



International
Competition
Network

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

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

**Russian Federation
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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:	Federal Law № 135-FZ of July 26, 2006 «On Protection of Competition» (non-official translation) http://fas.gov.ru/english/legislation/26940.shtml in English. Federal Law No. 160-FZ of 17th July, 2009 «On Introducing Amendments to the Code of the Russian Federation on Administrative Violations » http://fas.gov.ru/english/legislation/26938.shtml in English. Federal Law No. 216 of 29th July, 2009 "On Introducing Amendments to Article 178 of the Criminal Code of the Russian Federation" http://fas.gov.ru/english/legislation/26936.shtml in English
B. Implementing regulation(s) (if any):	Methodical recommendations for calculation of fines imposed on legal entities for administrative violations (an internal document)
C. Interpretative guideline(s) (if any):	Findings of the Plenary Session of the Supreme Arbitration Court of the Russian Federation (non-official translation) (July 2008) http://www.fas.gov.ru/english/legislation/19802.shtml in English
D. Other relevant materials (if any):	The FAS Russia is about to launch a new project www.anticartel.ru devoted to anti-cartel activity.

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 Russian competition law doesn't define the term "cartel", instead the terms "concerted practices" and "agreements restricting competition" are used.</p> <p>agreement - is a written understanding contained in a document or several documents, as well as verbal understanding;</p> <p>indicators of restriction of competition - are reduction in the number of economic entities, which are not included in one group of persons, in the goods market, increase or decrease in commodity price which is not connected with the relevant changes of other general conditions of commodity circulation in the goods market, refusal of economic entities, which are not included in one group of persons, from independent actions in the goods market, defining general conditions of commodity circulation in the goods market by agreement between economic entities or in accordance with instructions of another person which are obligatory for fulfillment by them, or as the result of coordination of actions in the goods market by the economic entities not included in one group of persons as well as other circumstances creating opportunity for an economic entity or several economic entities to impact unilaterally on the general conditions of circulation of commodity in the goods market;</p> <p>vertical agreement - is an agreement between economic entities which are not competing with each other, one of which purchases commodity or is its potential purchaser and the other provides commodity or is its potential sellers.</p> <p>Concerted practices are the actions of economic entities in the goods market that meet both the following conditions:</p> <ol style="list-style-type: none"> 1) the result of such actions meets the interest of each mentioned economic entity only on the condition that their actions are known to each of them in advance; 2) the actions of each mentioned economic entity are caused by the other economic entities' actions and are not the consequences of the circumstances equally influencing upon all economic entities on the relevant goods market. <p>Such circumstances, in particular, can include change of the regulated tariffs, change in the prices for raw material used for the commodity production, change in the prices of the commodity in the world commodity markets, significant change in commodity demand within the period not less than a year or within the period of existence of the relevant commodity market if it exists for less than a year.</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market</p>	<p>The legislation does not clearly distinguish hard-core cartels and other types of cartels.</p> <p>However all four types of hard-core cartels (price-fixing, market sharing, bid rigging and output restriction) are included in the list of prohibited activities.</p>

<p>sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>The other types of restricting activities include:</p> <ul style="list-style-type: none"> - refusal to conclude contracts - imposing contractual terms on a counteragent, which are disadvantageous for the latter or are not connected with the subject of the agreement - unjustified establishment of different prices (tariffs) for the same goods; - creation of barriers to entry the market; - establishment of conditions for the membership in professional and other associations. <p>Differentiation between them is made in the formula of calculating the respective fines for such violations.</p>
<p>C. Scope of the prohibition of hardcore cartels:</p>	<p>Hardcore cartels are prohibited per se.</p> <p>There are no exemptions for hard core cartels.</p> <p>Other restricting activity can be exempted provided it results in</p> <ol style="list-style-type: none"> 1) perfection of production, sale of goods or stimulation of technical, economic progress or rising competitive capacity of the Russian goods in the world market 2) obtaining by consumers of benefits (advantages) which are proportionate to the benefits (advantages) obtained by the economic entities in the result of actions (lack of action), agreements and concerted practices, transactions, other actions. <p>The Government of the Russian Federation has the right to determine the cases of permissibility of agreements and concerted practices meeting these conditions</p>
<p>D. Is participation in a hardcore cartel illegal per se?</p>	<p>Participation in a hardcore cartel is illegal per se and entails administrative and criminal liability.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>Participation in hardcore cartel is an administrative offence, provided it meets certain terms it can be admitted a criminal one.</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels:</p>	<p>The Federal Antimonopoly Service of the Russian Federation.</p>
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¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

