



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

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

FINLAND

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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>The Competition Act (No 948/2011)</p> <p>http://www.kkv.fi/en/facts-and-advice/competition-affairs/legislation-and-guidelines/competition-act/</p> <p>(in Finnish, Swedish, English)</p>
B. Implementing regulation(s) (if any):	<p>Act on the Finnish Competition and Consumer Authority (661/2012)</p> <p>http://www.kkv.fi/en/facts-and-advice/competition-affairs/legislation-and-guidelines/act-on-the-finnish-competition-and-consumer-authority/</p> <p>(in Finnish, Swedish, English)</p>
C. Interpretative guideline(s) (if any):	<p>FCCA Guidelines on the immunity from and reduction of penalty payments in Cartel Cases.</p> <p>https://www.kkv.fi/globalassets/kkv-suomi/julkaisut/suuntaviivat/guidelines-2016-leniency.pdf</p> <p>(in Finnish, Swedish, English)</p> <p>FCA Guidelines on the Assessment of the amount of the Fine</p>

	<p>http://www.kkv.fi/globalassets/kkv-suomi/julkaisut/suuntaviivat/fi/suuntaviivat-3-2011-seuraamusmaksu.pdf</p> <p>(in Finnish and Swedish)</p> <p>FCA Guidelines on Prioritisation in the handling of competition restriction cases</p> <p>http://www.kkv.fi/globalassets/kkv-suomi/julkaisut/suuntaviivat/fi/suuntaviivat-4-2011-priorisointi.pdf</p> <p>(in Finnish and Swedish)</p>
D. Other relevant materials (if any):	Not applicable.

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>Agreements between undertakings, decisions by associations of undertakings, and concerted practices by undertakings which have as their object the significant prevention, restriction or distortion of competition or which result in a significant prevention, restriction or distortion of competition. (Section 5 of the Competition Act)</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 Competition Act includes no express distinction, but contains a list of agreements, decisions or practices which are, in particular, prohibited. These are agreements, decisions or practices which:</p> <ol style="list-style-type: none"> 1. directly or indirectly fix purchase or selling prices or any other trading conditions; 2. limit or control production, markets, technical development, or investment; 3. share markets or sources of supply; 4. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or 5. make the conclusion of a contract subject to acceptance by the other party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such a contract.
<p>C. Scope of the prohibition of hardcore cartels:</p>	

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>[including any exceptions, exclusions and defences e.g. for particular industries or sectors.]</p>	<p>No specific exceptions exist. However, Section 6 (below) of the Competition Act provides for a general exception to the prohibition of horizontal agreements, provided the efficiencies of the agreements outweigh their negative effects. In practice, the exception will not be applicable to hardcore cartels.</p> <p>Section 6 Exemption The prohibition of Section 5 does not, however, apply to any agreement between undertakings, any decision by associations of undertakings, or any concerted practice by undertakings, or any category of agreements, decisions or concerted practices, which:</p> <ol style="list-style-type: none"> 1. contributes to improving the production or distribution of goods or to promoting technical or economic progress; 2. allows consumers a fair share of the resulting benefit; 3. does not impose on the undertakings concerned restraints which are not indispensable to the attainment of these objectives; and 4. does not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question. <p>According to Section 32 of the Competition Act, the Finnish Competition and Consumer Authority may prioritise its investigations and thus allocate its resources towards the most harmful competition restrictions. In general, hardcore cartels fall within the category of harmful competition restrictions and are, in principle, always prohibited and taken action upon.</p> <p>Section 32 Prioritisation and leaving a case uninvestigated (1) The Finnish Competition and Consumer Authority shall prioritise its tasks. (2) The Finnish Competition and Consumer Authority shall not investigate a case if:</p> <ol style="list-style-type: none"> 1. it cannot be deemed likely that there exists a restriction of competition prohibited by Sections 5 or 7, or Articles 101 or 102 of the Treaty on the Functioning of the European Union; 2. competition in the relevant market may be considered functional as a whole, irrespective of the suspected restriction; 3. the complaint in the matter is manifestly unjustified; 4. it is unlikely that the business practice or organisational structure shall have major impacts on the conditions of sound and effective economic competition. <p>(3) The decision to not to investigate shall be taken without delay.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>?</p>	<p>Yes.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>It is an administrative offence.</p>

