



**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

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

Switzerland

Updating of the template:

17/10/2022

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 anti-competitive practices, particularly 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 and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

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

1. Information on the law relating to cartels

A. Law(s) covering cartels:	<p>251 Federal Act of 6 October 1995 on Cartels and other Restraints of Competition (Cartel Act, CartA) http://www.admin.ch/ch/e/rs/c251.html Available in: German, French, Italian and English</p> <p>Federal Act of 6 October 1995 on the Internal Market (IMA) https://www.admin.ch/opc/de/classified-compilation/19950280/index.html Available in: German, French and Italian</p>
B. Implementing regulation(s) (if any):	<p>Ordinance of 17 June 1996 on the Control of Concentrations of Undertakings (Merger Control Ordinance, MCO) http://www.admin.ch/ch/e/rs/c251_4.html Available in: German, French, Italian and English</p> <p>Ordinance of 12 March 2004 on Sanctions imposed for Unlawful Restraints of Competition (Cartel Act Sanctions Ordinance, CASO) http://www.admin.ch/ch/e/rs/c251_5.html Available in: German, French, Italian and English</p> <p>Ordinance of 25 February 1998 on the Fees charged under the Cartel Act (Cartel Act</p>

	<p>Fees Ordinance, CartA-FeeO) http://www.admin.ch/opc/de/classified-compilation/19980154/index.html Available in: German, French, Italian</p>
<p>C. Interpretative guideline(s) (if any):</p>	<ul style="list-style-type: none"> - Notice regarding the competitive assessment of vertical agreements - Remarks on the notice regarding the competitive assessment of vertical agreements - Notice regarding the competition law treatment of vertical agreements in the motor vehicle trade - Remarks on the notice regarding the competitive assessment of vertical agreements in the motor vehicle trade - Notice regarding small- and middle-sized undertakings - Notice regarding the ratification and sponsoring of sporting goods - Notice regarding the use of aids of calculation - Remarks on the ordinance on fines - Explanatory leaflet on selected instruments of investigation - Explanatory leaflet on the decision making process of the COMCO - Explanatory leaflet on settlements - Explanatory leaflet on business secrets - Explanatory leaflet on deadlines in competition procedures - Explanatory leaflet on preliminary investigations - Explanatory leaflet on investigations - Explanatory leaflet on merger notification - Note on the notification and evaluation practice of mergers - Explanatory leaflet on opposition proceedings - Explanatory leaflet on the leniency program (voluntary report) - Explanatory leaflet on relative market power - Guidelines on the submission of economic evidence - Guidelines on the relationship with civil courts - Questionnaires sent by the European Commission to Swiss companies <p>https://www.weko.admin.ch/weko/de/home/rechtliches_dokumentation/bekanntmachungen--erlaeuterungen.html</p> <p>All available in: German, French and Italian; a few also in English</p>
<p>D. Other relevant materials (if any):</p>	<p>Law and policy on competition (LPC, casebook) https://www.weko.admin.ch/weko/de/home/praxis/recht-und-politik-des-wettbewerbs--rpw.html Available in: German, French and Italian</p> <p>Federal Act of 20 December 1968 on Administrative Procedure (Administrative Procedure Act, APA) https://www.admin.ch/opc/en/classified-compilation/19680294/index.html</p>

	<p>Available in: German, French, Italian, Romanic and English</p> <p>Federal Act of 4 December 1947 on Civil Procedure (Federal Civil Procedure Act, FCPA)</p> <p>https://www.admin.ch/opc/de/classified-compilation/19470259/index.html</p> <p>Available in: German, French and Italian</p> <p>Federal Act of 22 March 1974 on Administrative Criminal Law (Administrative Criminal Law Act, ACLA)</p> <p>http://www.admin.ch/opc/de/classified-compilation/19740066/index.html</p> <p>Available in: German, French, Italian, Romanic</p>
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2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>The Cartel Act does not use the term “cartel”, but it uses the terms “agreements affecting competition” instead: “Agreements affecting competition are binding or non-binding agreements and concerted practices between undertakings operating at the same or at different levels of production which have a restraint of competition as their object or effect” (Article 4 (1) Cartel Act).</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>Yes.</p> <p>The following (horizontal) cartel behaviour is presumed to be very serious (hardcore cartels, Article 5(3) Cartel Act):</p> <ul style="list-style-type: none"> - agreements to fix prices - agreements to limit quantities - agreements to allocate markets <p>The following vertical agreements are presumed to be very serious (Article 5(4) Cartel Act):</p> <ul style="list-style-type: none"> - vertical agreements regarding fixed or minimum prices - vertical agreements contained in distribution contracts regarding the allocation of territories to the extent that sales by other distributors into these territories are not permitted. <p>For other agreements, no such presumption exists, and they are evaluated on a case-by-case analysis.</p>
<p>C. Scope of the prohibition of hardcore cartels:</p>	<p>The aforementioned (2.B.) horizontal hardcore cartels are presumed to eliminate effective competition.</p> <p>If there is proof that such agreements only significantly restrict competition in a market (and do not as presumed eliminate it) they are deemed to be justified on grounds of economic efficiency if they:</p> <ol style="list-style-type: none"> 1) are necessary in order to 2) - reduce production or distribution costs, or <ul style="list-style-type: none"> - improve products or production processes, or - promote research into or dissemination of technical or professional know-how, or - exploit resources more rationally; and