B. Contact details of the agency:	11, Sadovaya Kudrinskaya, Moscow, Russia. Phone: +7(495) 254-5643 Fax: +7(495) 254-7521 E-mail: international@fas.gov.ru www.fas.gov.ru Available languages of the website are Russian and English.
C. Information point for potential complainants:	http://fas.gov.ru/cartel/index.shtml
D. Contact point where complaints can be lodged:	Mr. Alexandre Kinev, Head of the Anti-Cartel Department of the FAS Russia (Russian-speaking) tel: 8 (916) 686-50-32 e-mail: kartel@fas.gov.ru
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	Ministry of Internal Affairs of the Russian Federation: - search - initiation of criminal cases - force support General Prosecutor's Office of the Russian Federation can initiate state prosecution if there are signs of a criminal act committed by individuals or legal persons

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:	
B. Contact details of the agency:	
C. Contact point for questions and consultations:	
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	
E. What is the role of the	

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

investigating agency if cartel cases belong under criminal proceedings?	
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5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases:	<ul style="list-style-type: none"> - receipt of relevant information from state and local authorities; - application of the legal or private person (including leniency application) - detection of violation by the FAS Russia - reports of mass media
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	<p>If applying for the leniency it is possible to make a complaint by phone (see 3D)</p> <p>Application submitted by post should be done in free form in Russian and should follow provisions of the Administrative Regulation on execution of state function on initiation and consideration of cases on violation of competition legislation of the Russian Federation that was adopted by the FAS Russia Order №447 of 25.12.2007.</p> <p>http://fas.gov.ru/reform/regulations/16538.shtml in Russian</p>
C. Legal requirements for lodging a complaint against a cartel:	Every complaint is to be considered.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	See 5C
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	Yes.
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	Yes. Not more than one month.

6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	The Russian Leniency program is formulated in the Code of the Russian Federation on Administrative violations (Article 14.32) as a "relief from administrative liability".
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Only the first applicant receives full immunity.
C. Who is eligible for full leniency?	The first applicant is eligible for full immunity provided: <ul style="list-style-type: none"> - at the time of the person filing an application, an antimonopoly body did not have relevant information and documents about the committed administrative offence; - the person refused to participate or further participate in the agreements or to exercise or further exercise concerted practices; - the presented information and documents are sufficient to establish the event of an administrative violation.
D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation? In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?	Yes. See 6C.
E. Who can be a beneficiary of the leniency program (individual / businesses)?	Individual
F. What are the conditions of availability of full	See 6C.

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.

leniency:	
G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):	Not applicable
H. Obligations for the beneficiary after the leniency application has been accepted:	Obligations for the beneficiary (after the relief from administrative liability has been accepted by the Commission) imply that he is forbidden to get engaged in concerted practice or collusions again.
I. Are there formal requirements to make a leniency application?	See 5B.
J. Are there distinct procedural steps within the leniency program?	No.
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?	The applicant receives a notice of receipt when applying for a relief from administrative liability.
L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?	<p>The legal basis for the power to agree to grant leniency is stated in Notes to Article 14.32 of the Federal Law "On Introducing Amendments to the Code of the Russian Federation on Administrative Violations and some Legislative Acts of the Russian Federation".</p> <p>Link: http://fas.gov.ru/english/legislation/26938.shtml in English</p> <p>The relief from administrative liability is granted on the basis of a receipt signed by FAS Russia's officials who are authorized to grant such receipts.</p> <p>Commission on Turnover Fines decides about relief from administrative liability.</p>
M. Does your legislation have a marker system? If yes, please describe it.	No. Nowadays following amendments to the competition legislation (the «Second Antimonopoly Package») some draft regulations are being prepared.
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,	Yes.

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.

please elaborate.	
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	Such a possibility is not provided for.
Q. Contact point where a leniency application can be lodged:	Mr. Alexander Kinev, Head of the Anti-Cartel Department of the FAS Russia (Russian-speaking) 11, Sadovaya Kudrinskaya str., 123995, D-242, GSP-5, Moscow, Russia. tel: 8 (916) 686-50-32 e-mail: kartel@fas.gov.ru
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?	Theoretically there is a possibility of leniency being revoked, however this has never been applied in practice so far. If the persons fails meet the conditions mentioned in 6C, then there is a possibility to revoke the leniency.
S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?	No.

7. Investigative powers of the enforcing institution(s)⁵

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	The FAS Russia has powers to take the following investigative measures: - obtain on demand documents, explanations in written or verbal form and information (including information constituting commercial, official, other legally protected secret) - request information from private and legal persons, - carry out electronic or computer searches of information, - carry out scheduled and unscheduled on-site inspections of legal entities and state authorities (unplanned are almost equal to dawn raids with minor differences stated in Article 25(1) of the Law on Protection of Competition; planned ones are published in a special list prior to their conduction) - examine territories, premises (except the dwelling of the
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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>inspected person), documents and objects of the inspected person.</p> <p>These measures do not require a court warrant.</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>No. The antimonopoly body, carrying out the inspection, can only examine territories, premises (except the dwelling of the inspected person), documents and objects of the inspected person.</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>All evidence collected under the antimonopoly legislation can be used in any case</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No</p>

