with the subject of the main contract or to its performance. <p>(art.15, par. 1 LPC)</p> <p>Any agreements and decisions referred to in paragraph (1) shall be void (art.15, par.2 of LPC)</p> <p>Starting from 01.01.2007, pursuant to article 3 of COUNCIL REGULATION (EC) No 1/2003,, the Commission on Protection of Competition, as a National Competition Authority of a Member state of the EC where applies the national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 81(1) of the Treaty which may affect trade between Member States within the meaning of that provision, also applies Article 81 of the Treaty to such agreements, decisions or concerted practices.</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>The LPC defines the grave infringements of art. 15 LPC and / or art. 81 EC Treaty as an infringements which may affect considerably and on a lasting basis the competitive environment in respect of a significant part of the national market. (Supplementary provisions of LPC - § 1 p.16). Further, the Methodology for setting fines under the Law on Protection of Competition defines the cartels as grave infringements of competition rules. The basic amount of the sanction imposed for committing a cartel infringement starts from up to 10% of the value of the sales of the directly or indirectly affected products and after further calculations of the different factors can reach the legal maximum of 10% of the total turnover of the undertaking for the preceding financial year.</p> <p>Moreover, the „de minimis” rule, stipulated in art. 16 of LPC, which excludes from the general prohibition the agreements, decisions or concerted practices with inappreciable effect on competition, because of the aggregated share of the participants which does not exceed ten per cent of the relevant market, where the participants are competitors or fifteen percent of any of the relevant markets, where the participants are not competitors does not apply to the agreements, decisions or concerted practices which have as their object or effect:</p> <ol style="list-style-type: none"> 1. direct or indirect fixing of prices or other trading conditions; 2. allocation of markets and/or customers;

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>3. limitation of production and sales..</p> <p>Finally, the commitments decision, following art. 75, paragraph 3 of LPC, can not be adopted by the CPC in cases of grave infringements of the competition law, including in cartel cases.</p>
C. Scope of the prohibition of hardcore cartels:	Hardcore cartels are always prohibited. They are not subject to any legal exemptions (see above point 2 / B), nor any of the sectors of the economy or particular industries are excluded from the scope of the cartels prohibition.
D. Is participation in a hardcore cartel illegal <i>per se</i>?	Yes
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	It is an administrative offence under the Law on Protection of the Competition.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	Commission on Protection of Competition (CPC)
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	<p>Commission on Protection of Competition (CPC)</p> <p>Address: 18, Vitosha Blvd, Sofia 1000, Bulgaria</p> <p>Telephone: (+359 2) 9356 113</p> <p>Fax: (+359 2) 980 7315</p> <p>E-mail: cpcadmin@cpc.bg</p> <p>Website: www.cpc.bg</p> <p>Dedicated Leniency Telephone / Fax + 359 2 986 3153</p>
C. Information point for potential complainants:	<p>See above points 3 A and 3 B</p> <p>A potential complainant is advised firstly to check the home page of CPC and the FAQ section.</p>
D. Contact point where complaints can be lodged:	<p>The proceedings before the CPC can be initiated on the grounds of an application, submitted from the persons, whose interests have been affected or threatened by an infringement of the LPC (as per art.38,par.1, p.3 of LPC).</p> <p>The application (complaint) should be lodged in writing, in Bulgarian language, addressed to the CPC to its premises: 18, Vitosha Blvd, 1000 Sofia, Bulgaria</p> <p>The application under art.38, par.1, p.3 has to fulfil certain requirements, specified in art. 71, par.1 of LPC, amongst which are:</p> <ul style="list-style-type: none"> • due identification of the applicant and the person(s)

	<p>against whom the application has been brought (incl. name, data on registration, address);</p> <ul style="list-style-type: none"> • description of the circumstances upon which the complaint is based and the alleged infringement; • evidence supporting of the application; signature of the person who files the application, or of his or her authorised representative; • the receipt for the state fees paid, if due. <p>For the details of the application form content, as well as for the guidance to it, please consult the CPC Decision n. 111/10.02.2009, published at the CPC website www.cpc.bg in the Secondary Legislation section.</p> <p>Complaints which are not signed or anonymous are not to be examined by the CPC.</p> <p>The application shall be submitted in a form, adopted by the Commission with its decision n. 111/10.02.2009 and shall contain all the detailed information specified there.</p> <p>The decision is available on the home page in the Legislation – Secondary Legislation section in Bulgarian and English and on: http://www.cpc.bg/system/storage/R-111-10-02-2009.doc</p> <p>The proceedings could be also initiated following an application under art.38,par.1, p.4 (an application for immunity from fines in case of participation of an undertaking in a secret cartel, so-called Leniency Application). The Leniency application shall be submitted in a form, adopted by the CPC with its decision n. 112/10.02.2009. . The identity of the applicant shall be kept secret until the notifying of the Statement of objections to the parties</p> <p>(for more details see section 6 of this Template below)</p> <p>In addition to the applications received, the CPC can start its proceedings also ex officio and on request of a public prosecutor.</p> <p>For initiating a proceeding ex officio, the "warning" (note, information) received could not fulfil all the requirements stipulated for a formal complaint.</p>
<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>	<p>The police authorities of the Ministry of Interior shall assist the CPC during the inspections (dawn raids) of the premises, means of transport and other locations used by the undertakings or associations of undertakings.</p> <p>To this purpose, an Instruction regulating the procedure of organization and conduction the joint actions of the Ministry of Interior Act and the Commission on Protection of Competition has been adopted jointly by both authorities.</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:	Commission on Protection of Competition (CPC)
B. Contact details of the agency:	See 3/B above
C. Contact point for questions and consultations:	See 3/B above
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	<p>Once the proceedings are initiated, the Chairperson nominates the member of the Commission who shall supervise the investigation and shall provide instructions where needed.</p> <p>The Chairperson also appoints the case team from the administration of the CPC, which shall perform the investigation and shall be supervised and instructed by the appointed member of Commission</p> <p>...</p> <p>After having collected sufficient evidence with regard to the further course of the proceedings, the case team shall prepare a report and shall submit it to the supervising member of the Commission.</p> <p>The supervising member shall inform the Chairperson of the submitted report. The Chairperson shall issue an order scheduling a closed sitting of the Commission within 14 days as of the completion of the investigation, at which the further course of proceedings shall be decided.</p> <p>After having reviewed the report at a closed sitting, the Commission shall adopt:</p> <ul style="list-style-type: none"> - A decision establishing that no infringement has been committed or that there are no grounds to take actions for an infringement committed under art. 81 the Treaty establishing the European Community; (art.74, par.1, p.1.LPC); - A ruling to referring the case back for additional investigation, giving mandatory instructions to the case team; (art.74, par.1, p.2 LPC) - A ruling to submit Statement of objections (SO) for an alleged infringement of the Law to the defendant(s). (art.74 par.1, p.3 LPC). <p>In the case under art.74, par.1, p.1.LPC, the parties shall be notified of the decision of the Commission and of their right of access to the file, e.g. the opportunity to get acquainted with the (public) materials and evidences collected in the file. (art. 55 LPC).</p> <p>In the case under art.74, par.1, p.3 LPC (i.e. a SO is adopted), the applicant and the defendant shall receive the ruling of the</p>

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

Commission, while the third parties shall be informed of it. The ruling shall specify a deadline not shorter than 30 days, within which the applicant and the defendant shall have the right to submit their written objections on the submitted SO (the period shall run from the day of receipt), and the interested third parties - their observations (the period shall run from the day of written notice of the ruling). The ruling shall state that the parties and the interested third parties shall have the right of access to the file (art.55LPC) , as well as the right to be heard in an open sitting of the Commission (art. 76 LPC).

