



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques

REPUBLIC OF PANAMA.

29/2/16

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.

[For information on legal provisions accessed to the institution's web site www.acodeco.gob.pa the button "normativa".]¹

1. Information on the law relating to cartels

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| A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available] | Law 45 of 31 October 2007 "that dictates rule of consumer protection and defence of competition." http://www.acodeco.gob.pa/acodeco/view.php?arbol=2&sec=1&pagi=0 The Law is available in Spanish. |
| B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available] | Executive Decree No. 8-A of January 22, 2009 " Regulates the Title I (monopoly) and other provisions of the Law 45 of 31 October 2007 ." http://www.acodeco.gob.pa/acodeco/view.php?arbol=2&sec=2&pagi=0 The executive decree is available in Spanish. |
| C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address)] | Resolution No. A-24-09 of October 21, 2009, Guide to the Legal collaboration between competitors. Resolution No. A-31-09 of July 16, 2009, Guide for the control of economic concentrations (article 21 of Law 45). |

¹ 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.

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| <p>and indication of the languages in which these materials are available]</p> | <p>Resolution No. A-029-09 of June 16, 2009, Audit Guide of competition.</p> <p>Resolution No. A-30-09 of June 30, 2009 Guide to the analysis of vertical behaviours.</p> <p>Resolution No. A-064-15 of July 10, 2015, Program Guide of dispensing or Decline of sanctions.</p> <p>http://www.acodeco.gob.pa/acodeco/view.php?arbol=2&sec=3&pagi=0</p> <p>The guides are in Spanish language.</p> |
| <p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p> | <p>Competition Law and Policy in Panama,(Organization for Economic Cooperation and Development., OECD), A peer review 2010.</p> <p>http://www.acodeco.gob.pa/acodeco/view.php?arbol=1&sec=17&pagi=0</p> <p>The peer review is available in Spanish.</p> |

2. Scope and nature of prohibition on cartels

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| <p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p> | <p>Law 45 of 31 October 2007, in its article 13, defines absolute monopolistic practices:</p> <p>"Article 13. <u>Absolute monopolistic practices</u>. Absolute Monopolistic practices are any act, combination, settlement agreement or contract, between economic agents competitors or potentially competing among themselves, or through associations whose objects or effects are any of the following:</p> <ol style="list-style-type: none"> 1. Set, manipulate, agree or impose the price of sale or purchase of goods or services, or exchange information with the same object or effect. 2. Agree on the obligation to produce, process, distribute or sell only a limited amount of goods, or to provide a number, a volume or frequency of limited services. 3. Divide, distribute, assign, agree or impose portions or segments of a existing or potential market of goods and services, by customers, suppliers, time or spaces determined or determinable. 4. Establish, arrange or coordinate positions or abstention in public tenders, by best value, to framework convention and reverse auction, auction of public goods, as well as any other form of contracting with the State." |
| <p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing,</p> | <p>Our law does not distinguish between monopolistic practices absolute serious or very serious. The absolute monopolistic practices referred in the article 13, are sanctioned up to one million balboas.</p> |