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

	3) do not enable the parties involved under any circumstances to eliminate effective competition.
D. Is participation in a hardcore cartel illegal <i>per se</i>²?	No, the Cartel Act operates, though, on the presumption that hardcore cartels (2.B.) lead to the elimination of effective competition. If this presumption cannot be refuted, a justification based on grounds of economic efficiency is not possible and the agreement is deemed illegal.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	The participation in a hardcore cartel is in principle an administrative offence. A person affected by an unlawful restraint of competition is entitled to file a civil action. Potentially the members of a bid-rigging Cartel could be liable under the Swiss Criminal Code. Courts in Switzerland have not answered the question yet whether bid-rigging could be a criminal offence.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	Secretariat of the Swiss Competition Commission
B. Contact details of the agency:	Competition Commission Secretariat Hallwylstrasse 4 CH-3003 Bern Tel.: +41 58 462 20 40 info@weko.admin.ch Online contact form: https://www.weko.admin.ch/weko/en/home/kontakt/kontakt.html Website: https://www.weko.admin.ch/weko/en/home.html Available in: German, French, Italian and English
C. Information point for potential complainants:	Whistle-blowers: https://www.weko.admin.ch/weko/de/home/anzeigen/whistleblowing.html Leniency applicants: https://www.weko.admin.ch/weko/de/home/anzeigen/selbstanzeige-bonusregelung.html Others: Information about unlawful practices: https://www.weko.admin.ch/weko/de/home/anzeigen/kontakt.html , Suspicion of bid rigging: https://www.weko.admin.ch/weko/de/home/anzeigen/kontakt1.html and Information about relative market power:

² 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.

	https://www.weko.admin.ch/weko/de/home/anzeigen/relative_marktmacht.html
D. Contact point where complaints can be lodged:	Whistle-blowers: Email: whistleblowing@weko.admin.ch Leniency applicants: Email: selbstanzeige@weko.admin.ch Bid rigging: Email: submissionsabrede@weko.admin.ch Others: https://www.weko.admin.ch/weko/de/home/kontakt/kontakt.html
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	The federal or state (cantonal) police assists the Secretariat of the Competition Commission during searches of premises For example: https://www.fedpol.admin.ch/fedpol/de/home.html The price surveillant may refer cases to the Secretariat of the Competition Commission https://www.preisueberwacher.admin.ch/pue/de/home.html

4. Decision-making institution(s)³ [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases:	Competition Commission
B. Contact details of the agency:	Competition Commission Hallwylstrasse 4 CH-3003 Bern Tel.: +41 58 462 20 40 info@weko.admin.ch Online contact form: https://www.weko.admin.ch/weko/en/home/kontakt/kontakt.html Website: https://www.weko.admin.ch/weko/en/home.html Available in: German, French, Italian and English
C. Contact point for questions and consultations:	See above (4.B.)
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	The Secretariat of the Swiss Competition Commission opens an investigation in consultation with a member of the presiding body of the Competition Commission or can be mandated with an investigation by the Swiss Competition Commission or the Federal Department of Economics Affairs, Education and Research. The Secretariat conducts the investigation and issues together with a member of the presiding body any procedural decisions. It carries out searches of premises and questions the

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

	parties. It submits motions for decisions of the Swiss Competition Commission on which the parties may comment. They may include sanctions and measures to re-establish workable competition. The Secretariat of the Swiss Competition Commission may negotiate an amicable settlement which is subject to the approval of the Swiss Competition Commission.
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	Potentially bid-rigging cartels could be criminal offences. Courts have not answered yet whether the participants of a bid-rigging cartel are liable under the Swiss Criminal Code. In Switzerland the body of public prosecution enforces the Swiss Criminal Code.