The defendant under art. 74,par.2 LPC may propose to undertake commitments with the aim of terminating the conduct, in respect of which the proceedings were initiated. The Commission may approve these commitments by a decision and shall terminate the proceedings without establishing an infringement.

After the period for submission of objections and observations, set by the ruling under art.74, par.1, p.3, expires, by an order the Chairperson shall schedule an open sitting, at which the Commission shall hear the parties and the interested third parties. On said sittings the parties concerned are summoned, as well as other persons, summoned at Commission's discretion.

The parties, the interested third parties, as well as the other persons shall be heard by the Commission in camera. The sitting of the Commission shall start with dealing with preliminary issues related to the procedure. The parties and the interested third parties may be asked questions in an order, determined by the Chairperson. When all circumstances on the case have been clarified, the Chairperson gives the floor to the parties to make their pleas.

After the dispute is clarified from the factual and legal point of view, the Chairperson shall close the sitting.

After hearing the parties, the Chairperson of CPC schedules a closed sitting at which the Commission shall take its decision which shall:

- establish the infringement committed and the infringer;
- impose pecuniary sanctions, periodic sanctions and fines;
- establish that no infringement of the LPC has been committed or that there are no grounds to take actions for an infringement committed under art. 81 the Treaty establishing the European Community;
- order the termination of infringements, including by imposing the relevant behavioural and/or structural measures to restore competition;
- withdraw the application of a block exemption decision to the specific case and specify a term to bring it into compliance with Article 17 or terminate it;
- withdraw the application of an EU Regulation for block exemption from the prohibition of Article 81, paragraph (1) of the Treaty establishing the European Community to the specific case and specify a term to bring it into compliance with Article 81, paragraph (3) of the Treaty establishing the European Community or terminate it.

	<p>At said closed sitting the Commission may also adopt a ruling, by which it may:</p> <ul style="list-style-type: none"> • accept new allegations of a committed infringement of the Law under the procedure laid down in Article 74, paragraph (1), item 3; • refer back the case for additional investigation with mandatory instructions <p>The decision is taken by open vote and with majority of four votes. In case that the sitting is attended by less than seven members, the decision shall be passed only if for the same at least 4 of the members of the Commission cast their votes.</p> <p>The Commission shall prepare and announce its reasoned decision within fourteen days after holding its the closed sitting. The decision shall be reasoned and signed by the members of the CPC who have voted at the closed sitting.</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>Not applicable, as cartel offence is not criminalized as per the Bulgarian laws.</p> <p>However, there is a general "Obligation of the officials for notification" provided for in the Criminal Procedure Code, article 205, paras 2 and 3, which state that:</p> <p>"(2) Whereas they learn about committed crime of general nature, the officials shall notify immediately the body of the pre-trial procedure and to take the needed measures for saving the situation and the data about the crime.</p> <p>(3) In the cases of Para 1 and 2, the body of the pre-trial procedure shall immediately execute its powers to institute penal procedure".</p>

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases:</p>	<p>The investigation of a prohibited agreement, decision or concerted practice can be initiated as per the general principles, described in 3/D above, i.e. following a formal application, ex-officio, on the request of a public prosecutor or following a Leniency application.</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>For the general requirements to the applications (complaints), see the described in the above point 3/D.</p> <p>The application should be made in writing, in Bulgarian language, not anonymous, should contain the information specified in the law, and a state fee should be paid.</p> <p>The application shall be submitted in a form, adopted by the Commission with its decision n. 111/10.02.2009 and available on the home page in Bulgarian:</p> <p>http://www.cpc.bg/system/storage/R-111-10-02-2009.doc</p> <p>The Leniency Application form, adopted with the decision of the Commission n. 112/10.02.2009, under art.101LPC, is available at the web site of the CPC www.cpc.bg in the Secondary Legislation</p>

	Section http://www.cpc.bg/system/storage/Leniency%20Decision%20EN.doc
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>The application can be lodged by the persons, whose interests have been affected or threatened by an infringement of LPC, as per art.38, par.3 of the LPC, which means that for a formal application a legitimate interest is necessary to be shown.</p> <p>The Leniency application can be submitted by a member of the secret cartel.</p>
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	<p>If the formal application fulfils all requirements, stipulated in the LPC, by an order the Chairperson of the Commission initiates proceedings and nominates the member of the Commission who shall supervise the investigation.</p> <p>If the application fails to fulfil all the requirements, the applicant is informed about this and is given a 7-days term to rectify the irregularities. If the applicant fails to remedy the irregularities within the time limit set in, the Chairperson issues an order refusing to initiate proceedings.</p> <p>In case of receiving of "warnings" (notes, information, etc.), the Commission is free to decide, following a preliminary gathering of additional information, if deemed appropriate, if an investigation should be lodged ex-officio.</p>
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	In case the applicant fails to remedy the deficiencies in its application within seven days, the Chairperson issues an order refusing to initiate proceedings.
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?	Not applicable

6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	<p>The Leniency Policy is provided for in art. 101 of the LPC "Immunity from fines or Reduction of fines".</p> <p>In accordance with the provisions of paragraph 5 of art. 101 LPC, with its decision n.112 / 10.02.2009 the CPC has adopted a Leniency Programme and Rules for its application, as well as</p>
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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>Leniency (Immunity and/or Reduction of fines) form and Guidance to it, Marker Application form and Guidance to it and Summary application form and Guidance to it.</p> <p>The Law and the Leniency Decision of CPC are available in English (translation made for informative purposes) at our web site www.cpc.bg</p> <p>in the Legislation section http://www.cpc.bg/system/storage/ZZK_eng.doc</p> <p>and the Secondary legislation Section http://www.cpc.bg/system/storage/Leniency%20Decision%20EN.doc</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>Yes.</p> <p>Both immunity from fines and reduction of fines are provided for by art. 101 of the LPC. and consequently – in the Leniency Programme and Rules, adopted with Decision of the CPC n. 112/10.02.2009.</p>
<p>C. Who is eligible for full leniency?</p>	<p>The Law (LPC – art. 101 (1), p. 1 and 2), as well as the Leniency Programme (p. 8 and p. 11), provide for two types of immunity from fines:</p> <p>1. In accordance with Article 101 (1), point 1 of LPC, the Commission may grant immunity from any fine to undertaking participating in a secret cartel activity in violation of Article 15 of LPC and/or of Article 81 of TEC provided that:</p> <p>1.1. prior to other cartel members the undertaking submits evidence, on the basis of which CPC may carry out inspection in connection with the alleged cartel, and</p> <p>1.2. at the time of the submission of such evidence CPC did not have sufficient information and evidence, in order to request a court authorization to carry out inspection, and</p> <p>1.3. at the time of submission of the application the undertaking has ended its involvement in the secret cartel, unless the CPC estimates that the continuation of its involvement will be necessary for the investigation, and</p> <p>1.4. the undertaking fulfils, throughout the proceedings, all other conditions required for granting immunity from fines as specified in section V of the Leniency Programme.</p> <p>2. In accordance with Article 101 (1), point 2 of LPC, CPC may also grant immunity from fines to an undertaking involved in secret cartel in violation of Article 15 LPC and/or of Article 81 TEC provided that:</p> <p>2.1. prior to other cartel members the undertaking submits evidence that will enable CPC to prove the alleged infringement; and</p> <p>2.2. at the time of the submission of the evidence CPC has not granted to another undertaking conditional immunity from fines in connection with the alleged infringement prior to carrying out an inspection or prior to be in possession of sufficient evidence to seek a court authorization to carry out an inspection; and</p> <p>2.3. at the time of the submission of the evidence CPC did not have sufficient evidence, in order to prove the infringement; and</p> <p>2.4. the undertaking ends its involvement in the secret cartel at the time of its application, unless the CPC estimates that the continuation of its involvement will be necessary for the</p>