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| <p>bid rigging or production or sales quotas²) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p> | |
| <p>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.]</p> | <p>Article 2. <u>Scope of Application</u>. This Law will be applied to all economic agents, either natural or legal persons, private or state or municipal firms, industrial, commercial or professional institutions, lucrative or charity organisations, or to those who, by any other title, participate in the economic activity.</p> <p>Article 4 in Law 45 establishes exclusions to antitrust enforcement. Article 4 indicates:</p> <p>Article 4. <u>Exclusions</u>. (The following practices) are not considered monopolistic practices:</p> <ol style="list-style-type: none"> 1. The labour collective conventions concluded by labour unions with an employer or group of employers to obtain better work conditions; 2. The exercise of intellectual property rights and industrial designs recognised by the law to their holders; those (rights) granted for certain period of time to the holders of copyrights for the exercise of their rights; and those (rights) granted to inventors for the exclusive use of their inventions. <p>Article 6 of Law 45 of 31 October 2007, establishes exception:</p> <p>Article 6: <u>Exception</u>. Are exempt from the application of the present Law the acts, the agreements, partnerships, associations, conventions, contracts or any other economic agents that carry out, that have as objective the increase the savings or the improvement of the production and/or distribution of goods or services or promote technical or economic progress and that generate benefits for the consumer or the market, always consisting of:</p> <ol style="list-style-type: none"> 1. Exchange of technical information or technology. 2. The establishment and/or joint utilization of infrastructure, equipment, resources or production facilities and technology. 3. The establishment and/or joint use of facilities for the collection, storage, transport and distribution. 4. That the product of such acts is exported. |
| <p>D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal</p> | <p>The acts which constitute absolute monopolistic practices will have no legal validity, and the economic agents who made shall be punished in accordance with Law 45, without prejudice to the criminal responsibility that corresponds to it.</p> |

² 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 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.

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| liability, please clarify this.] | These acts will be punished even if they have not been perfected or not have stocked their effects. (article 14 Law 45). |
| E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these? | Combination of administrative and civil. |

3. Investigating institution(s)

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| A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities] | <p>The agency responsible for the application and enforcement of the competition under the Law is ACODECO Authority for the Protection of the Consumer and Defence of Competition. ACODECO is an independent administrative agency in the exercise of its functions.</p> <p>The Administrator is ACODECO 's legal representative and is responsible for implementation of ACODECO's policies. In Addition to the Administrator, the Law establishes two national directors one in charge of competition policy and the other in charge of consumer protection.</p> <p>The competition portion of ACODECO is led by the National Director of Free Competition. The current Director of Competition is Dayra Vial Fonseca.</p> <p>The National Director of Free Competition has three departments: The Department of Competition Investigation (legal division), the Department Information of Prices and Verification (DIPREV), and the Department of Analysis and Study of the Markets (economic division). The economic division mainly prepares and presents studies on the functioning of markets in order to detect distortions in the economy that affect consumers. It also carries out economic reports for investigations and trials. The legal division gives legal support in all procedures. DIPREV surveys prices, verifies prices on medicines and gathers statistics.</p> <p>The Authority is entitled to bring action in the courts of justice, in view of economic concentration, monopolistic practices, or violations of consumer protection laws, excluding what on the particular have special laws.</p> |
| B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website] | <p>ACODECO Authority for the Protection of the Consumer and Defence of Competition (ACODECO).</p> <p>Vía Fernández de Córdoba, Plaza Córdoba.</p> <p>(507) 510-1313- 510-1300</p> <p>info@acodeco.gob.pa</p> <p>www.acodeco.gob.pa.</p> <p>The information is available in Spanish.</p> |

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| C. Information point for potential complainants: | www.acodeco.gob.pa the button nuestra labor, dirección nacional de libre competencia. |
| D. Contact point where complaints can be lodged: | http://www.acodeco.gob.pa/acodeco/PracticasAnticompetitivas.php |
| 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)⁴ [to be filled in only if this is different from the investigating agency]

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| A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.] | All cases that ACODECO decides, whether about absolute or relative monopolistic practices or mergers, must be resolved in the courts. Nevertheless, once the courts have determined that there has been a monopolistic absolute or relative practice, ACODECO is responsible of sanction. |
| B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website] | N/A |
| C. Contact point for questions and consultations: | N/A |
| D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct. | N/A |
| E. What is the role of the investigating agency if cartel cases belong under criminal proceedings? | N/A |

