



**International  
Competition  
Network**

**ANTI-CARTEL  
ENFORCEMENT  
TEMPLATE**

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

**Malaysia Competition  
Commission (MyCC)**

**30/03/2016**

# 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.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]<sup>1</sup>

## 1. Information on the law relating to cartels

<b>A. Law(s) covering cartels:</b> [availability (homepage address) and indication of the languages in which these materials are available]	A particular provision which covers cartel is section 4(2) of the Competition Act 2010 ("CA 2010"). CA 2010 is available on the MyCC's website at <a href="http://www.mycc.gov.my">www.mycc.gov.my</a> . in both Malay and English.
<b>B. Implementing regulation(s) (if any):</b> [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	MyCC has yet to issue any implementing regulations.
<b>C. Interpretative guideline(s) (if any):</b> [name and reference number, availability (homepage address) and	MyCC has issued Guidelines on Chapter 1 Prohibition: Anti-competitive Agreements and published the same on the MyCC's website at <a href="http://www.mycc.gov.my">www.mycc.gov.my</a> . The guidelines are published in English.

<sup>1</sup> Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

indication of the languages in which these materials are available]	
D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]	MyCC has issued some publications / materials namely handbook and brochure on cartels. These publications are available on the MyCC's website at <a href="http://www.mycc.gov.my">www.mycc.gov.my</a> .

## 2. Scope and nature of prohibition on cartels

A. Does your law or case law define the term “cartel”? [Please quote.]  If not, please indicate the term you use instead. [Please quote.]	CA 2010 does not define the term “cartel”.  Section 4, in particular subsection (2) of CA 2010 uses the term anti-competitive “horizontal agreement which has the object to .....is deemed to have the object of significantly preventing, restricting or distorting competition in any market for goods or services.”
B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas <sup>2</sup> ) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]	Section 4 of CA 2010 covers prohibited horizontal and vertical agreement.  Section 4(1) applies any horizontal or vertical agreement that has the object or effect of significantly preventing, restricting or distorting competition in the market.  Section 4(2) of CA 2010 however emphasises only on horizontal agreement that has the object to price fix, share market, limit or control production and bid rigging to be deemed as having the object of significantly preventing, restricting or distorting competition in the market. It is clear the intention of the Parliament to consider these agreements as more serious compared to agreements which may fall under section 4(1) of CA 2010.
C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]	Section 5 of CA 2010 allows for any enterprise to an agreement that may fall under section 4 prohibition to relieve its liability. There are four requirements that must be cumulatively met by such an enterprise.
D. Is participation in a hardcore cartel illegal <i>per se</i> <sup>3</sup> ? [If the	No. As described above, an enterprise may still relieve its liability subject to requirements listed under section 5 of CA

<sup>2</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.

<sup>3</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.

situation differs for civil, administrative and criminal liability, please clarify this.]	2010.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	It is considered as a civil case.

### 3. Investigating institution(s)

A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]	Malaysia Competition Commission (MyCC)
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Malaysia Competition Commission (MyCC) Level 15, Menara SSM@Sentral No.7, Jalan Stesen Sentral 5 Kuala Lumpur Sentral 50623 Kuala Lumpur Tel: +603 2273 2277 Fax: +603 2272 1692 Website: www.mycc.gov.my
C. Information point for potential complainants:	MyCC has issued Guidelines on Complaint Procedures which contain information that may be useful for potential complainants.
D. Contact point where complaints can be lodged:	Complaints can be lodged with the MyCC via email, post, fax or walk in. However, there is a complaint form that is required to be completed.
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	No.

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

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	N/a
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<sup>4</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

<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
<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: [complaint, ex officio, leniency application, notification, etc.]</b>	MyCC can initiate an investigation upon receipt of a complaint, ex officio conduct or upon a direction given by the Minister
<b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]</b>	Yes. The complaint form is available on the MyCC's website at <a href="http://www.mycc.gov.my">www.mycc.gov.my</a>
<b>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</b>	No specific requirements.
<b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</b>	No. The MyCC will have to carry out its assessment on whether the complaint has merits and decide whether or not to investigate such a complaint.
<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>	In the event where the MyCC decides not to investigate, it has to inform the complainant on its decision and reasons for the decision.

<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.
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## 6. Leniency policy<sup>5</sup>

<b>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</b>	Leniency regime as stipulated under section 41 of CA 2010. The MyCC has issued Guidelines on Leniency Regime which is available on the MyCC's website at <a href="http://www.mycc.gov.my">www.mycc.gov.my</a> .
<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>	Yes, depending on the case.
<b>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</b>	The applicant has admitted its involvement in a cartel and offers to provide information or other form of cooperation about the same cartel which the MyCC has no knowledge.  Notwithstanding the above, the MyCC reserves the right to give reduction up to 100% in other circumstances.
<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>  In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?	Yes.
<b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b>	Enterprises.
<b>F. What are the conditions of availability of full leniency: [e.g. provide decisive</b>	Admission of its involvement in an infringement of section 4(2) prohibition and provision of information and or cooperation which significantly assisted or is likely to assist in the

<sup>5</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.

evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]	identification or investigation of any finding of an infringement.
<b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</b>	Depending on the stage of the investigation, the nature and the value-added of the information as well as other cooperation provided by the leniency applicant
<b>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</b>	Full cooperation is expected throughout the investigation process.
<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>	An application can be made by submitting the completed leniency application form unless authorised by the MyCC and signed by an authorised senior officer of the leniency applicant.
<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>	Yes. The grant is initially for conditional leniency and will only be made unconditional only after the applicant has fulfilled all conditions of the conditional grant of leniency and the MyCC has made an infringement decision.
<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>	If upon request the Leniency Officer advises that leniency is available, the applicant may ask for a marker to preserve its priority.
<b>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</b>	Provided for under section 41 of CA 2010. The Commission decides on leniency applications.
<b>M. Do you have a marker system? If yes, please</b>	Yes.