	<p>investigation; and</p> <p>2.5. the undertaking fulfils, throughout the procedure, all other conditions required for granting immunity from fines as specified in section V of the Leniency Programme.</p> <p>The conditions, provided for in section V of the Leniency Programme (p.20), which have to be fulfilled for both types of immunity from fines, as well as for the reduction of fines, until the end of the proceedings, are:</p> <ul style="list-style-type: none"> • the undertaking cooperates with CPC on a continuous basis throughout the entire procedure; and • prior to submitting its application the undertaking must not have destroyed or falsified any evidence related to the implementation of this Programme; and • prior to submitting its application the undertaking must not have disclosed in any way either the fact that it contemplates and prepares its participation in this Programme, or any of the content of the application submitted to the Commission in relation to its participation in the Programme, except to other competition authorities within the European Competition Network or outside it <p>All conditions are cumulative.</p> <p>N.B. The Leniency Programme provides also for filing a Summary Application (immunity from fines).</p> <p>In the cases where the European Commission is particularly well placed to investigate the specific case, to which Article 81 of TEC is applicable, pursuant to § 14 of the Commission Notice on cooperation within the Network of Competition Authorities the undertakings which have submitted or are submitting an application to the European Commission, may submit also to CPC a summary application for immunity from fines.</p> <p>The filing of the summary application for immunity from fines shall not constitute grounds for CPC to initiate proceedings within the meaning of Article 38 (1), point 4 of LPC.</p> <p>If at later stage the CPC shall decide to investigate the case, it shall grant the undertaking a time period to submit all evidence and information required for granting immunity from fines. If the undertaking provides such information and evidence within the set period, they shall be considered submitted on the date of submission of the summary application. Following the completion with the required information and evidence, the application shall serve as grounds to initiate proceedings in the meaning of Article 38 (1), point 4 of LPC.</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the</p>	<p>To be eligible for immunity from fines of the first type provided for by the LPC, an undertaking must submit to the CPC evidence and information sufficient to enable the CPC to conduct a targeted inspection. Said submission has to be done not only prior to other cartel members, but also before the CPC. has sufficient data and evidence to file an application for issuing of court authorization for the inspection.</p> <p>To be eligible for immunity from fines of the second type provided for by the LPC, an undertaking must submit to the CPC information and evidence sufficient for the CPC to prove the alleged infringement. Said submission has to be done before the CPC has enough</p>

<p>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>evidence to prove the infringement (and provided that immunity from fines under the first type has not been granted to any other undertaking).</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>The “undertakings”, as defined by the LPC, can apply - and therefore can be beneficiaries - of leniency (either immunity from fines or reduction of fines).</p> <p>An “Undertaking” is defined by the LPC (Supplementary provisions, §1,p.7 of LPC) as “any natural person, legal entity, or unincorporated entity which carries out economic activities, regardless of its legal and organisational form “</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>See above p. 6 / C</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>The law (LPC – art. 101 (3)), as well as the Leniency Programme (p. 14 and p.18), provide for the possibility of reduction of the fines of an undertaking participating in secret cartel in violation of Article 15 of LPC and/or of Article 81 of TEC provided that:</p> <ol style="list-style-type: none"> 1. the undertaking voluntarily, prior to the termination of the proceedings before CPC submits evidence, which is of significant importance to prove the infringement; and 2. the undertaking ends its involvement in the secret cartel at the time of its application, unless the CPC estimates that the continuation of its involvement will be necessary for the investigation; and 3. the undertaking fulfils, throughout the procedure, all other conditions required for granting immunity from fines as specified in section V of the Leniency Programme. <p>The conditions, provided for in section V of the Leniency Programme (p.20), which have to be fulfilled for both types of immunity from fines, as well as for the reduction of fines, until the end of the proceedings, are:</p> <ul style="list-style-type: none"> • the undertaking cooperates with CPC on a continuous basis throughout the entire procedure; and • prior to submitting its application the undertaking must not have destroyed or falsified any evidence related to the implementation of this Programme; and • prior to submitting its application the undertaking must not have disclosed in any way either the fact that it contemplates and prepares its participation in this Programme, or any of the content of the application submitted to the Commission in relation to its participation in the Programme, except to other competition authorities within the European Competition Network or outside it <p>All conditions are cumulative.</p> <p>Moreover, the reduction of the fines may be of maximum up to 50 %</p>

	<p>of the fines, which would have been imposed to the undertaking for the infringement committed, calculated under the Methodology for setting fines under the Law on Protection of Competition, and shall be determined by CPC on the case-by-case basis, taking into consideration:</p> <ol style="list-style-type: none"> 1. the significance of the evidence provided by the undertaking to prove the infringement; and 2. the time of providing CPC with such evidence, in view to determine the sequence of that undertaking against the other participants in the secret cartel, applying for reduction of the fines, where: <ol style="list-style-type: none"> a) for the first undertaking the reduction shall be of 30 % to 50 %; b) for the second undertaking the reduction shall be of 20 % to 30 %; c) for any subsequent undertaking the reduction shall be of 10 % to 20 %. <p>In case an undertaking, together with its application for reduction of fines, submits compelling evidence which is directly related to the establishment of additional facts relevant for the determination of the amount of the fines (for instance: in relation to the determination of the duration of the infringement or other similar reasons), such facts shall not be taken into consideration in setting the fines to be imposed to that undertaking</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>The undertaking has the obligation to cooperate fully, genuinely and voluntarily with the CPC throughout the entire procedure. Said obligation starts from the submission of the application and in order to fulfil its obligation for cooperation, the undertaking must:</p> <ol style="list-style-type: none"> a) provide the Commission promptly with all relevant information and evidence in relation to the alleged cartel, that comes into the undertaking's possession or under its control; b) remain at the disposal of the Commission to reply promptly to any requests for information with a view to the establishment of relevant facts; c) enable the Commission to take oral statements from all current and former staff members of the relevant undertaking, as well as from current and former managers or members of its Management or Supervisory bodies; d) not destroy, conceal or falsify any information or evidence relevant to the case; e) not disclose in any way either the fact of its participation in the Programme, or any of the content of the application submitted to the Commission in relation to its participation in the Programme, except to other competition authorities within the European Competition Network or outside it.
<p>I. Are there formal requirements to make a leniency application?</p>	<p>Yes.</p> <p>In order to be granted both immunity from fines or reduction of fines, the undertaking must file a formal application, following the application form adopted by the CPC with its decision n. 112/10.02.2009.</p>
<p>J. Are there distinct procedural steps within the leniency</p>	<p>The procedural steps for granting both immunity from fine and reduction of fines are described in the Rules for the application of the Leniency Programme, adopted by the CPC with its decision</p>