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<p>From the moment of initiating the cartel case persons alleged to have participated in the cartel have the right to familiarize themselves with the materials of the case, to make abstracts from them, to give evidence and to familiarize themselves with the evidence, to put questions to the other Participants, to enter petitions, to give written and oral explanations to the Commission of the FAS Russia, to present their arguments on all questions arising in the course of examination of the case, to familiarize themselves with the petitions entered by the other persons, to object to the other Participants' of the case petitions, arguments.</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</p>	<p>There are two methods of obtaining information by an antimonopoly body:</p> <ul style="list-style-type: none"> - requests of information - examination of territories, premises (except the dwelling of the inspected person), documents and objects of the inspected person. <p>In both cases the antimonopoly body protects business</p>

informal co-operation?	secrets.
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9. Limitation periods and deadlines

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?	Limitation period from the date of termination of infringement by which the investigation must begin is three years.
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?	A cartel case is examined by the Commission within three months period from the date of issuing the order to initiate proceedings. In some cases involving a necessity of getting more information by the antimonopoly body the mentioned period may be prolonged by the Commission but not longer than for six months.
C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?	Decisions of the antimonopoly body can be appealed within three months from the date when the decision was adopted. The appeal to a court of law or an arbitration court suspends the fulfillment of the determination issued by the antimonopoly body for the period of its examination in a court of law until the court's ruling comes into legal force.

10. Types of decisions

A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.	The following types of decisions can be made in cartel cases: <ul style="list-style-type: none"> - dismissal of the case - finding of an infringement - issuing determination and a list of obligatory actions, included in the determination - imposition of fines - taking other measures for ceasing violation of antimonopoly legislation and (or) reverting its consequences, ensuring competition (including such measures as appeal to court, documents' transfer to the law machinery, recommendations on the actions aimed at development and ensuring of the conditions for competition given to the authority bodies and bodies of local self-government by the antimonopoly body).
B. Please list which types	See response to A.

<p>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>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>The antimonopoly body can issue interim instructions to economic entities before taking final decision to terminate (suspend) an action that is considered as a possible infringement. This instruction is given by the Head of Commission on consideration of the case.</p>

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

<p>A. Grounds for the imposition of procedural sanctions / fines:</p>	<p>Non-fulfilment of legal decision and determination of the federal antimonopoly body are the reasons to impose procedural sanctions.</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined):</p>	<p>Administrative.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>Officials (CEOs and public servants) and legal entities.</p>
<p>D. Criteria for determining the sanction / fine:</p>	<p>Sanctions are imposed under the provision 19.5 of the Code of the Russian Federation on Administrative Violations.</p>
<p>E. Are there maximum and / or minimum sanctions /</p>	<p>Yes. Fine upon officials from 18,000 to 20,000 Rubles, for legal entities - from 300,000 to 500,000 Rubles.</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.

fines?	
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12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be imposed?	<p>There are three types of sanctions: civil (can be imposed on officials and legal entities), administrative (imposed on officials and legal entities) and criminal (imposed on officials only).</p> <p>Administrative ones include: administrative fine and disqualification;</p> <p>Criminal ones include:</p> <ul style="list-style-type: none"> - fine with or without depriving of the right to hold certain positions or be involved in certain activities for some time ; - imprisonment up to 7 years, with or without depriving of the right to hold certain positions or be involved in certain activities for some time.
B. Criteria for determining the sanction / fine:	<p>The sanction is determined by the Methodical recommendations for calculation of fines imposed on legal entities for administrative violations according to the coefficient of gravity.</p> <p>Aggravating circumstances for determining sanction include damage inflicted to citizens, organizations or the state; gaining income on a large -scale; repeatedness, abusing person's position, liquidating or damaging somebody else's property, actions committed with violence or threat of violence</p>
C. Are there maximum and / or minimum sanctions / fines?	<p>Yes. Minimum fine is 20,000 Rubles (for officials) and one hundredth of the proceeds gained by the violator from selling goods (for legal entities). Maximum fine for both is 1,000,000 Rubles. Maximum imprisonment for officials is 7 years.</p>
D. Guideline(s) on calculation of fines:	<p>Guideline's name is the Methodical recommendations for calculation of fines imposed on legal entities for administrative violations. This is an internal document and hasn't been published.</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?	<p>Appeal of decisions or determinations of the antimonopoly body to a court of law or an arbitration court suspends the fulfillment of the determination issued by the antimonopoly body for the period of its examination in a court of law until the court's ruling comes into legal force</p>

13. Possibilities of appeal

A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	See response to 9 C. Grounds of appeal are questions of fact, law or procedure.
B. Before which court or agency should such a challenge be made?	Before a court of law or an arbitration court.