⁴ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

5. Handling complaints and initiation of proceedings

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| <p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p> | <p>ex officio or complaint.</p> |
| <p>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).]</p> | <p>The complainant by means of a formal written addressed to the administrator can denounce the monopolistic practice.</p> <p>The complainant may also fill out a complaint form by monopolistic practices that question the following:</p> <ul style="list-style-type: none"> • general of the complainant, • general of the complaint, • description of the practice • period or knowledge • elements that underpin the complaint • Absolute Monopolistic Practices with the complaint • Relative Monopolistic Practices with the complaint • The complainant's statement |
| <p>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</p> | <p>No.</p> |
| <p>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</p> | <p>If there is a complaint we must accept it and investigate.</p> |
| <p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p> | <p>N/A</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>Article 108 of Law 45 of 31 October 2007, establishes the following:</p> <p>Article 108. <u>Prescriptions</u>. The action to start the procedure prescribed in three years, commencing on the time of occurrence of lack, in the case of restrictive practices of the competition or from the time of the actual knowledge of the lack, in the case of unfair trade practices.</p> |

6. Leniency policy⁵

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| <p>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</p> | <p>Benefit Program of Dispensing or Decline of sanctions.</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>Our jurisdiction means that the possible fines or sanction to impose can be dispensed or diminished, always and in the case of the first economic agent to provide evidence and this is not the market leader and not be instigator of the practice.</p> |
| <p>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p> | <p>The first economic agent to provide evidence to show the realization of an absolute monopolistic practice and accept being part of the same, is not the market leader and is not the instigator of the practice.</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 economic agent can benefit from the Program of dispensing or Decline of sanctions before the ACODECO issue a final report with the recommendation to sue in the courts of justice.</p> |
| <p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p> | <p>The first economic agent who has complied with all the criteria of the Program Guide of benefit of dispensing or Decline of sanctions.</p> |
| <p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</p> | <ol style="list-style-type: none"> 1. Be the first economic agent to provide evidence to show the realization of a monopolistic practice absolute and accept being part of the same. 2. It is not the market leader and not be instigator of the practice. 3. That the elements of evidence provided would be sufficient to allow ACODECO can operate in the courts by the realization of an absolute monopolistic practice. |
| <p>G. What are the conditions of</p> | <ol style="list-style-type: none"> 1. Be the first economic agent to provide evidence to show the |

⁵ 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.

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| <p>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?]</p> | <p>realization of a monopolistic practice absolute and accept being part of the same.</p> <p>2. It is not the market leader and not be instigator of the practice.</p> <p>3. That the elements of evidence provided would be sufficient to allow ACODECO can operate in the courts by the realization of an absolute monopolistic practice.</p> |
| <p>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.]</p> | <ul style="list-style-type: none"> • That the economic agent applicant is not aware of their participation. • Continuous cooperation of the economic agent applicant with the ACODECO during the phase prior to the filing of the claim and collaborate with the specialized courts of trade in the trial stage. • That, to be the case, the economic agent applicant put an end to the practice of which it is a party, immediately after the application was filed. • Deprived of disclose that has applied to benefit from the program until the ACODECO has sued or having ordered the file of the background to the request. |
| <p>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.]</p> | <p>Applicants wishing to apply to the Program must submit, through legal representative or proxy duly accredited, ACODECO, in the Research Department of the Competition the following documentation:</p> <p>a. Program Application duly completed, which may be obtained in the Research Department of the Competition.</p> <p>b. Sufficient evidence to present a strong demand in the courts.</p> <p>The application must be filled out in detail with the following information:</p> <p>a. Identification of the applicant of the program.</p> <p>b. Participants in the alleged absolute monopolistic practice.</p> <p>c. Detailed description of the alleged absolute monopolistic practice.</p> <p>d. Detail of the period from which the alleged absolute monopolistic practice being or was used in case of no longer be in force.</p> <p>e. Evidence of the absolute monopolistic practice in possession of the applicant.</p> <p>f. Actions taken prior to the application of the Program:</p> <ul style="list-style-type: none"> i. Applicant's statement of not having revealed, directly or indirectly, to third parties other than the ACODECO, its intention to submit an application to qualify for the leniency program or its content. ii. Applicant's statement of not have blocked evidence, related to the Program application. iii. Applicant's statement of not having taken steps to compel others to participate in the breach, in the |