<p>program?</p>	<p>n.112/10.02.2009.</p> <p>In general, the applicable procedure for both immunity from fines and reduction of fines consists of the following steps:</p> <p>The undertakings may establish initial anonymous contact with the CPC, in order to obtain informal guidance on the principles of application and the contents of the CPC Programme on immunity from Fines or reduction of Fines and the Rules on its application. (please note that this is not an obligatory step)</p> <p>In order to be granted an immunity from fines or a reduction of fines, the undertaking shall submit a formal application to the Commission. The application must be submitted in the form, adopted by the CPC with its decision n. 112/10.02.2009, must contain as a minimum the information, specified therein, and must be supported with the necessary evidence. All required declarations and other supporting documents must also be enclosed to the application form.</p> <p>As a minimum, the application shall comprise the following information, supported by evidence:</p> <p>a) Confession of involvement in the alleged cartel;</p> <p>b) The name, address and data on the registration of the undertaking submitting an application for immunity from fines, which is involved in the alleged cartel;</p> <p>c) The names and the position they are holding or have held, or the capacity in which the natural persons who has been involved in the cartel's activity on behalf of the undertaking;</p> <p>d) The name, address and data on the registration, if known, of the other undertakings involved in the alleged cartel;</p> <p>e) The names and the positions they are holding or have held, or the capacity, in which the natural persons who has been involved in the cartel's activity on behalf of other participants;</p> <p>f) Detailed description of the alleged cartel, including:</p> <ul style="list-style-type: none"> • its aims, activities, functioning and participants; • the nature of the alleged cartel conduct • the affected products and/or services; • the affected territory (-ies); • an assessment of the market volumes affected by the alleged cartel; • the cartel duration; • the dates, locations, nature of the cartel contact, content of the cartel contacts, persons participating in contacts between members of the alleged cartel ; • a detailed explanations on the evidence submitted in support of the application. <p>g) Evidence of the organisation and activity of the alleged cartel in the possession of the undertaking or under its control (and in particular any evidence contemporaneous to the period of the infringement committed);</p> <p>h) Information on all other past or possible future applications submitted to any other Competition Authority (within or outside the EU) in relation to the alleged cartel.</p>
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i) Declarations to certify that the conditions specified under point 8.3, point 11.4, point 14.2, point 20.2, point 20.3, point 21.2 (d)(e) of the Programme are fulfilled (i.e. the conditions related to the termination of the participation in the secret cartel, the non-destruction or falsification of evidence before filing an application, the non-disclosure of the contemplated participation in the Programme before filing an application, the non-destruction, concealment or falsification of evidence during the proceedings)

k) Declaration to certify that the condition specified under point 13 of the Programme is fulfilled in the cases of an application for immunity from fines submission (i.e. the condition for non-coercing the other undertakings to take part or to remain in the cartel).

The application may be submitted personally or by fax and shall be submitted via the contact persons announced on the Commission's website. Subject to the CPC discretionary assessment, made on a case-by-case basis, applications may be submitted also orally following the conditions, stipulated in the Rules.

The date and time of receipt of an application by the contact persons shall determine its place in the order of the submissions to the Commission for the respective case.

The applications shall be registered under their order of submission by the contact persons in a special register. Upon the request of the undertaking CPC shall acknowledge the receipt of the application by indication of the date and time of submission. This confirmation shall be made in writing by the CPC's contact persons.

After verifying that the information and evidence submitted with the application are sufficient to fulfil the conditions for immunity from fines specified in the LPC and in the Programme, the CPC Chairperson shall grant **conditional immunity from fines** to the undertaking by written order. The undertaking shall be notified in writing about the order granting conditional immunity from fines

Similarly, If during the preliminary examination of the application it has been established that the evidence submitted by the undertaking are of "significant importance to prove the infringement" within the meaning of the Programme and that the undertaking has fulfilled the other conditions for reduction of fines, the CPC Chairperson shall by written order grant the undertaking **conditional reduction of fines**. The undertaking shall be notified in writing of the order of the CPC Chairperson to grant conditional reduction of fines, reflecting the intention to apply reduction of fines in the final decision on the case. Such confirmation shall be delivered as early as possible but in any case not later than the date on which a statement of objection is notified to the parties.

The **final immunity from fines** shall be granted by **CPC with the final decision adopted by the Commission** at the end of the proceedings

The **final reduction of the fines and its amount** shall be determined by the **CPC in the final decision in the procedure**

The summary application shall contain the following information:

- 1 the name, address and data on the registration of the person, submitting the short form application for immunity from fines;
2. the other participants in the alleged cartel;
3. the affected products or services;

	<p>4. the affected territories;</p> <p>5. cartel duration;</p> <p>6. the nature of the alleged cartel conduct;</p> <p>7. the EU Member States, where it is possible to find the evidence;</p> <p>8. information on other past or possible future applications for immunity from fines of that undertaking, in respect of the alleged cartel.</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 above p. 6 / J.</p> <p>As pointed, following the preliminary assessment, confirming that the application of the undertaking (for either immunity from fines or reduction of fines) contains the necessary information and evidence and that the undertaking fulfils the conditions relevant for the immunity or the reduction of fines, a conditional immunity from fines or conditional reduction of fines are granted to the undertaking. This is notified to it in writing.</p> <p>The final immunity from fines or reduction of fines is granted to the undertaking at the end of the proceedings, with the final decision of the CPC on the case, following a full analysis of the evidence supplied and following the assessment of the fulfilment by the undertaking of all conditions, attached to the immunity from fines or the reduction of fines throughout the proceedings.</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>The Law on Protection of Competition – art. 101 and the Leniency Programme and the Rules for its application, adopted by the CPC on the basis of art. 101, paragraph 5 of the LPC.</p> <p>The conditional immunity from fines and the conditional reduction of the fines are granted by the Chairperson of the CPC with an order. The final immunity from fines or the final reduction of the fines are granted by the CPC with its final decision on the case.</p>
<p>M. Does your legislation have a marker system? If yes, please describe it.</p>	<p>Yes.</p> <p>The granting of a marker is provided for in p.14-17 of the Rules for the application of the Leniency Programme for the cases of immunity applications only.</p> <p>The marker is defined as a period of time, granted to the undertaking in order to complete the application for immunity from fines with the required information and evidence. During that period of time the position of the undertaking in the consecutive order of submission of information and evidence to the Commission relating to the implementation of the Programme for the specific case, shall be preserved. If before the expiration of the set period of time the undertaking submits all information and evidence required for immunity from fines, they will be deemed to have been submitted on the date when the period of time (the marker) was granted</p> <p>The granting of a marker is subject to the CPC discretionary assessment, made on a case-by-case basis.</p> <p>In order to be granted a marker, the undertaking is required to file to the CPC an application to this purpose, where it shall duly justify the reasons which make the granting of a period of time necessary and the goals that it intends to attain during that period of time. The</p>