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	The Finnish Competition and Consumer Authority (FCCA)
B. Contact details of the agency:	The Finnish Competition and Consumer Authority Siltasaarekatu 12 A PO Box 5 FIN-00531 Helsinki Tel. + 358 29505 3000 http://www.kkv.fi (in Finnish, Swedish and English) e-mail: kirjaamo@kkv.fi https://www.kkv.fi/en/facts-and-advice/competition-affairs/toimintaohjeet/leave-cartel/ (incl. link for sending confidential e-mail messages)
C. Information point for potential complainants:	Mr Antti Norkela Head of Cartel Detection, Enforcement 1 Tel. + 358 29505 3345 e-mail: antti.norkela@kkv.fi
D. Contact point where complaints can be lodged:	Complaints can be lodged by hand, by mail or by e-mail. Contact information included in point 3B above.
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	Yes. The Regional State Administrative Agencies may assist the FCCA e.g. in investigating competition restrictions and conducting inspections.

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:	The Finnish Competition and Consumer Authority: - orders termination of competition infringement ("cease-and-desist orders") - obligations to deliver on non-discriminatory terms - interim measures
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² Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	<ul style="list-style-type: none"> - decisions not to take action (“non action decisions”) - decisions on immunity from competition infringement fine - decisions accepting commitments <p>The Market Court:</p> <ul style="list-style-type: none"> - imposition of competition infringement fine - decisions on reduction of competition infringement fine
B. Contact details of the agency:	<p>The Finnish Competition and Consumer Authority, please see point 3B above.</p> <p>The Market Court Radanrakentajantie 5, 00520 Helsinki Finland tel. +358-(0)29 56 43300 fax. +358-(0)29 56 43314 markkinaoikeus@oikeus.fi http://www.markkinaoikeus.fi/ (in Finnish, Swedish, English)</p>
C. Contact point for questions and consultations:	See point 3B above
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	<p>The FCCA investigates the cartel case and conducts, if necessary, an inspection in the business premises of the undertaking (Section 35 of the Competition Act) and/or other premises of the undertaking (Section 36 of the Competition Act). If the cartel conduct has not been terminated, the FCCA issues a decision ordering the cartel members to terminate their illegal conduct. Furthermore, the FCCA makes a proposal to the Market Court for the imposition of a competition infringement fine for the cartel conduct.</p>
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	Not applicable.

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	In general, investigations are initiated on the basis of a complaint, a leniency application or ex officio.
B. Are complaints required to be made in a specific	No formal criteria are required for lodging a complaint but the complaint should ideally contain at least the following facts:

<p>form (e.g. by phone, in writing, on a form, etc.)?</p>	<ul style="list-style-type: none"> • contact information of the complainant • information about the market that the alleged competition restriction concerns (what is the product or service at issue and how could the relevant product and geographical markets be defined) • information about how competition is restricted and who is responsible for the restriction (parties to the restriction) • information or assessment of who will suffer as a result of the competition restriction and what is the harm caused by the restriction • information about the market position of the parties to the competition restriction and the ones suffering from the restriction as well as their significance in the market (e.g. their market shares) • copies of documents or other material, which in the opinion of the complainant serves as proof of the existence of the restriction, its harmfulness etc.
<p>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</p>	<p>There are no specific legal requirements for lodging a complaint, i.e. anyone who has information about an alleged cartel may lodge a complaint. Nevertheless, only a person whose rights, interests or obligations are affected by the conduct which might violate the Competition Act will be considered as a complainant.</p>
<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>	<p>According to Section 32 of the Competition Act, the FCCA shall prioritise its tasks and thus allocate its resources in a way it sees appropriate e.g. to investigate the most harmful competition restrictions. However, the FCCA shall not investigate a case if:</p> <ol style="list-style-type: none"> 1. it cannot be deemed likely that there exists a restriction of competition prohibited by Sections 5 or 7, or Articles 101 or 102 of the Treaty on the Functioning of the European Union; 2. competition in the relevant market may be considered functional as a whole, irrespective of the suspected restriction; 3. the complaint in the matter is manifestly unjustified; 4. it is unlikely that the business practice or organisational structure shall have major impacts on the conditions of sound and effective economic competition. <p>The decision to not to investigate shall be taken without delay.</p>
<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?</p>	<p>The FCCA is only required to adopt a decision addressed to the complainant if the competition restriction may affect the complainant's rights, interests or obligations. Nonetheless, the FCCA always informs all persons who have lodged a complaint at the FCCA about the fact that the complaint does not give cause to further action on the part of the FCCA.</p>
<p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on</p>	<p>According to Section 32 of the Competition Act a decision not to investigate must be taken without delay. The FCCA has set internal guidelines and strives to close cases which will not be investigated within one month. If the case is found of minor</p>