<b>describe it.</b>	
<b>N. Does the system provide for any extra credit<sup>6</sup> for disclosing additional violations? [e.g. a hardcore cartel in another market]</b>	Yes.
<b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b>	Confidentiality including the identity of the applicant will be maintained subject to section 21 of CA 2010.
<b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b>	No.
<b>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</b>	Malaysia Competition Commission (MyCC) Level 15, Menara SSM@Sentral No.7, Jalan Stesen Sentral 5 Kuala Lumpur Sentral 50623 Kuala Lumpur Tel: +603 2273 2277 Fax: +603 2272 1692 Website: www.mycc.gov.my  The Leniency Officer will answer a call from 8.30am to 5.30pm.
<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>	Yes. The MyCC may revoke a conditional grant of leniency if it concludes that the applicant has not fulfilled any condition such as by providing false or misleading information to the MyCC.
<b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b>	N/a
<b>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</b>	No.

<sup>6</sup> Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

## 7. Settlement

<b>A. Does your competition regime allow settlement?</b>  If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).	N/a
<b>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b>	N/a
<b>C. What is the reward of the settlement for the parties?</b>	N/a
<b>D. May a reduction for settling be cumulated with a leniency reward?</b>	N/a
<b>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</b>	N/a
<b>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</b>	N/a
<b>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</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

<p><b>A. Does your competition regime allow the possibility of commitment?</b></p> <p>If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].</p>	<p>Yes. The provision relating to undertaking is enshrined under Section 43 of the Competition Act 2010.</p>
<p><b>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b></p> <p>Are there commitments which are excluded from the commitment possibility?</p>	<p>Section 43 of the Competition Act 2010 is applicable for all types of infringement.</p>
<p><b>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</b></p>	<p>N/a</p>
<p><b>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</b></p>	<p>The MyCC may impose any conditions on any enterprise to do or refrain from doing as the MyCC considers appropriate.</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>Initiation can be done by the MyCC or by the enterprise.</p>
<p><b>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</b></p>	<p>No.</p>
<p><b>J. Describe how your authority monitors the parties' compliance to the commitments.</b></p>	<p>The MyCC will monitor from time to time.</p>
<p><b>K. Is there a possibility for parties to appeal a commitment decision at court?</b></p>	<p>No.</p>

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

<p><b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>8</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b></p>	<p>The MyCC has the power to require provision of information, conduct search with or without warrant, have access to computerised data and have access to records etc.</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>Yes. Search can be conducted on any premise that has been used or contains evidence which may assist the MyCC's investigation. Search can also be conducted on any computer, automobiles and briefcases as well as person. A search warrant may not be required in the event that adverse affect will happen on the MyCC's investigation or evidence will be tampered with or removed.</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>N/a</p>
<p><b>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p>	<p>No.</p>

## 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</b></p>	<p>Upon being served with a Proposed Decision, enterprises may submit their written representations and make oral representations before the MyCC: Section 36 and section 37 of CA 2010.</p>
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<sup>7</sup> "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

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

<p>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.</p>	
<p><b>B. Protection awarded to business secrets (competitively sensitive information):</b> 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>Please refer to section 21 of CA 2010.</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>No limitation period.</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>N/a</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>N/a</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. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</b></p>	<p>Finding of an infringement; requirement for the infringement to be ceased immediately; direction for steps to be taken for bringing the infringement to an end; imposition of a financial penalty and other direction as the MyCC deems appropriate.</p>
<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>Same as above.</p>
<p><b>C. Can interim measures<sup>9</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>10</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>Yes. The MyCC has the power to direct an interim measure if it has grounds to believe that any prohibition under CA 2010 has been infringed or is likely to be infringed and it considers that it is necessary for it to act as a matter of urgency for preventing serious and irreparable damage, economic or otherwise, to a particular person or category of persons; or protecting the public interest.</p>

## 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 [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence,</b></p>	<p>N/a</p>
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<sup>9</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>10</sup> Only for agencies which answered “yes” to question 2.B. above

challenging the validity of documents authorizing investigative measures, etc.]:	
<b>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</b>	N/a
<b>C. On whom can procedural sanctions be imposed?</b>	N/a
<b>D. Criteria for determining the sanction / fine:</b>	N/a
<b>E. Are there maximum and / or minimum sanctions / fines?</b>	N/a

## 14. Sanctions on the merits of the case

<b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b>  <b>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</b>	Civil and against enterprises.
<b>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</b>	Gravity, duration, benefit gained etc.
<b>C. Are there maximum and / or minimum sanctions / fines?</b>	Yes. A financial penalty imposed shall not exceed ten percent of the worldwide turnover of an enterprise over the period during which an infringement occurred.
<b>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b>	The MyCC has issued Guidelines on Financial Penalties which is available on the MyCC's website at <a href="http://www.mycc.gov.my">www.mycc.gov.my</a> in English.
<b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that</b>	No.

<p>sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	
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## 15. Possibilities of appeal

<p><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>	<p>Yes. Section 51 of CA 2010 allows an appeal to be made by an aggrieved person whose interest is affected by the MyCC's decision issued under section 35: interim measures, section 39: finding of a non infringement and section 40: finding of an infringement.</p>
<p><b>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</b></p>	<p>Before the Competition Appeal Tribunal.</p>