	<p>Marker application must also contain a minimum information as follows:</p> <ul style="list-style-type: none"> • the name, address and data on its registration; • the reasons to apply for immunity from fines; • the participants in the alleged cartel; • the affected products or services; • the affected territories; • the duration of the alleged cartel; • the nature of the alleged cartel conduct; • the information on all its past or possible future applications for immunity from fines, in respect of the alleged cartel, to any other Competition Authority of EU Member State or the European Commission and/or other competition authorities outside the EU; • the reasons making it necessary to grant a period of time to complete the application.
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.	<p>The LPC, in art. 38, paragraph 3 provides that the identity of the immunity applicant, whose application has served as grounds for initiating the proceedings before the CPC, must be kept secret.</p> <p>The Rules for the application of the Leniency Programme further clarify (in p. 13) that this should happen until the Commission issues the statement of objections to the parties and provide for specific rules as regards the procedures for keeping the applicant's identity secret in case of filing a request to the Administrative Court - Sofia for an authorization to carry out inspections and during the proceedings before the CPC until the issuing of the statement of objections to the parties.</p>
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	<p>The law does not provide for a separate appeal of the order of the Chairperson refusing the granting of conditional immunity from fines or conditional reduction of fines.</p> <p>The final decision of the CPC on the case, which contains the reasoned refusal to grant an immunity from fines or a reduction of fines to certain undertaking is included, can be appealed by the parties to the proceedings before the Supreme Administrative Court within a term of 14 days, which starts as of their notification in accordance with the procedure laid down in the Code of Administrative Procedure.</p>
Q. Contact point where a leniency application can be lodged:	<p>Leniency application can be lodged in writing to the CPC to its premises via the Leniency contact persons</p> <p>at address: Sofia 1000, 18, Vitosha Blvd,</p>

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

	<p>or at the dedicated tel/fax n. +359 2 986 3153,</p> <p>or can be made orally, at the premises of the CPC.</p> <p>In all cases, applicants are advised to approach the Leniency contact persons of CPC in order to receive guidance on the conditions for application of the Leniency Policy.</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>Yes.</p> <p>Regarding the immunity applications, the following possibilities exist:</p> <ul style="list-style-type: none"> • If the initial analysis of the immunity application and the evidence, supplied with it shows, that the evidence submitted are not sufficient for the undertaking to obtain immunity from fines or if it has been established that immunity from fines is no longer available, the CPC Chairperson shall by written order reject the application for immunity from fines. The undertaking shall be notified in writing about the order rejecting the application for immunity from fines. The undertaking may in this case either withdraw the evidence it provided, or request the Commission to consider its application as application for reduction of fines. Withdrawal of the evidence provided by the undertaking with the application for immunity from fines shall not prevent the Commission from the opportunity to use its powers under Article 46 of LPC in order to obtain such evidence. • In the case where, after conditional immunity from fines has been granted, before the end of the administrative procedure it is established that the undertaking applying for immunity from fines took steps to coerce another undertaking to join or remain in the cartel or that it has not met all conditions for immunity from fines, the CPC Chairperson shall by written order withdraw the conditional immunity from fines. The undertaking shall be immediately notified in writing about the order withdrawing the conditional immunity from fines. • If the conditional immunity from fines granted has been withdrawn due to the fact that before the end of the procedure it has been established that the conditions for immunity from fines have not been fulfilled by the undertaking, it will not benefit from any other favourable treatment under the Programme for immunity from fines or reduction of the fines in the same proceedings. <p>Regarding the reduction of fines applications, the following possibilities exist:</p> <ul style="list-style-type: none"> • If during the preliminary examination of the application it has been established that the evidence submitted by the undertaking are not of "significant importance to prove the infringement" within the meaning of the Programme and/or that the undertaking has not fulfilled any of the other conditions for reduction of fines, the CPC Chairperson shall by written order establish that the undertaking has not met the conditions for reduction of fines. The undertaking shall be notified in writing of the order of the CPC Chairperson. Such notification shall be made as early as possible but in any case not later than the date on which a statement of objection is notified to the parties. • If it has been established that one or more conditions for reduction of fines have not been met, the undertaking will not benefit from any other favourable treatment under the Programme for immunity from fines or reduction of fines in the same proceedings. <p>For both cases, the final immunity from fines or reduction of</p>

	finances is granted by the Commission on Protection of Competition with its final decision on the case.
S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?	As such possibility is not prohibited by the Law, it is upon the discretion of the CPC to apply such approach on a case-by-case basis, as well as a matter of policy decision for promoting its Leniency Policy as means for fighting cartels.

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, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>Following art. 45 of the LPC, during the investigation of a case, the supervising member of the Commission and the case team, appointed according to Article 39, paragraph (2), shall have the right to:</p> <ol style="list-style-type: none"> 1. request information, material, written, digital and electronic evidence, irrespective of the media on which they have been stored. 2. take oral or written statements. The oral statements shall be recorded and signed by the person who has given the statement as well as by the case team on the proceedings.; 3. conduct inspections 4. entrust the conducting of expertise by external experts; 5.; request information or assistance by other national competition authorities of Member States of the European Union and by the European Commission <p>Following art 46 of the LPC, all natural persons and legal entities, including undertakings, associations of undertakings, state authorities and local government bodies, non-governmental organizations and the National Statistical Institute, shall be obliged to render assistance to the Commission in exercising its powers laid down in this Law as well as in Regulation (EC) No. 1/2003 and Regulation (EC) No. 139/2004</p> <p>The inspections (art. 50 – 52 of LPC) shall be conducted following an authorization by a judge from the Administrative Court-Sofia, which shall be issued upon the request of the Chairperson of the Commission.</p> <p>During the inspections the officials, appointed by an order of the Commission’s Chairperson, shall have the power to:</p> <ol style="list-style-type: none"> 1. enter any premises, means of transport and other locations used by the undertakings or associations of undertakings;
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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>2. examine all documents and records, related to the activity to the undertakings or associations of undertakings, irrespective of the medium on which they are stored;</p> <p>3. seize or obtain in paper, digital or electronic medium any copies of or extracts from documents and records, irrespective of the media on which they are stored or, where this is impossible, seize the originals, as well as any other material evidence;</p> <p>4. seize or obtain electronic, digital and forensic evidence, as well as traffic data, from all types of computer data media, computer systems and other information media as well as seize the devices for transmission of information;</p> <p>5. receive access to all types of information media, including servers, accessible by computer systems or other means, located in the inspected premises;</p> <p>6. seal for a certain period of time any premises, means of transport and other locations, used by the inspected undertakings or associations of undertakings, as well as commercial or accounting books or other information media;</p> <p>7. take oral statements of any representative or member of the management or staff of the undertakings or associations of undertakings, on circumstances, related to the subject matter and purpose of the inspection.</p> <p>During the inspections, the Commission officials shall be assisted by the police, in accordance with the powers conferred upon it by the Ministry of Interior Act.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>CPC has no explicitly attributed powers to conduct inspections in private premises or to search persons.</p> <p>The power to search motor vehicles during the inspections is described above.</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>Any document or evidence found during the inspection may be seized if they contain data raising well-founded doubts of other infringement under article 15, article 21 or article 24 of the LPC or under article 81 or article 82 of the Treaty establishing the European Community. After conclusion of the inspection they shall be immediately handed over to the Commission for adoption of a decision pursuant to article 38, paragraph (1), item 1.</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