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| | <p>course of presentation of a request for dispensation.</p> <p>iv. Statement by the applicant in respect of the efforts made in order to verify that, if this is the case, one has put an end to their involvement in the offense at the time that it facilitates the evidence. (This action must be coordinated with ACODECO)</p> <p>g. Statement of the applicant through which undertakes to the submission of the request and cooperate with the courts of specialized trade in the trial stage. The lack of this collaboration in the stages described here, is reason enough for ACODECO does not recognize the benefit that may be established by law.</p> |
| <p>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)?]</p> | <p>The application and the evidence should be admitted in a closed envelope sealed and be submitted to the Head of the Department of Competition Investigation.</p> <p>ACODECO through the Department of Competition Investigation by means of specific personnel of the Program will have the functions of checking that all the documentation supplied by the applicant or legal representative meets with the requirements for the implementation of the Program.</p> <p>Depending on the quality and usefulness of the information you provide, the National Directorate of Free Competition shall report to the Administrator a report indicated if there is place in obtaining benefits, taking into account the following factors:</p> <p>a. The effectiveness of the collaboration of the economic agent in the provision of information and evidence to clarify the facts.</p> <p>b. The elements of evidence submitted must lead us to determine the existence of practice, duration and impact of the conduct, identity of responsible, degree of participation and benefit obtained with the illegal conduct.</p> <p>c. If it is timely collaboration obtained from the economic agent.</p> <p>This report will be sent along with the file to the Administrator of the ACODECO, who will decide within a period of no more than 15 working days if the applicant or his legal representative has been admitted or rejected in the Program, at least initially.</p> |
| <p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p> | <p>The Administrator of the ACODECO, will decide within a period of no more than 15 working days if the applicant or his legal representative has been admitted or rejected in the Program, at least initially.</p> <p>Similarly, in the event of failure of documents exist or evidence, you will be notified in the same term.</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</p> | <p>Resolution No. A-064-15 of 10 July 2015 that approves the Program Guide of Benefit of Dispensing or Decline of Sanctions, stipulates that the decision will be notified by means of reasoned resolution issued by ACODECO, which does not support any remedy. If the economic agent has been admitted to the Program; the reasoned resolution should contemplate</p> |

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| agency decides about leniency applications? | the decision of ACODECO of dispensing or reduce the fine or sanction. This resolution shall be of a confidential nature. |
| M. Do you have a marker system? If yes, please describe it. | No. |
| N. Does the system provide for any extra credit⁶ for disclosing additional violations? [e.g. a hardcore cartel in another market] | No. |
| O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate. | The Authority is the guarantor of the confidentiality of the identity of the economic agent and the documentation provided in accordance with article 31 of Decree Law No. 8-A of January 22, 2009. For the effective realization of such confidentiality, ACODECO may sue and be included in the evidentiary proceedings that perform the applicant of the Program, in such a way that will not be able to deduce who is the beneficiary. |
| P. Is there a possibility of appealing an agency's decision rejecting a leniency application? | No. |
| Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]: | Head of the Department of Competition Investigation (legal division), Harmodio Cedeño. Phone: (507) 510-1365. Opening Hours: Monday to Friday from 8:00 am to 4:00 pm. |
| 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? | No. |
| S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants? | No. |
| T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate. | ACODECO is committed to the return of the documents provided by the applicant or legal representative if your application has been rejected. At the same time, do not initiate investigations whose basis is the documentation provided by the applicant or his legal representative for the application to the program unless they would have been obtained in a manner other than that referred to in this guide. |

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.