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases:	The Secretariat may conduct preliminary investigations on its own initiative (ex officio), following an undertaking's complaint or on information received from third parties. Additionally, the Secretariat may in consultation with a member of the presiding body of the Competition Commission open an investigation without prior preliminary investigations, e.g. following a leniency application.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	No. However, the Secretariat provides practical guidelines and an online form on its website. Practical guidelines: https://www.weko.admin.ch/weko/de/home/rechtliches_dokumentation.html Online forms: https://www.weko.admin.ch/weko/de/home/anzeigen.html Available in German, French, Italian and some also in English The Secretariat asks the complainants to substantiate their claims more or less thoroughly, depending on whether the complaint is filed by a citizen, a whistle-blower or an undertaking.
C. Legal requirements for lodging a complaint against a cartel:	There are no specific legal requirements. Any person or undertaking may file a complaint with the Swiss Competition Commission
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	No, the Secretariat is not obliged to take action on each complaint, it has a limited discretionary power to refuse to investigate complaints on minor breaches of the Swiss Cartel Act.
E. If the agency intends not to pursue a complaint, is it required to adopt a	The Secretariat is not required to adopt such a decision (decision of the Swiss Federal Court 2A.74/2004 resp. BGE 130 II 521, E. 2.7.3). The Secretariat informs the complainants about the reasons why it does not intend to pursue a complaint.

<p>decision addressed to the complainant explaining its reasons?</p>	
<p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</p>	<p>No, there is no such time limit.</p>

6. Leniency policy⁴

<p>A. What is the official name of your leniency policy (if any)?</p>	<p>There is no specific name for the leniency policy. The Ordinance of 12 March 2004 on Sanctions imposed for Unlawful Restraints of Competition (Cartel Act Sanctions Ordinance, CASO) regulates the conditions and the procedure for obtaining complete or partial immunity from sanctions. It is publicly available and can be found on the following website:</p> <p>https://www.fedlex.admin.ch/eli/cc/2004/175/de</p> <p>Furthermore the Swiss Competition Commissions' website provides a leniency application form as well as an explanatory leaflet:</p> <p>https://www.weko.admin.ch/weko/de/home/anzeigen/selbstanzeige-bonusregelung.html</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>Yes. The competition commission grants an undertaking full immunity from sanctions, if it provides information that enables the competition authority to open proceedings, or if it provides evidence that enables the competition authority to establish a hardcore infringement of competition.</p> <p>The Swiss Competition Commission shall reduce the sanction up to 50 per cent if an undertaking voluntarily cooperates in proceedings and if it terminates its participation in the infringement of competition law no later than at the time at which it submits evidence. The reduction depends on the importance of the undertaking's contribution to the success of the proceedings.</p> <p>The Swiss Competition Commission can reduce the amount of the sanction up to 80 per cent if an undertaking voluntarily provides information or submits evidence on further unlawful restriction of competition.</p>
<p>C. Who is eligible for full</p>	<p>Only the first applicant is eligible for full immunity.</p>

⁴ For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

<p>leniency?</p>	<p>The rest of the applicants however can benefit from a partial reduction as mentioned in 6.B.</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>The eligibility for leniency does not depend on whether the authority has already opened proceedings. If after the opening an undertaking provides evidence that enables the authority to establish an infringement of the Cartel Act it is still eligible for leniency. There is no specific date for the participants to come forward, although, if the competition authority already possesses sufficient evidence to prove the infringement, immunity from a sanction cannot be granted anymore. Therefore, it is recommendable for undertakings to apply for leniency in the early stages of the proceedings.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Only businesses can benefit from the leniency program. But the Swiss Competition Commission only has a legal basis for sanctioning businesses.</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>As mentioned above (6.B.), the Swiss Competition Commission grants an undertaking full immunity from a sanction, if it provides information that enables the competition authority to open proceedings, or if it provides evidence that enables the competition authority to establish a hard core infringement of competition. Furthermore, full immunity from a sanction can only be granted if the undertaking:</p> <ul style="list-style-type: none"> a. has not coerced any other undertaking into participating in the infringement of competition and has not played the instigating or leading role in the relevant infringement of competition; b. voluntarily submits to the competition authority all available information and evidence relating to the infringement of competition that lies within its sphere of influence; c. continuously cooperates with the competition authority throughout the procedure without restrictions and without delay; d. ceases its participation in the infringement of competition upon submitting its voluntary report or upon being ordered to do by the competition authority. <p>As mentioned above (6.D), full immunity can only be granted if the competition authority does not already possess sufficient evidence to prove the infringement.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>The Swiss Competition Commission can reduce the sanction up to 50 per cent if an undertaking voluntarily cooperates in proceedings and if it terminates its participation in the infringement of competition law no later than at the time at which it submits evidence. The reduction depends on the importance of the undertaking's contribution to the success of the proceedings.</p> <p>The Swiss Competition Commission can reduce the amount of the</p>