A. Key rights of defence in cartel cases:

The parties have the right to :

- at their own discretion, during the investigation to submit to the Commission statements and all additional evidence (both written and oral), and to put forward to the Commission reasoned requirements for gathering additional evidence, including requests for conducting an expertise by external experts, which at their view will contribute to the clarification of the facts and the to the legal qualification of the case;
- receive the written ruling of the CPC as per art. 74 paragraph 1, p.3 of the LPC, with which the CPC submits the Statement of objections (SO) for an alleged infringement of the Law to the defendant(s);
- have access to any evidence, collected in the course of investigation with the exception of those containing production, trade or other secret, protected by law and with the exception of the internal documents of the Commission, including correspondence with the European Commission or with a national competition authority of a Member State of the European Union. The right to access to file starts as from the date of the notification of the SO to the parties (art. 74 par. 2 and art. 55 of LPC).
- have access to a specific piece of confidential information (evidence, containing production, trade or other secret, protected by law), in case such evidence is of significant importance for exercising their right of defence. To this purpose, the parties must lodge a substantiated claim thereof with the Commission , which shall issue a substantiated ruling, which shall be subject to appeal before the Supreme Administrative Court.
- submit their written objections to the submitted SO in a time period, specified in the ruling, but not shorter than 30 days (art. 74 par. 2 of LPC);
- be heard in an open sitting of the Commission before it takes decision on the merits of the case (art.76 of LPC). The open sitting shall be scheduled by an order of the Chairperson of the Commission for a day which shall not be earlier than 14 days after the deadline for submission of objections and observations on the submitted allegations for infringements
- be represented during the proceedings by an attorney or legal advisor (although it is not obligatory)
- receive the written reasoned decision, adopted by the Commission, on the merits of the case
- appeal the decisions of the Commission before the Supreme Administrative Court, unless otherwise stated by the LPC (appellation and cassation appeal)
- appeal the rulings of the CPC for which this is provided in the Law before the Supreme Administrative Court;
- the inspections of the undertakings or association of undertakings are to be conducted in the

	<p>presence of representatives of the undertaking or association of undertakings, any of its employees or any other person having the right to be present at the premises or means of transport or found to be there at the time of the inspection. The representatives of the undertakings or associations searched have the right to certify the copies of the seized documents, to sign the protocols certifying what evidence has been seized, which are drawn at the inspected premises, with full and precise list of the items seized and to receive a copy of said protocols.</p> <ul style="list-style-type: none"> • according to art.51 (6) of LPC, the rulings of the Administrative Court, authorizing the inspections, as well as any refusal to pass such rulings, may be appealed against by the CPC or the undertakings or associations of undertakings concerned in three-days period, as of the day the CPC and respectively, the undertaking or association of undertakings, are notified. The appeal shall not suspend the execution of the rulings.
<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 in the protection awarded to production, trade or other secrets, protected by law depending on the method of collection of evidence.</p> <p>No access shall be granted to internal documents of the Commission, including correspondence with the European Commission or with a national competition authority of a Member State of the European Union.</p> <p>When the information contains data representing classified information, the procedure laid down in the Protection of Classified Information Act shall apply.</p> <p>When the information contains personal data, the procedure laid down in the Personal Data Protection Act shall apply</p> <p>Any person, submitting information to the Commission in the course of the proceedings shall identify the materials that are claimed to contain production, trade or other secret protected by law, and which should be , therefore, be treated by the Commission as confidential. (art.55 paragraph 2 LPC). The person shall substantiate its claim and shall submit the same materials in a version in which all data considered to be confidential has been erased. Whenever the Commission considers that certain information is not confidential, it shall issue a ruling in this regard and inform the person of it. The ruling shall be subject to appeal before the Supreme Administrative Court.</p> <p>The materials, containing production, trade or other secrets might be disclosed in case they are important for the exercising the right of defence of the parties or are of significant importance to prove the alleged infringement. Said disclosure can be effected by the CPC only after issuing a substantiated ruling, which is subject to appeal before the Supreme Administrative Court. In the case the evidence is of significant importance for exercising the right of defence of a party to the proceedings, which wishes to get acquainted with it due to said reason, the party can lodge a substantiated claim thereof with the Commission and the Commission will issue a substantiated ruling, which is subject to appeal before the Supreme Administrative Court.</p> <p>Pursuant to art.55 under the LPC, with its Decision n. 161 / 19.02.2009 the CPC has adopted Procedural Rules regulating</p>

	<p>the access, use and storage of documents constituting production, trade or other secret protected by law.</p> <p>The LPC contains also a provision in its art. 49, paragraph 3, which stipulates that when there are sufficient grounds to assume that disclosure of the identity of any person, who has given statements or has provided data for an infringement under this Law may lead to significant adverse effects on his/her activity or on him/her as a person, the Commission shall take measures not to disclose his/her identity. To this purpose, the CPC with its Decision n. 113/10.02.2009 has adopted Internal Rules on classifying the identity of persons who have given statements or provided information relevant to infringements of the Law on Protection of Competition.</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>Articles 41 and 42 of the LPC provide that no proceedings shall be initiated by the CPC or the proceedings initiated shall be discontinued after the expiry of:</p> <ul style="list-style-type: none"> • three years for infringements of the provisions referring to requests for information or making of inspections; • five years for all other infringements; <p>The limitation period runs from the day the infringement is committed and in case of continuous infringement – from the date it is discontinued.</p> <p>The limitation periods shall be interrupted upon the initiation of proceedings to establish the infringement by the Commission or another national competition authority of a Member State of the European Union or by the European Commission.</p> <p>No limitation period shall run during the time proceedings are ongoing or until entry of the decision into force.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>There is no statutory or otherwise stipulated deadline for completion of the investigation or adoption of decision regarding infringements of prohibited agreements between undertakings, decisions of associations of undertakings or concerted practices between undertakings, prohibited by the Law on Protection of Competition and / or by art. 81 EC Treaty.</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 decisions of the Commission on Protection of Competition, unless otherwise provided for in the Law, shall be subject to appeal before the Supreme Administrative Court within fourteen days of their notification according to the procedure provided for in the Code of Administrative Procedure, and in respect of third parties - as of the date of their publication in the electronic register of the Commission.</p> <p>The decision of the CPC to initiate proceedings (ex-officio) is not subject to appeal.</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>For the infringements of Part III of the Law on Protection of Competition (Prohibited Agreements between undertakings, Decisions of associations of undertakings or Concerted practices between undertakings), as well as infringements of art. 81 of the Treaty establishing the European Community, the Commission on Protection of competition, on the grounds of art. 77 and art. 60 of LPC., may adopt the following decisions:</p> <ol style="list-style-type: none"> 1. establish the infringement committed and the infringer; 2. impose pecuniary sanctions, periodic sanctions and fines; 3. establish that no infringement of this Law has been committed, or that there are no grounds for taking actions for a committed infringement under Article 81 of the Treaty establishing the European Community; 4. order the termination of infringements, including by imposing the relevant behavioural and/or structural measures to restore competition; 5. withdraw the application of a block exemption decision to the specific case and specify a term to bring it into compliance with Article 17 or terminate it; 6. withdraw the application of an EU Regulation for block exemption from the prohibition of Article 81, paragraph (1) of the Treaty establishing the European Community to the specific case in case that the conditions under Article 29 of Regulation (EC) 1/2003 are present and specify a term to bring it into compliance with Article 81, paragraph (3) of the Treaty establishing the European Community or terminate it. <p>The CPC, on the grounds of art. 75, paragraph 2 of LPC, by a decision may also approve the commitments, proposed by the undertakings with the aim of terminating the conduct, in respect of which the proceedings were initiated. In such cases the Commission shall terminate the proceedings without establishing an infringement, concluding that there are no longer grounds for further proceedings. In its decision the Commission may prescribe the period within which the commitments shall be effective. The Commission shall not adopt commitment decisions in cases of serious infringements of the Law (for example: in cartel cases).</p>
<p>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</p>	<p>See above point 10 / A</p>