whether to investigate or reject it?	<p>importance during the preliminary investigation, the FCCA will close the case within six months from the initiation of proceedings.</p> <p>Furthermore, the FCCA is bound by the Administrative Procedure Act, which contains rules governing good administration including a duty for swift and appropriate action.</p>
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6. Leniency policy³

<p>A. What is the official name of your leniency policy (if any)?</p>	<p>Immunity from penalty payment in cartel cases (Section 14 of the Competition Act) / Reduction of penalty payment in cartel cases (Section 15 of the Competition Act).</p> <p>Finnish Competition and Consumer Authority (FCCA) guidelines: immunity from and reduction of fines in cartel cases.</p> <p>Available at https://www.kkv.fi/globalassets/kkv-suomi/julkaisut/suuntaviivat/guidelines-2016-leniency.pdf</p> <p>(in Finnish, Swedish, English)</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>The Finnish jurisdiction provides full leniency (immunity) as well as partial leniency (reduction of fines).</p>
<p>C. Who is eligible for full leniency?</p>	<p>Only one undertaking can, in principle, obtain immunity for the same infringement. Thus, the FCCA will grant full leniency only to the first undertaking that satisfies the conditions for obtaining leniency set in Sections 14 and 16 of the Competition Act. However, the Market Court is not restricted from deciding to reduce the fine for other applicants even by 100%.</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 date (the moment) at</p>	<p>According to Section 14 of the Competition Act, the FCCA will grant full leniency to an undertaking which:</p> <ul style="list-style-type: none"> - provides information or evidence, on the grounds of which the FCCA may conduct an inspection referred to in Section 35 or 36 of the Competition Act; or - following an inspection referred to in Section 35 or 36, delivers information or evidence, on the grounds of which the FCCA can establish that Section 5 or Article 101 of the Treaty on the Functioning of the European Union has been violated - provides the information before the FCCA has obtained the

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>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>information from some other source</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Business undertakings.</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>Section 14 of the Competition Act states that the FCCA will grant full leniency to an undertaking which:</p> <ul style="list-style-type: none"> - provides information or evidence, on the grounds of which the FCCA may conduct an inspection referred to in Section 35 or 36 of the Competition Act; or - following an inspection referred to in Section 35 or 36, delivers information or evidence, on the grounds of which the FCCA can establish that Section 5 or Article 101 of the Treaty on the Functioning of the European Union has been violated - provides the information before the FCCA has obtained the information from some other source <p>An undertaking which has pressured another undertaking to participate in a cartel cannot obtain immunity.</p> <p>Section 16 of the Competition Act includes further conditions for immunity and the reduction of fines in cartel cases as follows.</p> <p>(1) Immunity from fines or reduction of fines is further conditional upon the undertaking:</p> <ol style="list-style-type: none"> 1. immediately ceasing participation in the restraint on competition once it has delivered to the FCCA the application referred to in Section 17(1); 2. cooperating with the FCCA during the entire investigation of the restraint on competition; 3. not destroying the evidence covered by the application prior to or following the submission of the application referred to in Section 17(1); and 4. keeping confidential the content of the application referred to in Section 17(1) and the fact of having made an application or considering making an application. <p>(2) Notwithstanding Section 16(1)(1), the undertaking may, under the direction of the FCCA, continue participation in the infringement to the extent it is necessary to secure the success of the inspections referred to in Sections 35 (inspections of business premises) and 36 (inspections of other premises).</p> <p>(3) By way of derogation from Section 16(1)(4), the undertaking may submit the information concerning the application to the European Commission or the competition authority of another country, if this is necessary for the investigation of a restraint on competition.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction /</p>	<p>According to Section 15 of the Competition Act, the fine shall be reduced if the undertaking submits information and evidence to the FCCA that is significant for establishing a restriction on competition or its entire extent or nature, and prior to the FCCA</p>