	<p>sanction up to 80 per cent if an undertaking voluntarily provides information or submits evidence on further unlawful restriction of competition.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>The undertaking has to continuously and voluntarily cooperate with the competition authority throughout the procedure without restrictions and without delay. It has to terminate its participation in the infringement no later than at the time at which it submits evidence. The reduction depends on the importance of the undertaking's contribution to the success of the proceedings.</p>
<p>I. Are there formal requirements to make a leniency application?</p>	<p>There are no formal requirements. I.e. an undertaking can deposit its leniency application in form of a verbal statement which is subsequently transcribed or it can directly be submitted in written. An undertaking may even apply for leniency submitting anonymous information in the first step. Regarding its content, the leniency application shall contain all necessary information on the undertaking itself, on the nature of the reported infringement of competition, on the other undertakings participating in the infringement of competition and on the affected or relevant markets.</p>
<p>J. Are there distinct procedural steps within the leniency program</p>	<p>The Secretariat acknowledges receipt of the leniency application, indicating the date and time of receipt. It informs the applicant in consultation with a member of the presiding body of</p> <ul style="list-style-type: none"> a) the extent to which it regards the requirements for complete immunity from the sanction as fulfilled; b) any additional information that the reporting undertaking shall submit and in the case of an anonymous voluntary report c) the period within which the undertaking must disclose its identity. The Competition Commission decides whether to grant complete immunity from the sanction.
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>As mentioned above, the Swiss Competition Commission may grant an undertaking full immunity. The applicant is therefore not certain with respect to its eligibility for leniency until the final decision. However, the Secretariat may inform the applicant in consultation with a member of the presiding body at an early stage of the proceeding of the extent to which it regards the requirements for complete immunity from the sanction as fulfilled. Furthermore, it will propose the Swiss Competition Commission in its motion to grant full immunity to the applicant, which gives the applicant a high degree of certainty with respect to its eligibility for leniency.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p>	<p>The Swiss Competition Commission has the power to grant leniency and takes a formal decision (Art. 11 (1) CASO).</p> <p>The Secretariat may reach an amicable settlement with the parties. Therein, it may offer the prospect of full or partial immunity. The amicable settlement is, however, subject to approval by the Swiss Competition Commission. Solely the Swiss Competition Commission has the power to grant leniency in a formal decision.</p>

<p>M. Do you have a marker⁵ system? If yes, please describe it.</p>	<p>Yes. Markers can be set either through the online form on https://www.weko.admin.ch/weko/de/home/anzeigen/selbstanzeige-bonusregelung/e-marker.html or under the following email address: selbstanzeige@weko.admin.ch. The Secretariat acknowledges receipt of the leniency application automatically, indicating the date and time of receipt. A leniency application via telephone is not possible. The Secretariat informs the applicant of any additional information that the applicant shall submit and in the case of an anonymous leniency application of the period within which the undertaking must disclose its identity. It finally informs the applicant in consultation with a member of the presiding body of the extent to which it regards the requirements for complete immunity from the sanction as fulfilled.</p>
<p>N. Does the system provide for any extra credit⁶ for disclosing additional violations?</p>	<p>Yes, the reduction amounts to up to 80 per cent of the sanction if an undertaking voluntarily provides information or submits evidence on further infringements.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>There is no express obligation to keep the identity of the leniency applicant confidential, but there is a general legal base that makes it possible for the agency to keep it confidential (cf. Art. 27 (1) APA). In practice, the Secretariat keeps the leniency applicant's identity confidential as long as possible (cf. the explanatory note and form of the Secretariat regarding the leniency application [https://www.weko.admin.ch/weko/de/home/anzeigen/selbstanzeige-bonusregelung.html]). Even if the final decision does not reveal the name of the leniency applicant, it is not excluded that a party familiar with the facts of the case may deduce its identity from the context.</p>
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>There is only a possibility to appeal against the final decision if the Commission rejected a leniency application.</p>
<p>Q. Contact point where a leniency application can be lodged:</p>	<p>Competition Commission Secretariat Hallwylstrasse 4 CH-3003 Bern Tel.: +41 58 462 20 40 (application via telephone is not possible) info@weko.admin.ch (general contact)</p> <p>Contact point for leniency applications 24 hours a day during 7 days a week:</p> <p>selbstanzeige@weko.admin.ch or https://www.weko.admin.ch/weko/de/home/anzeigen/selbstanzeige-bonusregelung/e-marker.html (online form)</p>
<p>R. Does the policy address the possibility of</p>	<p>Partially yes. If the Secretariat finds that the voluntary report (leniency application) is incomplete, it informs the undertaking, in</p>