<p>C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>If, during an investigation, there is sufficient evidence of an infringement, in urgent cases where there is a risk of serious and irreparable damage to competition, the Commission on Protection of competition, on the grounds of art. 56 of LPC, at its own initiative or on request of the persons whose interests are affected or threatened by the infringement, may order the immediate termination of the practice by the undertaking or the association of undertakings, or impose other necessary measures, taking into account the objectives of this Law. The Commission may not impose measures which are of the competence of other authorities and are stipulated in other Acts.</p> <p>The interim measures may be ordered at any time during the course of the proceedings. The term of effect of the interim measures shall be up to 3 months as of the time they are ordered. If necessary, the time limit may be extended. The interim measures may have effect until the adoption of the Commission's decision on the merits.</p> <p>The Commission shall impose the interim measures with a reasoned ruling stating the objectives of the imposed measure and giving the grounds for its urgency. The ruling shall be subject to appeal before the Supreme Administrative Court within 7 days of their notification in accordance with the procedure laid down in the Code of Administrative Procedure. Appeal shall not suspend the application of the interim measure.</p> <p>The Commission may revoke the interim measure also before the expiry of the term of its effect where the illegitimate practice is terminated and the damage to competition is prevented.</p>
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11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

<p>A. Grounds for the imposition of procedural sanctions / fines:</p>	<p>Art. 100, par 2, par. 3, par.4,par.5 and par.6 of the LPC Art.102, par.2 and 3 of the LPC The Methodology of setting fines under the Law on Protection of Competition, adopted by the CPC with its Decision n. 71 / 03.02.2009</p>
<p>B. Type and nature of the</p>	<p>Administrative pecuniary sanctions imposed on undertakings</p>

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

⁸ Only for agencies which answered “yes” to question 2.C. above

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.

<p>sanction (civil, administrative, criminal, combined):</p>	<p>and associations of undertakings.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>Pecuniary sanctions of 1% of their total turnover in the preceding financial year shall be imposed on the grounds of art. 100, par. 2 of LPC on undertakings or associations of undertakings which:</p> <ul style="list-style-type: none"> • fail to comply with the obligations to provide assistance to the CPC under Article 46; • damage the integrity or destroy the seals which have been placed during the inspections under Article 50. • delay submission of information or furnish information which is incomplete, inaccurate, untrue or misleading breaching the obligations under Article 47, par. (4) and (5); • fail to comply with the obligations under Art. 67 (to duly inform the Commission of the implementation of a decision, in the event it stipulates certain conditions or obligations.). <p>According to art. 100, paragraph 3 of the LPC, the decision by which the pecuniary sanction for failure to comply with the obligation for assistance or for delayed submission of information or furnishing information which is incomplete, inaccurate, untrue or misleading is imposed, shall specify the period within which the relevant party shall fulfil its assistance obligation or furnish complete, accurate, true and not misleading information</p> <p>On the grounds of art. 100, paragraph 5 of LPC, the Commission shall impose periodic pecuniary sanctions on an undertaking or association of undertakings to the amount of up to 5 percent of the average daily turnover in the preceding financial year for each day of failure to comply with:</p> <ol style="list-style-type: none"> 1. a decision of the Commission ordering the termination of an infringement, including by imposing the appropriate behavioural or structural remedies as laid down in Article 77, paragraph (1), item 4 or Article 90; 2. a ruling of the Commission, imposing interim measures under Article 56; 3. a decision of the Commission to approve commitments undertaken pursuant to Article 75, paragraph (2) or under Article 88, paragraph (1), item 2. <p>On the grounds of art. 100, paragraph 6 of LPC, periodic pecuniary sanctions shall be imposed on undertakings or associations of undertaking to the amount of up to one percent of the average daily turnover for the preceding financial year for each day of for each day of:</p> <ol style="list-style-type: none"> 1. failure to comply with the obligation for assistance under Article 46 after expiry of the period specified in the decision under paragraph (3); 2. failure to furnish complete, accurate, true and not misleading information under Article 47, paragraph (5), after the expiry of the period specified in the decision under paragraph

	<p>(3)</p> <p>3. impeding an inspection under Article 50.</p> <p>The periodic sanctions under article 100, paragraphs 5 and 6 of LPC shall be imposed for each day until the unlawful action or omission is terminated.</p>
<p>D. Criteria for determining the sanction / fine:</p>	<p>The LPC, art. 100, paragraph 4 sets the general principle that in determining the amount of the pecuniary sanction the gravity and duration of the infringement shall be taken into account as well as the circumstances mitigating or aggravating the liability. The exact amount of the sanction shall be determined in compliance with a methodology adopted by the Commission published in the web-page of the Commission.</p> <p>The following criteria for determining the exact amount of the sanctions for the procedural breaches are set in the Methodology for setting fines under the Law on protection of competition:</p> <ul style="list-style-type: none"> • The pecuniary sanction for the infringements under Art.100, para.2 of LPC, shall be set by CPC taking account of the nature, significance and the necessity of information for the investigation, the gravity of the infringement made and mitigating and aggravating circumstances. • For the infringements under Art.100, para.5 CPC shall impose a pecuniary sanction taking account of the gravity of the infringement, mitigating and aggravating circumstances. <p>For the infringements under Art.100, para.6 CPC shall impose a periodic pecuniary sanction, taking into account the nature, significance and necessity of information for the investigation, the gravity of the infringement, and mitigating and aggravating circumstances.</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>See above point 11/C</p>

12. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed?</p>	<p>Administrative pecuniary sanctions, imposed on undertakings or associations of undertakings for commitment of infringement of LPC and/or art. 81 TEC.</p>
<p>B. Criteria for determining the sanction / fine:</p>	<p>Art. 100, paragraph 1 of LPC provides that the Commission shall impose a pecuniary sanction in an amount not exceeding 10% of the total turnover in the preceding financial year on an undertaking or an association of undertakings for infringement under Article 15 of the LPC or Article 81 of the</p>

Treaty establishing the European Community, as well as for failure to comply with decisions or rulings of the Commission.

