



**International  
Competition  
Network**

# **ANTI-CARTEL ENFORCEMENT TEMPLATE**

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

**Spain**

**01/09/2017**

# 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>	Competition Act 15/2007, 3 July 2007, and National Authority for Markets and Competition (CNMC) Constitution Act 3/2013, 4 June 2013.
<b>B. Implementing regulation(s) (if any):</b>	Royal Decree 261/2008, 22 February 2008, approving the Defence of Competition Regulation (RDC).  Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence Act 1/2002, of 21 February 2002.
<b>C. Interpretative guideline(s) (if any):</b>	Communication on Leniency Programme, 19 June 2013  Communication on Termination by Commitments of Infringement Proceedings.  Communication on the method of setting fines imposed pursuant to Articles 1, 2 and 3 of the Competition Act 15/2007 and Articles 81 and 82 of European Community Treaty (Articles 101 and 102 of the Treaty on the Functioning of the European Union, TFEU). Pursuant to the Competition Act, serious undertaking infringements may be liable for of up to 10 % of the combined turnover of the undertaking concerned, but the National High Court (Audiencia Nacional) maintained that 10% of a company's turnover, upon which Spanish law sets the maximum fine, must be calculated on the actual turnover within the affected market in question.

	<p>Later, the Supreme Court (Sentence of 29<sup>th</sup> January 2015) remedied the aforementioned position maintaining that the previously mentioned 10% must be calculated on the total turnover of the implicated company. Furthermore, the Supreme Court specified that the amount of the fine must be calculated using a penalty scale, as provided for in law, which ranges from zero to 10% of the implicated company's total turnover. As a result, the Supreme Court was of the view that the guidelines used by the CNMC for calculating fines strays from this legal base, and therefore, are not valid.</p>
<b>D. Other relevant materials (if any):</b>	<p>Royal Decree 9/2017, 26 may, implementing several European directives in the financial, trade and health care market, amending Competition Act 15/2007.</p>

## 2. Scope and nature of prohibition on cartels

<b>A. Does your law or case law define the term “cartel”?</b>	<p>Yes, Article 1 of the Competition Act 15/2007 refers to prohibited conduct and, in particular, to collusive conducts, among them cartels are included:</p> <p><i>"1. All agreements, collective decisions or recommendations, or concerted or consciously parallel practices are prohibited, which have as their object, produce or may produce the effect of prevention, restriction or distortion of competition in all or part of the national market and, in particular, those which consist of:</i></p> <p><i>a) The direct or indirect fixing of prices or any other trading or service conditions.</i></p> <p><i>b) The limitation or control of production, distribution, technical development or investment.</i></p> <p><i>c) The share-out of the market or sources of supply.</i></p> <p><i>d) The application, in trading or service relationships, of dissimilar conditions to equivalent transactions, thereby placing some competitors at a disadvantage compared with others.</i></p> <p><i>e) The subordination of the conclusion of contracts to acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of these contracts."</i></p> <p>In addition, the 4th Additional Provision of the Competition Act 15/2007, recently amended by the Royal Decree 9/2017, 26 may, defines a cartel as <i>"any agreement or concerted practice among two or more competitors which have as their object, to coordinate its competitive behaviour in the market or to have an impact on the competitive parameters such as fixing or coordinating the purchase or selling price or any other trade condition, even related to intellectual or industrial property rights; assigning production or sales quotas; market and clients sharing, including bid rigging, import or export restrictions, or the measures against free competition taken against any other competitor"</i>.</p>
<b>B. Does your legislation or case law distinguish between very</b>	<p>The Competition Act does not distinguish between very serious cartel behaviour (hardcore cartels) and other kind of cartels.</p>

<p><b>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></p>	<p>Article 1, Section 1 of the Competition Act includes a non exhaustive list of collusive conducts (see question No 2/A below) among which cartels are included. Notwithstanding, in the graduation of the various infringements set out in the Competition Act, cartels are classified as very serious infringements in Art. 62.4.a):</p> <p><i>“a) The collusive conduct typified in Article 1 of the Competition Act which consists of cartels or other agreements, decisions or collective recommendations, concerted or consciously parallel practices between actual or potential competing undertakings.”</i></p>
<p><b>C. Scope of the prohibition of hardcore cartels:</b></p>	<p>The following exceptions are included in Section 3, 4 and 5 of Article 1 of the Competition Act 15/2007, reducing the general ban on collusive conducts to agreements, decisions, recommendations and practices that contribute to improve the production or the commercialisation and distribution of goods and services or to promote technical or economic progress, without the need for any prior decision for this purpose, providing that:</p> <p>a) They allow consumers a fair share of its benefits.</p> <p>b) They do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives, and</p> <p>c) They do not afford participating undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.</p> <p>Additionally, Article 4 of the Competition Act exempts the conducts exempted by law (without prejudice to the eventual application of the Community provisions regarding competition, the prohibitions of this chapter shall not apply to conduct those results from the application of an Act) and Article 5 of the Competition Act exempts the "Conducts of minor importance" from the general ban: <i>“The prohibitions included in Articles 1 to 3 of this Act shall not apply to conduct which, due to their scant importance, are not capable of significantly affecting competition. The criteria for demarcating conduct of minor importance shall be determined according to regulations, taking into account, among others, the market share”</i>. Nevertheless Article 2 of the RDC excludes the application of this exemption to a cartel infringement: <i>“conducts shall not be classified as of minor importance if they are carried on between competitors and, directly or indirectly, in isolation or in combination with other factors under the control of the participating companies, have as their object: a) the fixing of prices when selling the products to third parties; b) the limitation of output or sales; c) the allocation of markets or customers, including fraudulent bids, or restriction of imports or exports”</i>.</p> <p>Finally, in the Communication on Termination by Commitments of Infringement Proceedings is established that this type of procedure will not be initiated when the investigation involves a violation of Article 1 of the Competition Act in relation to a cartel.</p>

<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. Is participation in a hardcore cartel illegal <i>per se</i><sup>2</sup>?</b>	Yes, it is illegal <i>per se</i> .
<b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b>	The participation in a cartel in the Spanish jurisdiction is an administrative infringement, not a criminal offence.

### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels:</b>	<p>The Spain's National Authority for Markets and Competition (Comisión Nacional de los Mercados y la Competencia, CNMC) is since its inception in the Act 3/2013, 4 June 2013, the agency which investigates infringements at national or supra regional level in the Spanish jurisdiction.</p> <p>The Competition Directorate within the CNMC, is the department which is going to investigate all the antitrust infringements, cartel ones include at a national or supra regional level.</p> <p>The CNMC Council is the collective decision-making body in relation to the resolution, functions conferred on the CNMC. The Council has two chambers, one dedicated to competition issues and another dedicated to regulatory supervision. The CNMC President chairs the Competition Chamber and resolves the infringement competition proceedings, including cartel cases.</p> <p>Besides, although the CNMC is responsible for preserving, guaranteeing and promoting the existence of effective competition in the markets at the national level, the Autonomous Communities also have their own authorities in defending competition for cases whose scope does not go beyond the territory of the respective region. Therefore, the Regional Competition Authorities are responsible to exercise the competences described in the Competition Act when such conduct, without affecting a sphere that is higher than that of an Autonomous Community (regional markets) or than that of the national market as a whole, affects or may affect free competition in the sphere of the respective Autonomous Community (Article 1 of Act 1/2002).</p>
<b>B. Contact details of the agency:</b>	<p>Comisión Nacional de los Mercados y la Competencia (CNMC)  <a href="http://www.cnmc.es">www.cnmc.es</a></p> <p>Address:  Alcalá 47 (28014 Madrid) Telephone: 34 914329600  Barquillo 5 (28004 Madrid) Telephone: 34 914329600  Bolivia 56 (08018 Barcelona) Telephone: 34 936036200</p>

<sup>2</sup> For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

	<p>Competition Directorate:</p> <p>Barquillo, 5 (280004 Madrid), Telephone: 34 917876841</p> <p><a href="mailto:dc@cnmc.es">dc@cnmc.es</a></p> <p>Language on website: Spanish and English</p>
<b>C. Information point for potential complainants:</b>	<a href="http://www.cnmc.es/">http://www.cnmc.es/</a> and click "Competition" and "Services available to you": <a href="https://www.cnmc.es/ambitos-de-actuacion/competencia#servicios-disposicion">https://www.cnmc.es/ambitos-de-actuacion/competencia#servicios-disposicion</a>
<b>D. Contact point where complaints can be lodged:</b>	<p>Electronic Contact Point: <a href="http://www.cnmc.es/">http://www.cnmc.es/</a> and click "Competition" and "Filing a complaint": <a href="https://sede.cnmc.gob.es/tramites/competencia/denuncia-de-conducta-prohibida">https://sede.cnmc.gob.es/tramites/competencia/denuncia-de-conducta-prohibida</a></p> <p>Registry Office: Alcalá, 47, 28014 Madrid/Barquillo, 5, 28004 Madrid/Bolivia, 56, 08018 Barcelona</p>
<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>	<p>Yes. The Competition Act No 15/2007 sets out mechanisms for the coordination of all of the administrative bodies that intervene in the application of the Act, with the object of safeguarding the consistency of the competition policy, efficiency in the allocation of public resources and the legal certainty of the economic operators.</p> <p>According to Article 15 of the Competition Act, the CNMC shall obtain from the competent autonomous body a mandatory, no binding report, in relation to the conduct set out in Articles 1, 2 and 3 of the Competition Act or Articles 101 and 102 of the TFEU that, affecting a supra-autonomous sphere or the national market as a whole, have a significant effect in the territory of the respective Autonomous Community.</p> <p>The CNMC and Regional Competition Authorities may request the mutual assistance of their personnel.</p>
<b>4. Decision-making institution(s)<sup>3</sup> [to be filled in only if this is different from the investigating agency]</b>	
<b>A. Name of the agency making decisions in cartel cases:</b>	<p>As mentioned before the Council of the CNMC is the collective decision-making body in relation to the resolution, functions conferred on the CNMC.</p> <p>The Competition Directorate within the CNMC is the department which is going to investigate all the antitrust infringements, cartel ones included at a national or supra regional level.</p> <p>Both the Council and the Competition directorate belong to the same Agency, the CNMC, so they are not two different agencies but units within the same Agency.</p>
<b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b>	N/A

<sup>3</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

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

## 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating investigations in cartel cases:</b>	<p>According to Article 49 of Competition Act 15/2007, the proceedings are initiated ex officio by the Competition Directorate, be it on its own initiative or that of the Council of CNMC or by complaint. Any natural or legal person, interested or not, may submit a complaint.</p> <p>The Competition Directorate shall institute proceedings when rational signs are observed of the existence of prohibited conduct and it shall notify the interested parties of the decision to institute proceedings.</p> <p>As for the leniency programme, according to Article 46 and 50 of the Royal Decree 261/2008 of 22 February 2008, which implement Articles 65 and 66 of the Competition Act 15/2007, the procedure for exemption from payment or reduction of the fine will be initiated at the initiative of the requesting company or natural person that has participated in the cartel, who must for such purpose submit to the Competition Directorate for Investigation a formal application with the information and relevant evidence mentioned in these articles.</p>
<b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b>	<p>Complaints addressed to the Competition Directorate must contain, at minimum, the following information, stated Art. 25 of the Competition Regulation and in the form of its Annex I:</p> <p>a) Full individual or corporate name, domicile, telephone and fax number of the complainants and, if they are acting through a representative, evidence of the representative capacity and address for purposes of notices.</p> <p>b) Full individual or corporate name, domicile and, if applicable, telephone and fax number or any other relevant electronic media of the accused.</p> <p>c) Facts from which there derives the existence of a violation and evidence thereof, if applicable, and definition and structure of the relevant market.</p> <p>d) If applicable, justification of standing as interested party in any eventual disciplinary proceeding.</p>

	<p>This written complaint could be submitted at the CNMC website, on <a href="http://www.cnmc.es">http://www.cnmc.es</a> and click "Competition" and "Filing a complaint": <a href="https://sede.cnmc.gob.es/tramites/competencia/denuncia-de-conducta-prohibida">https://sede.cnmc.gob.es/tramites/competencia/denuncia-de-conducta-prohibida</a>, by fax or directly on the Registry Office (Alcalá, 47 or Barquillo, 5 in Madrid and Bolivia 56, in Barcelona).</p> <p>Concerning the leniency programme, the leniency application must be addressed to the Competition Directorate – in writing, orally or through the CNMC Electronic Register: <a href="http://www.cnmc.es/">http://www.cnmc.es/</a> and click "Competition" and "Leniency: requests for fine exemption or reduction": <a href="https://sede.cnmc.gob.es/en/tramites/competencia/solicitud-de-clemencia">https://sede.cnmc.gob.es/en/tramites/competencia/solicitud-de-clemencia</a></p> <p>Although the leniency application may be submitted at any office authorized as official register under Article 38.4 of the Act 30/1992 of 26 November 1992 on the Legal Organization of Public Administrations and Common Administrative Procedure, the entry date and time of those leniency applications taken into account when determining their order of reception will be that of their registration in the CNMC register.</p> <p>At the request of the leniency applicant, the Competition Directorate may accept oral applications. To do so, it will arrange a meeting at the CNMC offices and, after the recording has been transcribed, the declaration will be registered. The transcript's entry date and time in the CNMC register will determine the order of receipt of that leniency application. The oral leniency application will be recorded and transcribed using the CNMC's own resources, upon prior review of the recording and verification of the accuracy of the transcript, and the applicant will not be allowed to use recording devices.</p>
<p><b>C. Legal requirements for lodging a complaint against a cartel:</b></p>	<p>Any natural or legal person may submit a complaint against a cartel. The complaint must meet all the legal requirements set out in Article 25 of the Competition Regulation (see point 5 letter B above).</p>
<p><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></p>	<p>Although submission of a complaint in due form does not oblige the Competition Directorate to open a formal proceeding, the CNMC has not a discretionary decision about every complaint received. According to Article 49 of the Competition Act, the Competition Directorate shall institute proceedings when rational signs of the existence of prohibited conduct are observed and it shall notify the interested parties of the decision to open proceedings. In light of news of the possible existence of an infringement, the Competition Directorate may investigate information confidentially, included with domicile investigations of the undertakings involved, with the aim of a preliminary determination of whether the circumstances that justify the institution of the sanctioning proceedings meet. The decision not to bring the proceeding by the Council of the CNMC, at the proposal of the Competition Directorate, shall be notified to the complainant, indicating the reasons for not initiating the proceeding in accordance with what is provided in Article 49 of the Competition Act 15/2007.</p>