⁵ A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁶ 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>leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>agreement with a member of the presiding body, of any additional information it shall submit (Article 9 (3)(b) CASO) and sets a final deadline for this purpose. If the voluntary report (leniency application) is not subsequently completed, the undertaking loses its position in the ranking. It shall then be determined whether another undertaking is in a position to file the first complete voluntary report.</p> <p>If a party all of a sudden denies all the facts that it reported before in its leniency application the Commission will in principle not grant a reduction of the fine. The parties can appeal the final decision in the proceeding. In the context of this appeal, they can also appeal the “revocation”.</p>
<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>There are no legal provisions allowing or forbidding such a conduct. In general the Secretariat informs the businesses of the possibility of a leniency application at the beginning of searches of premises.</p>
<p>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what does protection actually mean.</p>	<p>Access to the file of the leniency application may be restricted to the premises of the Secretariat. Any form of reproduction (scans, photos, etc.) may be prohibited. This applies as a general rule to the reporting undertaking as well as to the other parties of the proceedings. Whether annexes of the leniency application can be consulted depends on the volume of the file. Access usually takes place at the premises of the competition authority; however if the volume is such that an onsite consultation is not reasonable for the parties and if this prevents them from exercising their right to effective defence, copies may be provided to the parties to the investigation (usually in electronic form), with restrictions as to the extent of their use. This means the copies provided to the parties may be exclusively used for the preparation of the defence in the ongoing administrative cartel procedure before the Swiss competition authorities (but not in civil, criminal and foreign procedures).</p> <p>According to current case law, third parties are not given access to leniency material (see 16.L).</p>

7. Settlement

<p>A. Does your competition regime allow settlement?</p>	<p>Yes. According to Article 29 of the Cartel Act, the Secretariat may propose a settlement to undertakings, if it considers that a restraint of competition is unlawful.</p> <p>Available in: German, French, Italian and English.</p>
<p>B. Which types of restrictive agreements are eligible for settlement?</p>	<p>In principle, all types of restrictive agreements are eligible for settlements.</p>
<p>C. What is the reward of the settlement for the parties?</p>	<p>The Swiss Competition Commission can reduce the amount of the sanction. Whether it does, depends on the circumstances of each individual case.</p>
<p>D. May a reduction for settling be cumulated with a leniency</p>	<p>A reduction for settling can in principle be cumulated with a leniency reward. This depends though on the circumstances of</p>

reward?	each individual case.
E. List the criteria (if there is any) determining the cases which are suitable for settlement.	There is no such list.
F. Describe briefly the system	According to Art. 29 LCart the power to decide whether there will be negotiations over a settlement stays with the Secretariat. This does however not prevent undertakings from taking the initiative. The authority is not obliged to settle. In principle, the settlement may be initiated at any time of the investigation. The later the stage of the investigation, the smaller the incentive to settle for the authority.
F. Describe the procedural efficiencies of your settlement system	The legal reasoning will in general be shorter and it is less likely that a party will appeal against the decision of the Swiss Competition Commission.
G. Does a settlement necessitate that the parties acknowledge their liability for the violation?	No.
H. Is there a possibility for settled parties to appeal a settlement decision at court?	Yes. The normal rules apply (see below 15).

8. Commitment

A. Does your competition regime allow the possibility of commitment? If yes, please indicate its public availability	Yes. Within the framework of settlements and prohibition decisions.
B. Which types of restrictive agreements are eligible for commitment? Are there violations which are excluded from the commitment possibility?	In principle, all restrictive agreements are eligible for commitment.
C. List the criteria (if there are any) determining the cases which are suitable for commitment.	There is no such list of criteria.
D. Describe, which types of commitments are available under your competition law.	There are commitments about future behaviour.
E. Describe briefly the system	Normally the authority proposes commitments within the framework of a settlement or a prohibition decision.
I. Does a commitment decision	No.

necessitate that the parties acknowledge their liability for the violation?	
J. Describe how your authority monitors the parties' compliance to the commitments.	It asks for regular reports of the involved undertakings.
K. Is there a possibility for parties to appeal a commitment decision at court?	Yes. The normal rules apply (see below 15).