The LPC, art. 100, paragraph 4 sets the **general principle** that in determining the amount of the pecuniary sanction **the gravity and duration of the infringement shall be taken into account as well as the circumstances mitigating or aggravating the liability**. The exact amount of the sanction shall be determined in compliance with a methodology adopted by the Commission published in the web-page of the Commission.

Following the Methodology for setting fines under the LPC, the CPC sets the pecuniary sanctions for the committed infringements of the Chapter III of LPC (prohibited agreements, decisions of associations and concerted practices) and/or art. 81 TEC using a two step methodology.

This includes the individualization of the basic amount of the sanction which is consequently adjusted upwards or downwards in case of existing aggravating or mitigating circumstances.

The **basic amount of the sanction** is based **on the value of sales**, made by the undertaking during the last financial year of its participation in the infringement.

For calculating the value of the sales CPC takes into account the net revenues, generated by the undertaking by selling the relevant products (goods, services or production), directly or indirectly affected or which might have been affected by the infringement.

For the **undertakings** the CPC shall set **the basic amount of the sanction as a percentage of the value of sales, depending on the gravity of the infringement gravity as follows:**

- for **light infringement** – up to 5 % of the value of sales;
- for **not very grave infringements** – up to 8 % of the value of sales;
- for **grave infringements** – up to 10 % of the value of sales.

For **associations of undertakings**, which do not generate sales revenues, CPC shall set the **basic amount of the sanction, by reference to the infringement gravity, as follows:**

- for **light infringement** – the basic amount of the sanction is up to BGN 50 000;
- for **not very grave infringements** – the basic amount of the sanction is up to NBG 100,000;
- for **grave infringements** – the basic amount of the sanction is up to BGN150 000.

The initial amount of the sanction is determined according to the gravity and the duration of the infringement.

In assessing **the gravity** of a given infringement, account is taken of all the relevant circumstances for the individual case. Based on this initial criterion the infringements can be classified in three separate groups: light, not very grave and grave ones.

- The **light infringements** are the cases of vertical restrictions of competition which cover a small geographic region or affect limited range of undertakings or consumers.
- **Not very grave infringements** are the cases of

horizontal restrictions of competition, which do not fall under “cartels” notion, vertical restriction of competition.

- **The grave infringements** category covers those infringements, which render or might render significant and persistent impact on the competitive environment share of the national market. **Such are the cartels.**

The **duration of the infringement** shall be assessed by the CPC as the basic amount of the sanction shall be multiplied by a duration factor:

- for infringements lasting less than one year – the duration factor shall be equal to 1;

- for infringements lasting over one year – the duration factor shall be equal to the number of years of participation of the undertaking in the infringement, whereas periods of participation of less than six months will be counted by the CPC as half a year, while periods longer than six months but shorter than a year will be counted as one full year.

The basic sanction can be increased or reduced by 10% for each established aggravating or mitigating circumstances.

The **aggravating circumstances** are:

- repeating the same or similar infringement, established by the CPC or other national competition authority of a member state of EC or the European Commission;

- refusal to cooperate with or obstruction of CPC in carrying out its investigation or resistance to the investigation;

- the undertaking has served the role of initiator, leader or instigator in performing the infringement or exercised coercion to make other undertakings participate in the infringement;

- offering or giving "indemnification" or "compensation" to other enterprises for their involvement in the infringement;

- affecting the competition in related or neighbouring markets; and

- other, depending on the specific case

The **mitigating circumstances** are :

- terminating the infringement as soon as the CPC intervened.. This circumstance will not apply in cases of cartels;

- passive behaviour of the undertaking or the association, performance of a rather limited role in the infringement or adopting the strategy of “follow the leader”;

- rendering effective cooperation with CPC outside the scope of the Leniency Program and its obligation to cooperate under LPC;

- undertaking due measures for reducing the unfavourable consequences of the infringement;

- other, depending on the specific case.

The sanction on an undertaking or association of undertakings, having committed an infringement under Art.81 of the Treaty, shall be set by CPC with an increase for deterrence of up to 25% of the basic amount.

	<p>The pecuniary sanctions imposed for non-compliance with a CPC decision or ruling pursuant to Art.100, para 1(7) of LPC are set as follows:</p> <ul style="list-style-type: none"> • For non-compliance with a decision of CPC, which establishes infringement under LPC and has imposed a pecuniary sanction, the sanction is set to double the amount of the initially imposed one, where it should not exceed 10% of the total turnover of the undertaking in the preceding financial year. <p>Upon non-compliance with other decisions or rulings of the CPC the non-compliance is defined as a grave infringement and the infringer is being imposed a pecuniary sanction, set under the procedure of the current methodology in accordance with the rules, governing the relevant type of grave infringements.</p>
C. Are there maximum and / or minimum sanctions / fines?	<p>The amounts of the fines are set in the above point 12/B.</p> <p>The legal maximum of the sanction is set by art. 100, paragraph 1 of LPC at 10% of the total turnover of the undertaking in the preceding financial year.</p> <p>Provided the amount of the sanction, calculated as per the Methodology, exceeds the maximum legal amount of 10% of the total turnover of the undertaking in the preceding financial year, then the sanction shall be reduced to the legal maximum.</p>
D. Guideline(s) on calculation of fines:	<p>Methodology for setting fines under the Law on Protection of Competition pursuant to art.100 (4) of LPC- adopted by the CPC with its Decision n. 71/03.02.2009</p> <p>Available on the home page in Bulgarian http://www.cpc.bg/system/storage/reshenie%20Metodika%20za%20sankciite.doc and in English http://www.cpc.bg/system/storage/Fine%20Setting%20Methodology%20final.doc</p>
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	Yes

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	The decisions of CPC, including the decisions stating infringements of the prohibition of cartels, are subject to appeal in respect of their conformity with the law by the parties to the proceedings or by any third person that has legal interest before the Supreme Administrative Court within fourteen days
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<p>yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>of their notification (including appellate and cassation appeal).</p> <p>According to art.146 of the Administrative Procedure Code, the grounds for appellate appeal (contestation) of administrative acts shall be:</p> <ol style="list-style-type: none"> 1. lack of competence [of the authority that adopted the act]; 2. lack of conformity [of the act] with the established form; 3. essential breach of the administrative and procedural rules [during the procedure for adoption of the act]; 4. contradictions [of the act] to the material legal provisions; 5. non-compliance [of the act] with the purpose of the law. <p>According to art. 208 of the Administrative Procedure Code, the first instance court decision entirely or in its separate parts shall be subject to cassation proceedings. Following art. 209 of the Administrative Procedure Code, a cassation complaint or a cassation protest shall be filed, when the decision is:</p> <ol style="list-style-type: none"> 1. invalid; 2. inadmissible; 3. incorrect because of a breach of the material law, substantial breach of the court procedural rules or insufficiency
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</p>	<p>Before the Supreme Administrative Court in Sofia – see p. 13 / A above</p>