<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>	Yes, the CNMC is required to issue a decision addressed to the complainant explaining its reasons not to pursue a complaint and not initiating the proceeding (Article 49 Competition Act).
<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>	No, there is not any time limit counted from the date of receipt of a complaint to take a decision whether to investigate or reject it.

## 6. Leniency policy<sup>4</sup>

<b>A. What is the official name of your leniency policy (if any)?</b>	According to the Spanish jurisdiction, the term leniency refers collectively to the situations and the exemptions and reductions of fines provided for in Articles 65 and 66 of the Competition Act 15/2007, respectively.
<b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</b>	<p>Spanish jurisdiction offers full leniency (Art. 65 Competition Act) and/or partial leniency (Art. 66 Competition Act).</p> <p>Arts. 65 and 66 Competition Act, developed by Arts. 46 to 53 Competition Regulation, allow CNMC to grant exemptions from payment of fines or reductions in the amount of fines to undertakings or individuals who inform CNMC of the existence of a cartel and their participation or responsibility in the cartel, accompanied by the substantive evidence at their disposal or which may be obtained through an internal investigation.</p>
<b>C. Who is eligible for full leniency?</b>	<p>According to Article 65 Competition Act, in order to be exempted from paying the fine for which it might otherwise be liable, the applicant must be the first to provide the Competition Directorate with sufficient information and evidence to order an inspection in relation to a cartel or to establish the existence of a cartel infringement:</p> <p>a) The first undertaking and/or individual who, in the opinion of the CNMC, provides the Competition Directorate with the necessary evidence to order an inspection in a cartel investigation may qualify for exemption from payment of the fine. This requirement will be deemed fulfilled if the applicant's contribution allows the Competition Directorate to order an inspection, no matter if the inspection is successful or not or is even carried out, if the Competition Directorate chooses to employ other investigative instruments.</p> <p>b) Alternatively, an exemption from payment of the fine may be granted to the first undertaking and/or individual that submits evidence, which, in the judgment of the CNMC, allows to legally verifying the existence of an infringement of Art. 1 Competition Act and if applicable of Art. 101 TFEU, if a conditional exemption have not been granted under the preceding point in relation to the same cartel.</p>

<sup>4</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.

	<p>The exemption from payment of the fine granted to an undertaking shall also benefit its legal representatives, or the persons comprising the management bodies and who have taken part in the agreement or decision, providing they have collaborated with the CNMC (Article 65.3 Competition Act).</p>
<p><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></p> <p><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></p>	<p>Yes, this is the eligibility criteria to grant leniency. The Competition Directorate will not grant the conditional exemption if, at the time the application is submitted, it has already sufficient evidence to carry out an inspection or establish the cartel infringement without relying on the submissions of the exemption applicant, even if it cannot do so at the same level or detail or with the same breadth of scope.</p> <p>If the CNMC receives more than one leniency application in relation to the same cartel, it will examine the applications by order of receipt. What is relevant is to provide with enough evidence to order an inspection or to declare the existence of an infringement, if at the date this evidence is submitted, the CNMC does not already have enough evidence to order such an inspection or to establish the existence of an infringement.</p>
<p><b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b></p>	<p>A leniency application may be submitted by any undertaking or individual (directly or through their duly evidenced legal representatives) that participates in a cartel affecting all or part of the national territory. Eligibility to be considered a leniency applicant under the above therefore extends to undertakings and individuals whom may be considered responsible for a cartel, and hence liable for the applicable sanction, irrespective of whether that responsibility derives from their direct involvement in the cartel, from their decisive influence as parent company or as a successor undertaking to the one that originally participated in the cartel.</p> <p>Given that under Article 63.2 Competition Act fines may be levied on each of the legal representatives or the persons on the executive bodies of the economic operators, undertakings, associations, unions or groupings that have taken part in the anti-competitive agreement or decisions, such persons may also file a leniency application in their own name.</p>
<p><b>F. What are the conditions of availability of full leniency:</b></p>	<p>According to Art. 65 Competition Act and Arts. 46 and 52 Competition Regulation, the general conditions to meet are the following: provide the CNMC with decisive evidence, maintain cooperation throughout the proceeding, cease the infringement -except in those situations in which the CNMC deems it necessary that said participation continue in order to preserve the effectiveness of an inspection-, not have destroyed evidence related to the application for exemption nor to have disclosed, directly or indirectly, to third parties other than the competition authorities, the fact of its contemplated application or any of the content and not have adopted measures to oblige other undertakings to participate in the infringement.</p>
<p><b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b></p>	<p>Leniency applicants who do not meet the requirements to qualify for exemption may be able to benefit from a reduction in the amount of the fine that would otherwise be levied on them, if they provide evidence of the alleged infringement with significant added value relative to the evidence already in the CNMC's possession and comply with the Article 66.1 requirements over the course of the proceeding.</p>

According to Article 66.1 Competition Act, a reduction application may be submitted by an undertaking or individual participant in a cartel who does not qualify for exemption, either because exemption is not available or because the applicant coerced other cartel participants and is therefore disqualified from seeking exemption.

The availability conditions to meet are:

a) provide with evidence of the alleged infringement which represents significant added value with respect to the evidence already in the CNMC's possession, and

b) maintain the cooperation throughout, stop the involvement in the infringement and not having destroyed any evidence related to the leniency application, nor to have disclosed, directly or indirectly, to third parties other than the competition authorities, the application's existence nor any of its content.

The evidence provided should include a significant added value in the sense of Article 49 Competition Regulation which states that: "*2. Evidence will be considered to provide significant added value when that evidence, whether by its nature or level of detail, reinforces the National Competition Commission's ability to prove the relevant facts*".

