



**International  
Competition  
Network**

**ANTI-CARTEL  
ENFORCEMENT  
TEMPLATE**

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

**JAMAICA**

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# ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

## IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

## 1. Information on the law relating to cartels

<b>A. Law(s) covering cartels:</b>	The Fair Competition Act (FCA). <a href="http://www.jftc.com">www.jftc.com</a> - English. This web page and language identification apply to all documents.
<b>B. Implementing regulation(s) (if any):</b>	None.
<b>C. Interpretative guideline(s) (if any):</b>	As contained in A Guide to Anti-Competitive Practices. See website.
<b>D. Other relevant materials (if any):</b>	N/A

## 2. Scope and nature of prohibition on cartels

<b>A. Does your law or case law define the term "cartel"?</b>  <b>If not, please indicate the term you use instead.</b>	No; the FCA uses the words, "conspire, combine, agree or arrange with another person..."
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<b>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas<sup>1</sup>) and other types of “cartels”?</b>	No
<b>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]</b>	<p>1) Arrangements relating only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public, in the practice of a trade or profession relating to the service; or in relation to the collection and dissemination of information relating to the service are exempt.</p> <p>2) Affiliated companies are exempt under the bid-rigging provision.</p> <p>3) Interconnected compaines and agencies are exempt.</p>
<b>D. Is participation in a hardcore cartel illegal <i>per se</i>?</b>	No; requires determinationas to whether competition is injured unduly.
<b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b>	The FCA is not explicit, but since no criminal sanctions are established we know it is a civil offence.

### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels:</b>	The Fair Trading Commission
<b>B. Contact details of the agency:</b>	<p>52-60 Grenada Crescent, Kingston 5, Jamaica</p> <p>Telephone: (876) 960-0120 to 4</p> <p>Fax: (876) 960-0763</p> <p>E-mail: <a href="mailto:jftc@cwjamaica.com">jftc@cwjamaica.com</a></p> <p>Website: <a href="http://www.jftc.com">www.jftc.com</a></p> <p>English only</p>
<b>C. Information point for potential complainants:</b>	As above

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

<b>D. Contact point where complaints can be lodged:</b>	As above
<b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b>	The Consumer Affairs Commission might be able to collect and transmit data to help sector regulators provide information on companies in the relevant sectors.

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

<b>A. Name of the agency making decisions in cartel cases:</b>	
<b>B. Contact details of the agency:</b>	
<b>C. Contact point for questions and consultations:</b>	
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	
<b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>	

#### 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency]</b>	By virtue of complaint or on the Commission's own initiative.
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<sup>2</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

<b>application, notification, etc.]</b>	
<b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b>	Writing is required; prescribed form is optional. Said form is available at the office of the FTC. E-mailed complaints are acceptable. Address as per question 3B.
<b>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?]</b>	No legal requirements but Informants are encouraged to provide some tangible information to support the allegations.
<b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</b>	The Commission has a discretion, based on certain established criteria. e.g. blatancy, severity and effect on the market.
<b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b>	There is no formal requirement but the Commission would indicate to an Informant, the reason(s) the complaint is not being pursued.
<b>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</b>	Wholly dependent to the nature of the case and other internal circumstances.

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

<b>A. What is the official name of your leniency policy (if any)?</b>	There is no leniency policy at this time.
<b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the</b>	See above.

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

<b>case?</b>	
<b>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</b>	N/A
<b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b>  <b>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</b>	N/A
<b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b>	N/A
<b>F. What are the conditions of availability of full leniency:</b>	N/A
<b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b>	N/A
<b>H. Obligations for the beneficiary after the leniency application has been accepted:</b>	N/A
<b>I. Are there formal requirements to make a leniency application?</b>	N/A
<b>J. Are there distinct procedural steps within the leniency program?</b>	N/A
<b>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency,</b>	N/A

<b>and how is this done?</b>	
<b>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</b>	N/A
<b>M. Does your legislation have a marker system? If yes, please describe it.</b>	N/A
<b>N. Does the system provide for any extra credit<sup>4</sup> for disclosing additional violations?</b>	N/A
<b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b>	N/A
<b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b>	N/A
<b>Q. Contact point where a leniency application can be lodged:</b>	N/A
<b>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</b>	N/A
<b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b>	N/A

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

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

<p><b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>6</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b></p>	<p>All these measures are available to the FTC. Searches are by warrant issued by a Justice of the Peace/Notary Public.</p>
<p><b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</b></p>	<p>The FCA allows for search of "premises". The word has not yet received a judicial interpretation.</p>
<p><b>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</b></p>	<p>Not yet tested in Court but under the common law, the Agency could make use of the information obtained extra the warrant.</p>
<p><b>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p>	<p>No</p>

## 8. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in</b></p>	<p>All these rights are recognized under Jamaica's general laws of</p>
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<sup>5</sup> "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

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

<b>cartel cases:</b>	natural justice.
<b>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</b>	Companies would be entitled to have such information treated confidentially. There is no specific statutory provision.

## 9. Limitation periods and deadlines

<b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</b>	This depends on the nature of the case; and there is no statutorily imposed limitation.
<b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</b>	No regulations are in place at this time. Much depends on the nature of the case.
<b>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</b>	There are no statutory deadlines; and no guidelines are in place.

## 10. Types of decisions

<b>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed</b>	Finding of an infringement, ordering to bring the infringement to an end. Enforcement of decisions by the Commission is through the Courts where the offender does not comply; but fines are imposed only by the Courts.
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<b>under Section 1.</b>	
<b>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).</b>	Same as above.
<b>C. Can interim measures<sup>7</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>8</sup>.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</b>	1) The Commission has no powers to issue Cease & Desist Orders or any other interim orders but it can obtain injunctions through the Court. 2) N/A 3) N/A

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

<b>A. Grounds for the imposition of procedural sanctions / fines:</b>	The FTC has no powers to impose fines. Monetary penalties are imposed by the Courts.
<b>B. Type and nature of the sanction (civil, administrative, criminal, combined):</b>	Criminal - fines and/or imprisonment.
<b>C. On whom can procedural sanctions be imposed?</b>	Any party who fails to comply with the Commission's request for documents or fails to attend and give evidence.
<b>D. Criteria for determining the sanction / fine:</b>	See A above. As set out under the FCA.

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

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

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

<b>E. Are there maximum and / or minimum sanctions / fines?</b>	Maximum of J\$1 million and/or maximum imprisonment of 2 years.
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## 12. Sanctions on the merits of the case

<b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b>  <b>On whom can sanctions be imposed?</b>	Civil.  As is practicable.
<b>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</b>	See 11D ante.
<b>C. Are there maximum and / or minimum sanctions / fines?</b>	Maximum of J\$1 million in respect of individual and J\$5 million in respect of an enterprise other than an individual.
<b>D. Guideline(s) on calculation of fines:</b>	N/A
<b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</b>	No. The party aggrieved would have to apply for a stay through the Courts - Section 50 of the FCA. No criteria set out in the Law.

## 13. Possibilities of appeal

<b>A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural</b>	Yes but grounds are not addressed in the FCA.  Court of Appeal Rules would apply. Appellant would need to show merit.
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<b>requirements?</b>	
<b>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</b>	The Supreme Court. i.e. A Judge in Chambers.