<p>fine / imprisonment):</p>	<p>receiving the information from some other source.</p> <p>The fine shall be reduced in the following way:</p> <ol style="list-style-type: none"> 1. 30-50 per cent if the undertaking is the first one to submit the information; 2. 20-30 per cent if the undertaking is the second one to submit the information; 3. 20 per cent at most in any other situations than the ones referred to in Section 15(1)(1) and Section 15(1)(2) above. <p>Section 16 of the Competition Act includes further conditions for immunity and the reduction of fines in cartel cases as follows.</p> <p>(1) Immunity from fines or reduction of fines is further conditional upon the undertaking:</p> <ol style="list-style-type: none"> 1. immediately ceasing participation in the restraint on competition once it has delivered to the FCCA the application referred to in Section 17(1); 2. cooperating with the FCCA during the entire investigation of the restraint on competition; 3. not destroying the evidence covered by the application prior to or following the submission of the application referred to in Section 17(1); and 4. keeping confidential the content of the application referred to in Section 17(1) and the fact of having made an application or considering making an application. <p>(2) Notwithstanding Section 16(1)(1), the undertaking may, under the direction of the FCCA, continue participation in the infringement to the extent it is necessary to secure the success of the inspections referred to in Sections 35 (inspections of business premises) and 36 (inspections of other premises).</p> <p>(3) By way of derogation from Section 16(1)(4), the undertaking may submit the information concerning the application to the European Commission or the competition authority of another country, if this is necessary for the investigation of a restraint on competition.</p> <p>The Market Court may reduce or not impose a fine if the undertaking has considerably assisted the FCCA in the investigation of the competition restriction.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>See point 6F above.</p>
<p>I. Are there formal requirements to make a leniency application?</p>	<p>An application for leniency may be given orally as well as in writing. A leniency application shall contain the following information:</p> <ul style="list-style-type: none"> • the applicant's name and address • parties to the cartel • a detailed description of the functioning of the cartel including the products targeted by the cartel, the regional extent of the cartel, the temporal duration of the cartel, and the nature of the cartel activities • a description of how the restraint on competition has been implemented and how it has been maintained • applications in the same cartel case made to other competent authorities in the same cartel issue

	<ul style="list-style-type: none"> information on whether the applicant intends to make an application concerning immunity from fines or the reduction of the penalty payment to other competent authorities
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>The procedure for immunity from fines and the reduction of fines in cartel cases is laid out in Section 17 of the Competition Act. As per Section 17(1), leniency shall be applied from the FCCA. The FCCA may fix a time-limit during which the applicant shall submit to the FCCA the information and evidence referred to in Section 14.</p> <p>According to Section 17(2), the FCCA grants the undertaking conditional immunity from fines after the undertaking has submitted to the FCCA the information and evidence referred to in Section 14. The FCCA shall not take a position on any other applications referred to in Section 14 prior to deciding whether it shall grant conditional immunity to the undertaking who has been the first one to submit an application.</p> <p>According to Section 17(3), the FCCA shall issue a written decision at the end of the procedure on whether the undertaking fulfils all the criteria set out in Sections 14 or 15 and 16.</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>A final decision may only be given once the investigation has finished, as the fulfilment of the criteria referred to in Section 16 can only be found upon completion of the investigation.</p> <p>The FCCA provides the undertaking with a conditional immunity from the penalty payment, in writing, once the FCCA has obtained the information and evidence referred to in Section 14(1), and having made sure that it is sufficient to grant immunity.</p> <p>If it turns out during the investigations that the undertaking does not fulfil the criteria in Sections 14, 15 or 16, the FCCA shall issue a written decision on dismissing the application without delay.</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 FCCA shall issue a separate decision on whether the undertaking fulfils all the conditions for full leniency. This decision is not separately subject to appeal.</p> <p>Leniency applications are processed by Enforcement 1, but the Director of the Competition Division makes the decision about granting leniency. Nonetheless, if the applicant fulfils the conditions for obtaining leniency, the Director of the Competition Division has no discretionary power, but is obliged to grant leniency.</p>
<p>M. Does your legislation have a marker system? If yes, please describe it.</p>	<p>An undertaking who applies for immunity from the penalty payment can request that the FCCA extend the time limit for the gathering of the information in Section 14(1).</p> <p>The FCCA can set a date for the applicant during which the information referred to in Section 14 shall be delivered to the FCCA. The applicant's priority order with respect to other cartel</p>