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

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids ⁸ , electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>Investigative measures:</p> <ul style="list-style-type: none"> - searches of premises including searches of electronic devices (computers, cell phones, etc.) - seizure of evidence - interrogation - requests for information - expert opinion <p>Searches of premises are ordered by a member of the presiding body of the Swiss Competition Commission in response to a motion from the Secretariat.</p>
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	Private locations and automobiles can be searched whereas persons may not be searched. A member of the presiding body of the Swiss Competition Commission has to authorise the search.
C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!	The Swiss Competition Authorities may access the servers abroad as long as the Swiss company or subsidiary can access the servers abroad from Switzerland (even if they have to use an access key for access). There is no specific statutory rule; however, the relevant case law of the Federal Supreme Court is clear.
D. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?	<p>Analogously to criminal law, evidence not falling under the scope of the search warrant can be used as evidence in another case if:</p> <ol style="list-style-type: none"> a. the coercive measure in question was lawful; and b. a coercive measure would have been adequate and lawful with respect to the new evidence.

⁷ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

⁸ "Searches/raids" means all types of search, raid or inspection measures.

<p>E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No.</p> <p>The Federal Court recently confirmed the legality of searches of premises, stating that there must be sufficient suspicion and that the search must be proportionate.</p>
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10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: Please indicate the relevant legal provisions.</p>	<p>The rights following from Article 6 ECHR, as endorsed by the Federal Supreme Court (BGE 139 I 72, 78 et seq., E. 2).</p> <p>Right to be informed in writing by the Commission of the objections it raises against them (Art. 30 (2) Cartel Act).</p> <p>The right to submit a written statement to those objections (Art. 30 (2) Cartel Act) within a set time limit.</p> <p>Right to access the Commission's file (with the exception of business secrets) (Art. 39 Cartel Act in conjunction with Art. 26 et seq. APA)</p> <p>Right to be heard in an oral hearing Art. 30 (2) Cartel Act).</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p>	<p>The competition authorities are bound by the rules on official secrecy, which include the duty to protect business secrets under all circumstances (Art. 25 Cartel Act)</p>

11. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p>	<p>There is no time limit. However, if the restraint of competition has not been exercised for more than five years by the time an investigation is opened, no sanction can be imposed.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an</p>	<p>There is no time limitation. The corresponding case law of the ECHR applies though.</p>

<p>investigation or to make a decision on the merits? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p>	
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</p>	<p>Only the final decision of the Competition Commission may be challenged. The appeal has to be filed within 30 days.</p>

12. Types of decisions

<p>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.</p>	<p>The Competition Commission decides:</p> <ul style="list-style-type: none"> a. based on the finding of an infringement to impose sanctions (and to grant full or partial leniency); and/or b. on the appropriate measures (e.g. to order to bring the infringement to an end) c. on the approval of an amicable settlement.
<p>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.</p>	<p>None.</p>
<p>C. Can interim measures⁹ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹⁰.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>Yes, the Swiss Competition Commission may order interim measures in order to protect the public interest as regards effective competition. Furthermore interim measures may be ordered if,</p> <ul style="list-style-type: none"> - irreparable damage, - the measure is urgent, - the measure is proportional. <p>The forecast regarding the main decision may be considered.</p>

⁹ 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].

¹⁰ Only for agencies which answered “yes” to question 2.B. above

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p>A. Grounds for the imposition of procedural sanctions / fines</p>	<p>The following procedural breaches may be sanctioned according to the Cartel Act and/or the Criminal Code:</p> <ul style="list-style-type: none"> - false testimony by a witness; - breaches of amicable settlements and administrative decision; - refusal to provide information or produce documents.
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p>	<p>The sanctions for procedural breaches are criminal sanctions.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>On the parties (undertaking) and/or natural persons involved in the proceedings.</p>
<p>D. Criteria for determining the sanction / fine:</p>	<p>False testimony by a witness shall be liable to a custodial sentence not exceeding five years or to a monetary penalty.</p> <p>Any undertaking that breaches an amicable settlement, a final and non-appealable ruling of the competition authorities or a decision of an appellate body can be charged up to 10 per cent of the turnover it achieved in Switzerland in the preceding three financial years. In assessing the amount, due account is taken of the likely profit that resulted from the unlawful behaviour. An undertaking that does not, or does only partially comply its obligation to provide information or produce documents will be charged up to 100'000 Swiss francs.</p> <p>Any person who wilfully violates an amicable settlement, a final and non-appealable ruling of the competition authorities or a decision of an appellate body is liable to a fine not exceeding 100'000 Swiss francs.</p> <p>Any person who wilfully does not, or does only partially comply with a ruling of the competition authorities concerning the obligation to provide information, is required to pay a fine of at most 20'000 Swiss francs.</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>See above 13.D.</p>

14. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed?</p>	<p>The Cartel Act provides with the exception of the above mentioned (see 13.) breaches for procedural rules only financial sanctions. According to the European Court of Human Rights and the Swiss Federal Supreme Court cartel sanctions have criminal character. Such sanctions can be imposed on undertakings individually and in addition to associations.</p>
<p>B. Criteria for determining the sanction / fine: [e.g.: gravity,</p>	<p>The sanction is assessed on the basis of the duration and the seriousness of the unlawful conduct. Determining the sanction,</p>

<p>duration of the violation, benefit gained from the violation]</p>	<p>the principle of proportionality has to be respected. Aggravating circumstances may be:</p> <ul style="list-style-type: none"> - repeated infringements, - particularly high profits, - the refusal to cooperate with the authorities or attempts to obstruct the investigation, - a leading role in the restraint of competition and - if an undertaking instructed or carried out retaliatory measures in order to enforce the agreement affecting competition. <p>Mitigating circumstances may be:</p> <ul style="list-style-type: none"> - The undertaking terminates the restraint of competition after the first intervention of the Secretariat of the Swiss Competition Commission, - an undertaking played a strictly passive role, - an undertaking did not carry out retaliatory measures.
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>In no case will the sanction exceed 10 per cent of the turnover achieved by the undertaking in Switzerland during the preceding three financial years.</p>
<p>D. Guideline(s) on calculation of fines:</p>	<p>Ordinance of 12 March 2004 on Sanctions imposed for Unlawful Restraints of Competition (Cartel Act Sanctions Ordinance, CASO) and the corresponding notice on the CASO.</p> <p>https://www.fedlex.admin.ch/eli/cc/2004/175/en</p> <p>Available in German, French, Italian and English.</p>
<p>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine?</p>	<p>Appeals to the Federal Administrative Court have an automatic suspensory effect on sanctions. Appeals to the Federal Court (Supreme Court) may be granted suspensory effect upon request.</p>

15. Possibilities of appeal

<p>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?</p>	<p>The Cartel Act in conjunction with the administrative procedure Act provides for an appeal with the Federal Administrative Court.</p> <p>Grounds of appeal may be:</p> <ol style="list-style-type: none"> a) Questions of law and/or fact b) Breaches of procedural requirements. <p>An appeal against the decision of the Federal Administrative Court may be lodged with the Federal Supreme Court. In general, the Federal Supreme Court only examines questions of law (exceptionally the arbitrary appreciation of the facts).</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</p>	<p>The Federal Administrative Court and the Federal Court (Supreme Court) thereafter.</p>

16. Private enforcement

<p>A. Are private enforcement of competition law and private damage claims possible in your jurisdiction?</p>	<p>Yes.</p>
<p>B. Laws regulating private enforcement of competition law in your jurisdiction</p>	<p>Federal Act of 6 October 1995 on Cartels and other Restraints of Competition (Cartel Act, CartA) https://www.fedlex.admin.ch/eli/cc/1996/546_546_546/en</p> <p>available: in German, French, Italian and English</p> <p>Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911 (Status as of 1 January 2020) https://www.admin.ch/opc/en/classified-compilation/19110009/index.html</p> <p>Swiss Civil Procedure Code of 19 December 2008 (Status as of 1 January 2018) https://www.admin.ch/opc/en/classified-compilation/20061121/index.html</p> <p>Both available: in German, French, Italian, Romanic, English</p>
<p>C. Implementing regulation(s) on private enforcement</p>	<p>Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911 (Status as of 1 January 2020) https://www.admin.ch/opc/en/classified-compilation/19110009/index.html</p> <p>Available: in German, French, Italian. Romanic, English</p> <p>Federal Act of 6 October 1995 on Cartels and other Restraints of Competition (Cartel Act, CartA) http://www.admin.ch/ch/e/rs/c251.html</p> <p>Available in: German, French, Italian and English</p>
<p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</p>	<p>Art. 12 Cartel Act provides the following:</p> <p>Rights arising from a hindrance of competition</p> <p>1 A person hindered by an unlawful restraint of competition from entering or competing in a market is entitled to request:</p> <ol style="list-style-type: none"> a. the elimination of or desistance from the hindrance; b. damages and satisfaction in accordance with the Code of Obligations; c. surrender of unlawfully earned profits in accordance with the provisions on agency without authority. <p>2 Hindrances of competition include in particular the refusal to deal and discriminatory measures.</p> <p>3 The rights set out in paragraph 1 above are also accorded to persons who are hindered by a lawful restraint of competition</p>