In order to analyze if the evidence submitted by the reduction applicant provides with significant added value, the evidence must be assessed in terms of its intrinsic value (due to its nature or its level of detail) for grounding the Competition Directorate's decision in relation to factual or legally relevant circumstances.

Depending on the individual cases, significant factors for determining added value may include, among others, the type of document, its date, background and author, its recipient, the occasion and purpose for which it was issued, the place where it has been kept and its specific content, in particular, clarifying the meaning of codes, key terms, etc.

In this regard, in the current state of Spanish and EU case-law and practice, information and incriminating evidence directly related to the facts provided by the reduction applicant are considered to have greater probative value than an indirect evidence; testimony (statements, recordings, etc.) on the facts in which the author has taken part in attached to its leniency application have greater probative value than the indirect testimonies it may submit; and written evidence dating from the period in which the investigated facts took place (minutes, e-mails, letters, faxes, etc.) provided with the leniency application are of greater probative value than those dated at a later time, for example. Because of the former criteria, a particularly high probative value must be attached to the information or statements provided by the leniency applicant, including his guilty incrimination, other cartel participants, undertakings and/or individuals. Due to the fact that they come from a direct witness of the reported or described circumstances.

The reduction applications' order will be determined according to the CNMC register entry date, time and the evidence provided by the reduction applicant.

	<p>Taking already into account, the evidence already in the Competition Directorate's possession at the time the reduction applicant submit its application, because the new evidence must serve to uncover new facts or responsibilities with respect to the investigated cartel or to complete the accounting of the facts and the assignment of liabilities. This is the case, for example, if the new evidence submitted by the applicant, allows the CNMC to prove in detail certain facts of the case, supporting other evidence, strengthening or increasing the credibility or reliability of the evidence already available.</p>
<p><b>H. Obligations for the beneficiary after the leniency application has been accepted:</b></p>	<p>The leniency applicant must cooperate with the CNMC fully, continuously and diligently until the conclusion of the proceeding. According to Article 52 Competition Regulation, the leniency applicant complies with the following requirements:</p> <ul style="list-style-type: none"> <li>a) Provides the Competition Directorate without delay all relevant information and evidence relating to the alleged cartel in the possession of or available to the applicant.</li> <li>b) Remains available to the Competition Directorate to respond without delay to all requests that can contribute to establishing the facts.</li> <li>c) Facilitate the Competition Directorate to interview the employees and current executives of the company and, if applicable, former executives.</li> <li>d) Abstains from destroying, falsifying or concealing relevant information or evidence in relation to the alleged cartel.</li> <li>e) Abstains from disclosing the filing of the fine exemption or reduction application, or the content thereof, prior to the notification of the Statement of Objections (SO) or such time as may be determined by the Competition Directorate.</li> </ul> <p>Leniency applicants who hinder the investigation or the proceeding by not giving his full cooperation will not be eligible for leniency.</p>
<p><b>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</b></p>	<p>As for the content of leniency applications, be they written or oral, for exemption or reduction, in addition to an acknowledgement of the leniency applicant's involvement in the cartel, the leniency application must contain the following information:</p> <ul style="list-style-type: none"> <li>a) On the applicant: full individual or corporate name, taxpayer identification number, address, contact person, telephone number, fax number and, for applications filed by individual entrepreneurs or entities without legal personality that operate under a trade name, the full names and addresses of the owners or partners and contact details. For applications filed by a legal representative on behalf of his or her principal, identity of the representative and a copy of the power of attorney.</li> <li>b) On the rest of the cartel participants: full individual or corporate name, taxpayer identification number, address, telephone number, fax number.</li> <li>c) Detailed description of the cartel:</li> </ul>

	<ul style="list-style-type: none"> <li>– Aims, activities and functioning.</li> <li>– Affected products, services and territory.</li> <li>– Structure of the market affected by the cartel (sellers, buyers, market shares, and any other information on the market that may be significant in relation to the cartel).</li> <li>– Duration and nature of the cartel.</li> <li>– Form and scope of the participation of the applicant and of the rest of the cartel participants.</li> </ul> <p>d) List of leniency applications that the applicant has submitted or will present to other competition authorities in respect of the same cartel, with the obligation to update this information if other applications are subsequently submitted. In addition, the applicant must confirm to the Investigations Division that it has not revealed, directly or indirectly, its intention to submit the leniency application or its content to and any third parties other than those competition authorities.</p> <p>e) Description of the actions taken before issuing the leniency application to check that the applicant's participation in the cartel has ended and that no evidence of the cartel has been destroyed or tampered with at the time the leniency application is submitted.</p> <p>In addition to that, the leniency application must include the information and evidence of the cartel, in particular, all contemporaneous evidence in the applicant's possession that proves the cartel's existence, such as:</p> <ul style="list-style-type: none"> <li>a) Statements, minutes, summaries, annotations, e-mails, faxes, recordings, etc., that contain information on the dates, locations and identities of the individuals or undertakings who participated in the cartel meetings or other contacts between cartel participants, as well as the content of those meetings or contacts and supporting evidence.</li> <li>b) Information on the actions carried out by cartel participants, with supporting materials that evidence those actions (statements, minutes, e-mails, faxes, etc.).</li> <li>c) Statements, agreements, travel documents, commercial documents, circulars, e-mails, letters, minutes, faxes, recordings, etc., that refer to the existence, objective, functioning and scope of the cartel, as well as to the cartel participants.</li> <li>d) Statistics or other data referring to the facts described and which demonstrate the existence and participation in the cartel (the evolution and formation of prices, sale or bidding conditions, usual conditions of the transactions, etc.).</li> </ul>
<p><b>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</b></p>	<p>Yes, there are different procedural steps within the leniency program. Concerning full leniency, according to Article 47 Competition Regulation, the Competition Directorate will check the information and evidence submitted and analyze if they fulfil the conditions set in Article 65.1 Competition Act. If this is the case, it will grant the conditional exemption from payment of the fine, reporting the leniency applicant in due time. At the end of the proceeding, if the leniency applicant has complied with the requirements established in Article 65.2 Competition Act, the Council of the CNMC, following the draft resolution of the Competition Directorate, will grant the leniency applicant the exemption from payment of the fine in the resolution that finishes the proceeding.</p>