	<p>members seeking immunity under Section 14 is secure if the applicant submits the information to the FCCA within the time limit imposed by the Authority.</p> <p>The FCCA may impose a time limit for the delivering of the information by the applicant of immunity (Section 14), but not for obtaining the reduction referred to in Section 15.</p> <p>In order to obtain a time limit for the gathering of the information referred to in Section 14, the undertaking shall provide the FCCA with:</p> <ul style="list-style-type: none"> • its name and address; • its justification for making an application for immunity; • the cartel parties; • description of the products targeted by the cartel, its geographical extent, temporal duration and the nature of the cartel activities; • estimates of the time needed for the gathering of information and the type of information the applicant shall deliver; • the applications made to other competent authorities in the same cartel case and • information on whether the applicant intends to make an application for immunity or reduction of fines to other competent authorities. <p>If the applicant submits the information referred to in Section 14(1) within the time limit, the information is considered to have been submitted at the date the FCCA imposed a time limit for the gathering of information and evidence.</p>
<p>N. Does the system provide for any extra credit⁴ for disclosing additional violations?</p>	<p>No.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>According to Finnish legislation all documents written by public authorities or submitted to them are public unless there is a legitimate reason to classify the document confidential. However, the FCCA can decline to reveal the name of the applicant as long as it might jeopardize the investigations. After conducting dawn raids it is likely that the name of the applicant will become public.</p>
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>The decision to reject a leniency application is not separately subject to appeal. Claims connected to the FCCA's decision may, however, be presented to the Market Court in the context of the handling of the primary matter concerning a penalty payment.</p>
<p>Q. Contact point where a leniency application can</p>	<p>The Finnish Competition and Consumer Authority Enforcement 1 Assistant Director, Ms Maarit Taurula, Tel. +358 29505 3381</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.