7. Settlement

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| <p>A. Does your competition regime allow settlement?</p> <p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p> | <p>The Law of 45 October 31, 2007 expressed in article 86, numeral 15, the transaction.</p> <p>"Article 86. <u>Functions of the Authority</u>. The Authority shall have the following functions and powers:</p> <p>(..)</p> <p>15. Cease, at any stage of the investigation carried out in administrative headquarters and even after promoted judicial process before the competent authority, the investigation or desist from the judicial process, by engaging in transactions, prior compliance of the legal requirements, provided that the economic agents investigated or defendants accept measures around the conduct or acts investigated, including penalty clauses to ensure that compliance with the agreement. (...)</p> |
| <p>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> | <p>Absolute Monopolistic practices and Relative Monopolistic Practices.</p> |
| <p>C. What is the reward of the settlement for the parties?</p> | <p>ACODECO:</p> <ul style="list-style-type: none"> Economic agents investigated or defendants accept measures around the conduct or acts investigated, including penalty clauses to ensure that compliance with the agreement. <p>ECONOMIC AGENTS INVESTIGATED OR DEFENDANTS:</p> <ul style="list-style-type: none"> Cease, at any stage of the investigation carried out in administrative headquarters and even after promoted judicial process before the competent authority, the investigation or desist from the judicial process. |
| <p>D. May a reduction for settling be cumulated with a leniency reward?</p> | <p>No.</p> |
| <p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p> | <p>To determine the adequacy of commitments or guarantees offered by the economic agents, the Administrator may take into account the following aspects:</p> <ol style="list-style-type: none"> That the offer of the commitments or guarantees to be made by a person who has the power to legally link to the individual being investigated or respondent. The offer consists of appropriate mechanisms and viable to |

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| | <p>suspend or modify the conduct or behavior by which the investigation was initiated.</p> <p>3. The offer contains time limits and precise terms for the adoption of the measures, in such a way that it is possible to verify the effective realization of the means proposed for the cessation or behavioral change. Well same shall contain mechanisms for verification or audit of competition.</p> <p>4. The offer includes instruments or mechanisms to ensure compliance with the obligation or main obligations and operate immediately in the event of any breach of the same.</p> <p>These mechanisms can be, among other things, compliance policies, bonds, bank guarantees or trust errands, in an amount not to exceed the value of the sanctions they might incur economic agents investigated or defendants, and should be in favor of the National Treasury.</p> |
| <p>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.].</p> | <p>Economic agents investigated should offer the Authority commitments and guarantees regarding cessation or modification of the behaviors by which the investigation was initiated or the judicial process, including penal clauses to ensure that compliance with the settlement agreement, in such a way that will give the Authority certainty with regard to the fulfillment of the law.</p> <p>To evaluate the commitments or guarantees that economic agents submitted to the Authority, shall be taken into account the criteria of adequacy contained in article 28 of this Executive Decree. No. 8-A of January 22, 2009.</p> <p>The economic agents interested in the offer of commitments and guarantees it will be submitted in writing to the Authority. This writing will be analyzed by the National Director of Free Competition who will prepare a technical report on the same and submit it to the Administrator.</p> <p>Received the technical report on the commitments and guarantees offered by the investigated, the Administrator shall take to check if the same are sufficient and suitable for lifting or modification of the behavior being investigated, in which case you can accept them and proceed to the suspension of the investigation, whose termination shall be conditional on compliance with these commitments.</p> <p>In the event that the administrator finds that the commitments and guarantees offered are not sufficient, proceed to reject them, with which the investigation will follow its normal course.</p> <p>In accordance with numeral 4 of article 200 of the Constitution, once the Authority has approved the transaction, it will be submitted to the Cabinet for approval, if prior approval has been granted the Attorney General of the Nation. The transaction shall be perfected once it is approved by the Cabinet Council.</p> <p>If it is a judicial transaction after the authorization of the Cabinet Council, you must wait for the approval of the Court where the demand was based.</p> |
| <p>F. Describe the procedural efficiencies of your settlement system [e.g.</p> | <p>In the judicial processes in our legislation by monopolistic practices take a long while the judicial compromise has worked in the short term to allow economic</p> |