	<p>In relation to partial leniency, according to Art. 50 Competition Regulation, the Competition Directorate, no later than the SO' notification, will report to the leniency applicant its proposal to reduce the fine to the CNMC Council on fulfilment of the requirements established in Art. 66.1 Competition Act or that such proposal has not been made due to lack of the requirements' fulfillment to get the reduction. If the application for reduction of the fine is submitted after the notification of the SO, the Competition Directorate will inform the leniency applicant of its proposal for reduction of the fine in the resolution proposal of the proceedings. The Council of the CNMC will set the percentage reduction that applies in the resolution that puts an end to the proceeding.</p>
<p><b>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?</b></p>	<p>Concerning full leniency, when the Competition Directorate check that the leniency applicant fulfils the requirements of Article 65.1 Competition Act, reports to the leniency applicant notice to such effect (Article 47 Competition Regulation).</p> <p>The Director of Competition can grant the conditional exemption to the leniency applicant before an inspection has been carried out, in the event provided for in article 65.1(a) Competition Act, or before notification of the SO in the event provided for in article 65.1(b) Competition Act.</p> <p>Once the exemption is granted by the Director of Competition, it has a provisional nature. It implies the investigative body's acknowledgement that the application meets the requirements at the time the decision is adopted and having regard to the information available at that time.</p> <p>Therefore, the Competition Directorate will specify, on a reasoned basis, both in the SO and in the Draft Resolution (PR), whether the conditional exemption that was granted is confirmed, and progressively evaluating the applicant's fulfilment of its cooperation duties throughout the proceeding. If the Competition Directorate considers such duties have been breached, it will report it and submit a reasoned proposal to the CNMC Council not to grant the exemption, so the applicant can submit the pleadings it deems fit on the matter.</p> <p>As for partial leniency, at the time of issuing the SO, the Competition Directorate will inform the leniency applicant about its proposal to the CNMC Council whether to reduce the amount of the fine having fulfilled the requirements established in Article 66.1 Competition Act or to reject the reduction of the fine for not having fulfilled the requirements to get the reduction (Article 50 Competition Regulation).</p> <p>In case of a successful application, the Competition Directorate will propose the applicable reduction according to the order of the applications' submission within the Draft Resolution: the first reduction applicant who meets the significant added value test will be gotten a reduction between 30% and 50% of the fine; the second a reduction between 20% to 30%, and the successive applicants a reduction of up to 20%, setting the order of those successive applicants.</p>
<p><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)</b></p>	<p>At the end of the proceeding, if the exemption applicant has fulfilled all the requirements, following the proposal of the Competition Directorate, the CNMC Council will grant the applicant exemption from payment of the fine in the Resolution that ends to the proceeding.</p>

<p><b>decision? Who within the agency decides about leniency applications?</b></p>	<p>In its Resolution the CNMC Council, following the Competition Directorate's draft proposal, will also state the percentage reduction of the fine within the relevant band, provided the reduction applicant has complied with its duty to cooperate.</p>
<p><b>M. Do you have a marker system? If yes, please describe it.</b></p>	<p>No, we have not. Nevertheless, if so requested by the leniency applicant at the time the leniency application is submitted or thereafter, the Competition Directorate will issue a receipt stating that the leniency application has been submitted. The receipt will identify the applicant, including the Competition Directorate's certification of the date, the time the leniency application was registered in the CNMC and its content. In any case, the issuance of this receipt could imply the grant of conditional exemption by the Competition Directorate or, as applicable, of the requested reduction in the fine. The receipt uses just to certify the date and time when the leniency applicant get into the CNMC register.</p> <p>Furthermore, the Competition Directorate may grant, upon a prior and reasoned request from the leniency applicant, a further deadline to submit evidence on the cartel when the leniency applicant is unable to submit them at the time the leniency application was submitted. Once the evidence has been submitted within the deadline granted, the filing date and time for the leniency application will be understood to be the date and time of the initial leniency application. If the evidence is not submitted, the leniency application will be automatically rejected. If the evidence is submitted after the granted deadline, this new submission's date and time will be the one that will be used for the leniency application's order.</p>
<p><b>N. Does the system provide for any extra credit<sup>5</sup> for disclosing additional violations?</b></p>	<p>No, the Spanish system does not provide with any extra credit for disclosing additional violations.</p>
<p><b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b></p>	<p>Yes, the CNMC must treat the submission of a leniency application and the identity of the leniency applicant as confidential. The Competition Directorate will set up a separate special file with all the leniency application and its attached documents.</p> <p>The parties will have access to the leniency application contents, which, being part of this special confidential file, are needed to appeal the SO. Nevertheless, no copies can be obtained of any oral or written statement specifically made by the leniency applicant to be submitted within the leniency application (Article 51 Competition Regulation).</p>
<p><b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b></p>	<p>As a rule, the CNMC's Council decision rejecting a leniency application cannot be appealed before the Court (Article 48 Competition Act). Nevertheless, the Competition Directorate's Resolutions rejecting a leniency application –not granting conditional exemption- could be appealed before the CNMC's Council if the leniency applicant alleges irreparable violation of his fundamental rights or legitimate interests.</p>

<sup>5</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.

<p><b>Q. Contact point where a leniency application can be lodged</b></p>	<p>At the CNMC website is available the contact point to get assistance on how to submit a leniency application and the information about the submission of a leniency application through the CNMC Electronic Register:</p> <p><a href="https://www.cnmc.es/ambitos-de-actuacion/competencia/programa-de-clemencia">https://www.cnmc.es/ambitos-de-actuacion/competencia/programa-de-clemencia</a></p> <p>Also if is needed any clarification about how to submit a leniency application, it is possible to contact CNMC's Office of Competition: 34 91 787 68 44.</p>
<p><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></p>	<p>No, but the CNMC'S Council will not grant the applicant the exemption from payment of the fine in the final Decision if the leniency applicant has not met the requirements established in Article 65.1 Competition Act. In this case, the final decision of the CNMC's Council can be appealed.</p>
<p><b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b></p>	<p>No, the Spanish competition policy does not allow for "affirmative leniency".</p>
<p><b>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</b></p>	<p>After notification of the SO, the parties in the infringement proceeding will have access to the data and documents, which form part of the separate confidential file with the leniency material submitted within the leniency application, necessary to appeal the SO. Nevertheless, the parties in the proceeding will not get a copy of the statements included in the leniency application submitted by the leniency applicant, which may be seen, but not copied.</p> <p>Besides, in the event of judicial review, when the leniency application submitted in the infringement proceeding is sent to the Court, the CNMC will expressly identify the statements made by the leniency applicant, no copies of which will be allowed (Article 51 Competition Regulation).</p> <p>Furthermore, if the documents submitted by a leniency applicant are required by a Court to review the CNMC's behaviour before the final CNMC's Council decision is issued, those documents will be submitted under confidential terms, with an express indication to the Court that the documents cannot be reported to third parties.</p> <p>The Competition Act provides a special protection to leniency applications because of the serious inconveniences that could arise from the disclosure of the existence and/or the content of the leniency applications. Not only to maintain the incentives for other competitors in the cartel to submit further leniency applications, but also to protect the CNMC's investigation.</p> <p>Therefore, when the CNMC is compelled to provide with information or give its opinion, under Article 15 of the Civil Procedure Act 1/2000, of 7 January 2000, it will keep from submitting data or documents provided by leniency applicants, submitted within the leniency application.</p>