be lodged:	<p>Head of Cartel Detection, Mr Antti Norkela, Tel. +358 29505 3345</p> <p>Siltasaarenkatu 12 A PO Box 5 FIN-00531 Helsinki</p> <p>https://www.kkv.fi/en/facts-and-advice/competition-affairs/toimintaohjeet/leave-cartel/ (incl. link for sending confidential e-mail messages)</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?	There are no express provisions in the Competition Act empowering the FCCA to revoke its decision to grant 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.	<p>According to Section 33 of the Competition Act, an undertaking or association of undertakings shall be obliged, at the request of the FCCA, to provide the Authority with all the information and documents needed for the investigation of the content, purpose and impact of a competition restriction and for clarifying the competitive conditions. The corresponding information and documents shall also be provided to a Regional State Administrative Agency when it investigates competition restrictions or competitive conditions.</p> <p>Section 35 of the Competition Act confers an authorised official of the FCCA and a Regional State Administrative Agency the right to conduct an inspection in order to supervise compliance with the Competition Act and any subsequent rules issued under it. At the request of the European Commission, the FCCA is obliged to conduct an inspection as prescribed in the European Union legal acts.</p> <p>The officials of the FCCA are allowed to enter any business premises, storage facilities, land, and means of transport</p>
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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>controlled by the undertaking. Moreover, under Section 37 the officials have the power to examine the books, financial accounts, computer files and other documents and data of an undertaking or an association of undertakings which may be relevant for ensuring compliance with the Competition Act and with any subsequent rules issued under it, and to take copies of the documents under investigation.</p> <p>The officials also have the right to request oral explanations on the spot and to make a record of the replies obtained, and have the power to seal business premises and books or records for the period and to the extent necessary for the inspection.</p> <p>A court warrant is not required for conducting an inspection in the business premises of an undertaking.</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>Under Section 36 of the Competition Act, an authorised official of the FCCA and a Regional State Administrative Agency may also conduct an inspection in premises other than the ones referred to in Section 35, if a reasonable suspicion exists that bookkeeping or other documents relating to the business and the object of the investigation may be held there, provided that these documents may have relevance in proving a serious violation of Sections 5 or 7 of the Competition Act, or Articles 101 or 102 of the Treaty on the Functioning of the European Union.</p> <p>Such an inspection requires prior authorisation from the Market Court. The Market Court may prohibit an inspection if it would be arbitrary or excessive.</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>No.</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</p>	<p>Section 12 of the Administrative Procedure Act (434/2003)</p>
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<p>cartel cases:</p>	<p>provides the party the right to an attorney or counsel in an administrative matter and therefore also in a competition case.</p> <p>Before the matter is decided, a party shall according to Section 34 of the Administrative Procedure Act be reserved an opportunity to express an opinion on the matter and to submit an explanation on the demands and information which may have an effect on the authority's decision.</p> <p>Moreover, according to Section 37 of the Administrative Procedure Act, the FCCA has on the request of a party an obligation to reserve a party the opportunity to submit his/her demands or information orally, if this is necessary for purposes of clarification of the matter and a written procedure would cause unreasonable inconvenience to the party. The other parties shall be summoned to be present at the same time, if this is unavoidable in view of safeguarding the rights or interests of the parties. Similarly, the FCCA may on the request of a party reserve an opportunity for the oral submission of information necessary for the clarification of the matter also in other situations.</p> <p>When the FCCA conducts an inspection, the party has the right to be present during the inspection and to express opinions and ask questions on points pertaining to the inspection. The party has a right to be informed, in so far as possible, of the purpose of the investigation, the procedure therein and the follow-up measures. The inspection shall be carried out without causing undue inconvenience to the object of the inspection or the person possessing it. Furthermore, the inspector shall without delay draw up a report of the inspection, indicating the progress of the inspection and the essential observations made by the inspector. The inspection report shall be served on parties entitled to be present during the inspection (cf. Section 39 of the Administrative Procedure Act).</p> <p>According to Section 11 of the Act on the Openness of Government Activities (621/1999), a party has the right of access also to the contents of a document which is not in the public domain, if they may influence or may have influenced the consideration of his/her case, unless there is a legitimate reason to deny access to the document in question.</p> <p>The party also has the right not to self-incriminate, as Finland has ratified the European Human Rights Convention.</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</p>	<p>Documents containing business secrets will, according to Section 24(20) of the Act on the Openness of Government Activities, in general remain secret.</p> <p>According to Finnish legislation all documents written by public authorities and documents submitted to them are public unless there is a legitimate reason to classify the document confidential. (Cf. The Act on the Openness of Government Activities, in particular Section 1 and Sections 22-24). Nevertheless, the information supplied by the applicant can also be kept confidential to the public and the parties as long as the publication can jeopardize the investigation. (Cf. Section 24(6) of the Act on the Openness of Government Activities). Once the investigation has been concluded and the decision given, the information (apart from business secrets) is,</p>

	in principle, public. This is applicable to all the information regardless of the manner in which it has been provided.
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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?	<p>As per Section 19 of the Competition Act, a penalty payment shall not be imposed unless the proposal has been made to the Market Court within five years of the termination of the infringement. Measures of the FCCA to investigate the infringement shall reset the limitation period. A penalty payment shall not be imposed, however, if the proposal to the Market Court has not been made within ten years of the termination of the infringement.</p> <p>Apart from that the FCCA is bound by the rules governing good administration which include the duty to swift and appropriate action.</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?	No statutory limits exist apart from the limitation period for the imposition of fines, but the FCCA is bound by the rules governing good administration which include the duty to swift and appropriate action. Cf. point 9A above.
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>Cf. point 9B above.</p> <p>The decision by the Market Court to impose a competition infringement fine may be appealed to the Supreme Administrative Court within 30 days of notice of the decision.</p>