	<p>more than is necessary for the implementation of that restraint.</p> <p>Therefore, private actions are available in cases of unlawful agreements affecting competition and in cases of abuse of a dominant position.</p>
<p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> • is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals? • if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? 	<p>There are two possible ways to lodge a claim:</p> <ol style="list-style-type: none"> 1. The plaintiff may take civil action even though the competition authorities have not opened an investigation or rendered a decision. 2. The plaintiff may take civil action (mainly damage claims) based on the findings of the competition authorities. In this case, the decision must be judicially finalised. Although civil courts are not legally bound by the factual findings of the competition authorities, they will nevertheless be of great importance in the civil proceedings.
<p>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</p>	<p>It is conceivable that the participants of a bid-rigging cartel could be liable under the Swiss Criminal Code (cf. 2. E. above). The Courts have not answered this question yet. If the responsible representatives of companies participating in bid-rigging cartels were liable under the Swiss Criminal Code the victim could possibly lodge a civil claim for damages against the responsible representatives.</p>
<p>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</p>	<p>There is no explicit legal base to treat immunity or leniency applicants different from other cartel members.</p>
<p>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</p>	<p>There are no such specialised courts. However, the Swiss Civil Procedure Code states that there can only be one cantonal instance for cartel law disputes (Article 5 paragraph 1 lit. b). Normally and if existing this is the cantonal commercial court.</p>
<p>I. Information about class action opportunities</p>	<p>None.</p>
<p>J. Role of your competition agency in private enforcement actions (if at all)</p>	<p>Article 15 paragraph 1 Cartel Act provides the following:</p> <p>If the legality of a restraint of competition is questioned in the course of civil proceedings, the case shall be referred to the Competition Commission for an expert report.</p>
<p>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence</p>	<p>In principle, the plaintiff has to quantify and prove the damages. The court may estimate the damages if an exact quantification is impossible (Article 42 Paragraph 2 Code of Obligations), but the plaintiff still has to prove all necessary</p>

<p>is admissible?</p> <ul style="list-style-type: none"> Role of your competition agency in the damage calculation (if at all) 	<p>circumstances in order for the court to make such an estimation.</p> <p>There is in principle a “numerus clausus” of possible evidence according to Article 168 Civil Procedure Code. The following evidence is admissible:</p> <ol style="list-style-type: none"> testimony; physical records; inspection; expert opinion; written statements; questioning and statements of the parties. <p>The competition agency does not have to calculate the damage in its own decisions. It is not involved in the damage calculation in private actions.</p>
<p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> can plaintiff obtain access to competition authority or prosecutors’ files or documents collected during investigations? is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? summary of the rules regulating the disclosure of confidential information by the competition agency to the court summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court 	<p>Public procurement agencies can obtain access to the competition authorities’ files in bid rigging cases by submitting a request for access. However, access to leniency application documents is not given. Since criminal prosecution in cartel cases is only potentially possible in bid-rigging cases and no such case has been opened yet, the question of access to criminal prosecutors’ files in cartel cases has not been addressed so far.</p> <p>The question whether the competition agency is obliged to disclose the file of the case to a civil court has not yet been raised.</p> <p>There are not any such rules in the Cartel Act (Art. 160 ZPO states a duty to cooperate, which though is a rule of civil procedure and so far no inquiries from civil courts have been received in this regard).</p> <p>There are not any such rules in the Cartel Act (Art. 160 ZPO, states a duty to cooperate, which though is a rule of civil procedure and so far no inquiries from civil courts have been received in this regard)</p>
<p>M. Passing-on issues:</p> <ul style="list-style-type: none"> how is passing-on regulated / treated in your jurisdiction? is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims? 	<p>There are no specific rules and so far no court decisions in this matter.</p>