	In the civil private enforcement actions which may be brought in relation to a cartel infringement sanctioned after a proceeding including a leniency application, the CNMC will not provide with any copy of the leniency applicants' statements, as such disclosure would reduce the effectiveness of the leniency program and weaken the fight against cartels.
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## 7. Settlement

<b>Does your competition regime allow settlement? If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</b>	The Spanish Competition Regime does not allow any kind of settlement throughout the sanctioning proceeding.
<b>A. Which types of restrictive agreements are eligible for settlement?</b>	N/A
<b>B. What is the reward of the settlement for the parties?</b>	N/A
<b>C. May a reduction for settling be cumulated with a leniency reward?</b>	N/A
<b>D. List the criteria (if there is any) determining the cases which are suitable for settlement.</b>	N/A
<b>E. Describe briefly the system</b>	N/A
<b>F. Describe the procedural efficiencies of your settlement system</b>	N/A
<b>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</b>	N/A
<b>H. Is there a possibility for settled parties to appeal a settlement decision at court?</b>	N/A

## 8. Commitment

<b>A. Does your competition regime allow the possibility of commitment? If yes, please indicate its public availability</b>	Art. 52 Competition Act, Art. 39 Competition Regulation and Communication on Termination by commitments regulate termination through the acceptance of commitments in investigations into prohibited conducts when the offenders propose commitments that resolve the effects on competition and the public interest is guaranteed.
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	<p>This is an atypical way of ending an infringement proceeding in which the CNMC terminates the case by accepting certain binding commitments voluntarily offered by the alleged infringing party, without the need for a declaration as to whether the violation has been demonstrated to exist or, consequently, for a penalty to be levied. Therefore, termination of an infringement proceeding by commitments is not a settlement proceeding, which has no reflection in Spain's competition regulations, as stated before.</p>
<p><b>B. Which types of restrictive agreements are eligible for commitment Are there commitments which are excluded from the commitment possibility?</b></p>	<p>Termination of an infringement proceeding by commitments is a way of finishing an investigation opened due to a possible infringement of competition rules for violation of Articles 1, 2 and/or 3 Competition Act and, if it is applicable, of Articles 101 and/or 102 TFEU.</p> <p>A termination by commitments is not admissible in those cases in which there are no viable commitments, either to resolve the effects on competition of the conducts or to guarantee the public interest.</p> <p>This procedure will NOT start when the investigation involves a one-off conduct with no continuity or, as stated before, a violation of Article 1 Competition Act in relation to a cartel; When the conducts had irreversible effects on competition during a significant period of time or affected a substantial part of the market; When the CNMC or some other competition authority has previously declared the alleged perpetrators responsible for a prohibited practice on the basis of similar conducts, or they have been part of a previous termination by commitments for similar practices or discontinuation of the infringement proceeding puts the effectiveness and deterrent effect of competition rules at risk; Or just when the CNMC deems that an express pronouncement is needed.</p>
<p><b>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</b></p>	<p>Competition Directorate will decide to start with this proceeding when the party that requests the beginning, has previously contacted the Competition Directorate to analyse the likely termination of the investigation through the agreement on binding commitments; this request is made before the deadline to reply the SO; the request sets out the general contours of the commitments the alleged infringing party would be willing to offer, and a statement as to why those commitments are considered adequate and sufficient for allowing a termination of the infringement proceeding.</p>
<p><b>D. Describe, which types of commitments are available under your competition law.</b></p>	<p>The commitments that may give rise to a commitment-based termination of a proceeding may be behavioural or structural in nature, or a combination. For example, commitments to modify a conduct, to put an end to certain types of arrangements, to eliminate provisions from agreements, contracts or bylaws, to disinvest, to refrain from engaging in certain economic activities, etc.</p> <p>In relation to the acceptance of the commitments proposed, in order to fulfil the requirements that the commitments must resolve, the CNMC will assess that the proposals meet the following requirements:</p> <ul style="list-style-type: none"> <li>- The offered commitments resolve effectively, clearly and unequivocally the competition problems detected.</li> <li>- The commitments can be implemented quickly and effectively.</li> </ul>

	<p>- Monitoring the fulfilment and effectiveness of the commitments is likely and efficacious.</p>
<p><b>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</b></p>	<p>The decision to begin this proceeding and to accept the commitments is a discretionary decision from the CNMC. The decision to begin the process of reaching a termination by commitments rests with the Competition Directorate, upon prior proposal by the alleged perpetrators of the prohibited conducts. Nevertheless, the Competition Directorate may invite them to seek a termination by commitments if it deems that the circumstances of the case warrant such termination. This invitation will be issued simultaneously to the opening of the infringement proceeding, although it may also be made after that time, although it should generally be submitted before the end of the stipulated time limit for replying to the SO.</p> <p>Termination by commitments has a dual objective. The first is quick reestablishment of the conditions of competition that had been jeopardised by the anti-competitive conducts that were detected, by means of commitments that resolve or eliminate the competition problems, safeguarding consumer welfare and the public interest. And the second is to comply with the principle of administrative effectiveness, allowing a more appropriate use of the CNMC's resources by helping to reduce investigation work and shorten the time it takes to resolve the infringement proceeding in which a termination by commitments is accepted. For these reasons, the CNMC will value very highly that the proposal for termination by commitments be submitted in the very earliest stages of the infringement proceeding, with the aim of securing the public interest as set out in Article 52 Competition Act, as stated before (see point 8 letter A above).</p> <p>The request can be made even if not all of the alleged infringers in the investigation participate, although it must cover all of the alleged prohibited conducts for which the applicant is responsible that were identified when the proceeding was formally opened or, if applicable, in the statement of objections.</p> <p>Resolution to begin this procedure will establish, as a general rule, a time limit of 15 business days within which the applicant can submit the commitments, unless the commitments was already submitted with the application to start this procedure. Resolution will also stop the time limit for resolving the infringement proceeding until the end of the actions leading to the termination by commitments. The Resolution will be notified to all parties with an interest in the proceeding. Failure to submit the proposal of commitments within the stipulated time frame will be regarded as a withdrawal of the request for termination by commitments, and for this reason, the infringement proceeding will continue and renewed running of the clock for concluding the case. With respect to the rest of the parties of the proceeding who also wish to seek a termination by commitments, they may either endorse the commitments submitted or offer their own commitments with respect to the conducts detected.</p> <p>Competition Directorate will bring before the CNMC Council the termination by commitments proposal, if it believes the commitments offered are proportionate and sufficient for resolving the effects on competition of the conducts investigated and secure the public interest.</p>