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.	<p>The FCCA may</p> <ul style="list-style-type: none"> - find an infringement of the Competition Act - order the termination of a competition infringement ("cease-and-desist order") - oblige a business undertaking to deliver on non-discriminatory terms - issue interlocutory injunctions - decide not to take action ("non action decisions") - decide on immunity from the competition infringement fine - make a proposal to the Market Court on the imposition of a competition infringement fine
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	<p>The Market Court</p> <ul style="list-style-type: none"> - may impose a competition infringement fine - decide on the reduction of the competition infringement fine
<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>Cf. point 10 A above.</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 the application or implementation of a competition restriction shall be prevented at once, the FCCA may issue an interlocutory injunction to that effect. The FCCA shall make a decision on the principal issue or a proposal on the imposition of a competition infringement fine to the Market Court within 60 days from issuing an interlocutory injunction. If the FCCA fails to make a decision on the principal issue or fails to make a proposal by the time limit laid down, the injunction will lapse. Prior to issuing an interlocutory injunction, the FCCA shall grant the undertaking or the association of undertakings an opportunity to be heard, unless the urgency of the matter or some other specific reason demands otherwise.</p>

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

<p>A. Grounds for the imposition of procedural sanctions / fines:</p>	<p>The FCCA may impose a conditional fine to enforce the obligation to provide information or to produce documents referred to in Section 33 of the Competition Act and the obligations during an inspection (Section 37). The Market Court shall order a conditional fine to be paid.</p> <p>Under Chapter 16, Section 8, of the Penal Code a person who provides an authority with false documents shall be sentenced to a fine or to imprisonment for at most six months. A sentence for providing false documents to a public authority shall be passed also on a person pursuing an activity under the specific supervision of an authority, the representative or</p>
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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.

	employee of such a person, and an auditor of the corporation under supervision, who during a statutory inspection or when otherwise fulfilling a statutory reporting duty provides the supervising authority with legally relevant false oral information.
B. Type and nature of the sanction (civil, administrative, criminal, combined):	The conditional fine is an administrative sanction whereas the sentence for providing false documents to a public authority is a criminal sanction.
C. On whom can procedural sanctions be imposed?	The procedural sanctions can be imposed on the undertakings (parties) participating in the proceedings. Only natural persons can be sentenced for providing false documents to a public authority.
D. Criteria for determining the sanction / fine:	The nature and extent of the obligation, the party's capability to pay and other factors which affect the case are taken into consideration when the conditional fine is determined.
E. Are there maximum and / or minimum sanctions / fines?	For the conditional fine, cf. point 11D above. The sentence for providing false documents to a public authority is a fine or imprisonment for at most six months.

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?	Administrative. Sanctions may be imposed on undertakings and associations of undertakings.
B. Criteria for determining the sanction / fine:	The amount of the fine shall be based on an overall assessment, and in determining the amount, attention shall be given to the nature and extent, the degree of gravity, and the duration of the infringement. The fine shall not exceed 10 per cent of the turnover of the undertaking or association of undertakings concerned during the year in which the undertaking or association of undertakings were last involved in the infringement.
C. Are there maximum and / or minimum sanctions / fines?	The fine shall not exceed 10 per cent of the turnover of the undertaking or association of undertakings concerned during the year in which the undertaking or association of undertakings were last involved in the infringement.

<p>D. Guideline(s) on calculation of fines:</p>	<p>The FCA Guidelines on the Assessment of the amount of the Fine</p> <p>http://www.kkv.fi/globalassets/kkv-suomi/julkaisut/suuntaviivat/fi/suuntaviivat-3-2011-seuraamusmaksu.pdf</p> <p>(in Finnish and Swedish)</p>
<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>	<p>No. The Market Court's decision imposing a competition infringement fine shall be followed, notwithstanding an appeal, unless the Supreme Administrative Court rules otherwise.</p>

13. Possibilities of appeal

<p>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?</p>	<p>An appeal may be lodged against a decision by the FCCA finding a violation of a prohibition of cartels within 30 days of notice of that decision.</p> <p>Any person to whom a decision is addressed or whose right, obligation or interest is directly affected by a decision taken by the FCCA may lodge an appeal against the decision.</p> <p>The decision may be appealed on questions of law or fact as well as on breaches of procedural requirements.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</p>	<p>An appeal against a decision taken by the FCCA shall be lodged before the Market Court, if the decision is appealed on questions of law or fact.</p> <p>If the decision is appealed on breaches of procedural requirements, the appeal shall be lodged before an administrative court.</p>