	<p>CNMC Council may decide:</p> <ul style="list-style-type: none"> <li>- To finish the infringement proceeding through a Resolution with commitments, upholding the adequacy of the commitments offered.</li> <li>- That the commitments offered are not proportionate or do not adequately resolve the effects on competition of the conducts examined in the proceeding so as to secure the public interest, and instruct the Competition Directorate to continue the infringement proceeding.</li> <li>- That there be presented new commitments to resolve the problems detected. On those new commitments the Council will resolve by either declaring termination by commitments or by instructing the Competition Directorate to continue the infringement proceeding.</li> </ul>
<b>F. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</b>	No, as stated before, if the infringement proceeding is finalised with a Resolution upholding the adequacy of the commitments offered, there is no declaration of infringement.
<b>G. Describe how your authority monitors the parties' compliance to the commitments.</b>	CNMC may open a new infringement proceeding under Articles 1, 2 and/or 3 Competition Act and, if applicable, Articles 101 and/or 102 TFEU in the case of breach of the compliance to the commitments, against the same conducts that were the object of the termination by commitments.
<b>H. Is there a possibility for parties to appeal a commitment decision at court?</b>	As stated before, judicial appeals may be lodged against the final decisions of the CNMC's Council (Article 48 Competition Act) and the decision of the Competition Directorate rejecting the start of this procedure through the acceptance of certain commitments could be appealed before the CNMC's Council if the parties allege irreparable damages to their rights or legitimate interests.

## 9. Investigative powers of the enforcing institution(s)<sup>6</sup>

<b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>7</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b>	<p>All natural or legal persons and bodies or entities of all public authorities are subject to the duty to cooperate with the CNMC in the exercise of its function to protect free competition. They shall be obliged to provide, at the request of the CNMC and on time, all types of data and information in their possession, which may be necessary for the discharge of the CNMC's functions.</p> <p>Requests for information must be reasoned and be proportionate to the aim pursued. To that end, requests for information shall provide a detailed and specific description of the content of the information sought and shall specify, giving reasons, the function the discharge of which requires such information and the use to be made of the information.</p>
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<sup>6</sup> "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

<sup>7</sup> "Searches/raids" means all types of search, raid or inspection measures.

	<p>Besides, civil servants of the CNMC authorized by the Director of Competition shall have the capacity of agent of the authority and may conduct inspections of undertakings and associations of undertakings with the following powers of inspection:</p> <p>a) To get into any premises, land and means of transport of the undertakings and associations of undertakings and the private homes of the entrepreneurs, managers and other members of staff of the undertakings. Moreover, they may check the items used in the services or activities of the operators or the persons who carry out the activities referred, the networks they install or operate and as many documents as they are required to possess or retain.</p> <p>b) To check the books, registers and other documents relating to the activity in question, regardless of its material format, including computer programs and files of a magnetic, optical or any other nature.</p> <p>c) To make or obtain copies or extracts, in any format, of such books or documents.</p> <p>d) To retain, for a maximum period of 10 days, the books or documents referred to in letter b).</p> <p>e) To seal all premises, books or documents and other company property for the time and to the extent necessary for the inspection.</p> <p>f) To ask any representative or member of staff of the undertaking or association of undertakings for explanations on acts or documents related to the subject matter and purpose of the inspection and record the answers.</p> <p>The exercise of the powers described in letters a) and e) shall require the express prior consent of the affected party or, failing that, appropriate judicial authorization.</p> <p>If the undertaking or association of undertakings opposes an inspection ordered by the Director of Competition or exists a risk of such opposition, they must request the corresponding judicial authorization when this involves restriction of fundamental rights from the Court, which shall rule within a maximum period of 48 hours. The public authorities shall provide the necessary protection and aid to the CNMC personnel for the exercising of the functions of inspection.</p> <p>The civil servants with responsibility for the inspection shall draw up a report on their actions. The reports drawn up shall have the status of public documents and, unless proven otherwise, shall evidence the facts underpinning their formalization.</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>As stated before, according to the Article 27 of the CNMC Constitution Act, the CNMC's officials authorized by the Director of Competition could get into in any premise, land and mean of transport of the undertakings and associations of undertakings, including the private homes of the entrepreneurs, managers and other members of the undertakings. The CNMC officials in order to exercise this power shall require the previous and express agreement of the affected party or, failing this, a search warrant.</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>On one hand if during the further analysis of the information copied during an inspection, the CNMC considers some information, which falls inside the scope of the inspection decision, may also indicate the existence of anti-competitive conduct in another case, the undertaking or association of undertakings raided will be informed about the use of this information, taking into account that it shall only be used for the aims set out in the Competition Act. On the other hand, any use of the information that falls outside the scope of the inspection decision is, in principle, barred. However, documents found by chance, truly fortuitous, during an inspection and not related to it, can be used to begin a new investigation. In this case, the Director of Competition could adopt another inspection decision concerned suspected competition infringements.</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, there have not been any significant legal challenges to the use of investigative measures authorized by the courts.</p>

## 10. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</b></p>	<p>In the context of cartel cases, interested parties have the same rights as within other prohibition proceedings: right to know at any time the state of the proceeding; to have access to the records and files and to obtain copies of all documents in the file, except for confidential information; right to submit any declaration or argument and to provide documents at any stage of the proceedings; right to be notified of the facts that may constitute an infringement and possible penalties to be imposed in a SO, of which the interested parties shall be notified so that, within a period of fifteen days, they may reply it and, as the case may be, propose evidence that they deem pertinent; right to be notified the proposal for resolution, of which the interested parties shall be notified so that, within a new period of fifteen days, they may submit new allegations that they deem appropriate, as well as their request for an oral hearing and the right to obtain information and guidance on legal and technical requirements to submit requests or documents. Relevant legal provisions: Articles 36-54 Competition Act and Articles 11-41 Competition Regulation.</p>
<p><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? Please indicate the relevant legal provisions.</b></p>	<p>Competition Act does not sets out any difference depending on the information is provided under a compulsory legal order or under informal cooperation. So, any person who, when submitting documents to the CNMC, requests confidential treatment of the data or information must do so on a reasoned basis before the competent body within the framework of the proceeding in question, and must also submit a non-confidential version of those documents. Furthermore, at any time during the proceeding, the CNMC may be ordered, ex officio or at the request of the parties, that the data or documents considered confidential are kept secret, using them to create a separate file (Article 42 Competition Act and Article 20 Competition Regulation).</p>

## 11. Limitation periods and deadlines

<p><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 on the merits of the case must be made?</b></p>	<p>According to the Article 68 Competition Act, very serious infringements shall lapse after four years, serious ones after two years and minor ones after one year. The term of the lapse shall be counted as of the day when the infringement has been committed or, in the case of continued infringements, as of when they have ceased. After the corresponding lapse of the infringement, the investigation proceeding cannot be opened.</p>
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</b></p>	<p>According to Article 36.1 Competition Act, the maximum period for issuing and notifying the resolution that ends a sanctioning proceeding for restrictive competition conduct shall be 18 months as of the date of the institution decision. The expiration of the maximum deadline of 18 months after the proceeding opening's date without a final Decision, there will cause the proceeding to lapse.</p>
<p><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? (see also 15A)</b></p>	<p>According to Article 47 Competition Act, only the resolutions and acts of the Competition Directorate that lead to defenselessness or irreparable damage to rights or legitimate interests may be appealed before the CNMC Council in the period of 10 days after its notification. Only judicial appeals in the terms of the Administrative Jurisdiction Act 29/1998, of 13 July, may be lodged against the resolutions and acts of the Chairman and of the CNMC Council. The deadline to lodge the appeal are 2 months from the date that the resolution has been notifying to the parties.</p>

## 12. Types of decisions

<p><b>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</b></p>	<p>According to Article 53 Competition Act the resolutions of the CNMC Council may declare:</p> <ul style="list-style-type: none"> <li>a) The existence of conduct prohibited by the Competition Act or by Articles 101 and 102 TFEU.</li> <li>b) The existence of conduct that, due to its scant importance, is not capable of significantly affecting competition.</li> <li>c) The existence of prohibited practices not being accredited.</li> </ul>
<p><b>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</b></p>	

<p><b>C. Can interim measures<sup>8</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>9</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></p>	<p>Once proceedings have been opened the CNMC Council may, ex officio, at the request of one of the parties or on the proposal or prior report of the Competition Directorate, adopt interim measures intended to ensure the efficacy of the resolution that may be later issued. Articles 40 and 41 of the Competition Regulation lay down the types and the procedure for the adoption of the interim measures. The main condition for taking such a decision is to ensure the efficacy of the resolution that may be later issued. So, the CNMC Council may adopt, inter alia, the following interim measures:</p> <p>a) Order to cease the conducts referred to by the case or to impose certain conditions thereon to avoid the harm they may cause.</p> <p>b) Guarantee of any kind declared sufficient by the CNMC Council to cover the liability for such damages and losses as could be caused.</p> <p>Interim measures cannot be ordered that are capable of generating irreparable harm to the interested parties or that imply violation of fundamental rights.</p>
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### 13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p><b>A. Grounds for the imposition of procedural sanctions / fines:</b></p>	<p>Article 62.2 Competition Act establishes as a minor infringement not to provide the CNMC with the information requested or supplied, to provide with incomplete, incorrect, misleading or false information, not to submit to an inspection or to obstruct by any means an inspection.</p>
<p><b>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</b></p>	<p>The procedural sanctions are administrative ones (minor infringement, as stated above).</p>
<p><b>C. On whom can procedural sanctions be imposed?</b></p>	<p>Procedural sanctions can be imposed on natural (individuals) or legal persons (economic agents, undertakings, associations, unions or groupings of them).</p>
<p><b>D. Criteria for determining the sanction / fine:</b></p>	<p>The penalty of a minor infringement is a fine of up to 1% of the aggregate turnover of the infringing undertaking in the year immediately preceding the year of the imposition of the fine. In the event that it is not possible to work out that turnover, the fine will be from 100,000€ to 500,000€. Administrative fines could be imposed on individuals of up to 60.000€.</p>
<p><b>E. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>See answer above.</p>

<sup>8</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>9</sup> Only for agencies which answered “yes” to question 2.B. above



## 14. Sanctions on the merits of the case

<p><b>Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be imposed?</b></p>	<p>The sanctions in cartel cases are administrative ones (fines). These sanctions may be imposed on the economic agents, undertakings, associations, unions or groupings of them that, intentionally or by negligence, infringe the provisions of the Competition Act and on each of its legal representatives or on the persons that comprise the management bodies that have participated in the agreement or decision.</p>
<p><b>A. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</b></p>	<p>According to the Article 64 Competition Act the criteria to set the amount of the fines, are, among others:</p> <ul style="list-style-type: none"> <li>a) The dimension and characteristics of the market affected by the infringement.</li> <li>b) The market share of the undertaking or undertakings responsible.</li> <li>c) The scope of the infringement.</li> <li>d) The duration of the infringement.</li> <li>e) The effect of the infringement on the rights and legitimate interests of consumers or on other economic operators.</li> <li>f) The illicit benefits obtained because of the infringement.</li> <li>g) The aggravating and mitigating circumstances that exist in relation to each of the responsible undertakings.</li> </ul> <p>There could be also aggravating circumstances, among others:</p> <ul style="list-style-type: none"> <li>a) The repeated commission of infringements typified in the Competition Act.</li> <li>b) The position of leader or instigator of the infringement.</li> <li>c) The adoption of measures to impose or guarantee the enforcement of the conduct constituting the infringement.</li> <li>d) The lack of collaboration or obstruction of the inspection task, notwithstanding the possible consideration as independent infringement.</li> </ul> <p>Finally there could be also mitigating circumstances, like:</p> <ul style="list-style-type: none"> <li>a) The performance of actions that terminate the infringement.</li> <li>b) The effective non-application of the prohibited conduct.</li> <li>c) The performance of actions intended to repair the damage caused.</li> <li>d) The active and effective collaboration with the CNMC carried out outside the cases of exemption and of reduction of the amount of the fine.</li> </ul>
<p><b>B. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>Yes, there are some limits in the maximum fines imposed on an undertaking and individuals.</p> <p>According to Ar. 63 Competition Act and the Supreme Court Jurisdiction, the penalty of a minor infringement is a fine of up to 1% of the aggregate turnover of the infringing undertaking in the year immediately preceding the year of the imposition of the fine.</p>

	<p>In the case of severe infringement of up to 5 % of the aggregate turnover of the infringing undertaking in the year immediately preceding the year of the imposition of the fine.</p> <p>In the case of very severe infringement like a cartel infringement, of up to 10% of the aggregate turnover of the infringing undertaking in the year immediately preceding the year of the imposition of the fine.</p> <p>In the event that it is not possible to work out the turnover referred, the fine will be from 100,000€ to 500,000€.</p> <p>Administrative fines could be imposed on individuals up to 60.000€.</p>
<b>C. Guideline(s) on calculation of fines:</b>	See point 1 letter C above, about CNC Communication on the method of setting fines.
<b>D. 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>	Generally, a challenge to a decision imposing a sanction has a suspensory effect on that sanction, due to as a rule the parties appeal the Resolutions imposing fines and, in the first instance, the National High Court (Audiencia Nacional) grants that suspension if the parties apply for it.

## 15. Possibilities of appeal

<b>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</b>	<p>Spanish Competition Act sets out an appeal against a decision that there has been a violation of a prohibition of cartels. According to Article 47 Competition Act, only judicial appeals in the terms of Administrative Jurisdiction Act 29/1998, 13 July, may be lodged against the resolutions and acts of the Chairman and the CNMC Council.</p> <p>Generally, the grounds of appeals may be questions of law or facts or breaches of procedural requirements.</p>
<b>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</b>	According to the Additional Provision 4 of the Act 29/1998, CNMC's Decision should be appealed before the Administrative Section of the National High Court (Audiencia Nacional).