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| shorter decision, etc.]. | agents cease to practice anticompetitive practices and pay to the national treasury monetarily by such actions. |
| 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? | No. |

8. Commitment

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| A. Does your competition regime allow the possibility of commitment? If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.]. | N/A |
| B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]? Are there commitments which are excluded from the commitment possibility? | N/A |
| C. List the criteria (if there are any) determining the cases which are suitable for commitment. | N/A |
| D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural] | N/A |
| 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.] | N/A |
| I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation? | N/A |
| J. Describe how your authority | |

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| monitors the parties' compliance to the commitments. | |
| K. Is there a possibility for parties to appeal a commitment decision at court? | N/A |

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

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| A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁸, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant. | The judge may grant authorization to the Authority to practice evidentiary proceedings, reviews of private documents of companies, raids and any other measure that is requested in the course of an investigation or administrative to the evidence. (Article 124, numeral 7). |
| B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court? | If the authority to judge displays items that indicate that at the residence of the investigated there is high probability of evidence linking the investigated with the restrictive practice of competition and the judge authorizes, then proceed to search the residences. |
| 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)? | No. The Authority can only obtain information from the company raided evidence of case authorized by the judge. If the Authority finds information of other restrictive conduct of the competition must initiate the investigation and ask the judge for permission to be able to raid to the company. |
| D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them. | Yes. In one case, the judge did not allow the withdrawal of the computer of the company and justified his decision with the article 817 of the judicial code. The judge considered that the article does not mention the retention of goods. "Article 817. Through the down raid, judge leads to effect the inspection of the litigious thing, or of the books, documents or other objects in the possession of the defendant actual or presumptive, the complainant, or third parties and that the |

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.

petitioner considers conducive to test or enforce their rights, claims, exceptions or defences" (...)

10. Procedural rights of businesses / individuals

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.

If the Authority finds items that evidences a restrictive practice of competition may sue to the court. Defendants have the right to answer the demand, submit your evidence, present arguments and if the judge decides that they are guilty, they may appeal.

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.

Article 103 of Law 45 of 31 October 2007, establishes the following:

"Article 103. Confidentiality. The information received by the authority of the companies and organizations in the exercise of their functions may not be divulged without the express permission of the people that have supplied the information or documentation, If such information or documentation has been provided with such character. Apart from the information that you may be required by authorities of the Public Ministry or authority of the Judiciary, in the form available to the relevant standards. The nature of confidentiality does not restrict access by the party under investigation with regard to the evidence against him".

11. Limitation periods and deadlines

A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?

Article 108 of Law 45 of 31 October 2007, establishes the following:

"Article 108. Prescriptions. The action to start the procedure prescribed in three years, commencing on the time of occurrence of lack, in the case of restrictive practices of the competition or from the time of the actual knowledge of the lack, in the case of unfair trade practices."

B. What is the deadline,

N/A

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| <p>statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</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>N/A</p> |

12. Types of decisions

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| <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. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p> | <p>N/A</p> |
| <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 (if different from those listed under 12/A).</p> | <p>N/A.</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>N/A</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

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

14. Sanctions on the merits of the case

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| <p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>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?]</p> | <p>Administrative:</p> <p>The Law of 45 October 31, 2007 expressed in article 86, numeral 3, the transaction.</p> <p>"Article 86. <u>Functions of the Authority</u>. The Authority shall have the following functions and powers:</p> <p>(..)</p> <p>3. Investigate and punish, within the limits of its jurisdiction, the implementation of acts and conduct prohibited by this Law.</p> <p>(...)"</p> <p>Sanctions may be imposed economic agents, natural persons or legal entities, private companies or institutions state or municipal, industrial, merchants or professionals, private profit,</p> |
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| | or non-profit, or to those who, by any other title, to participate as active subjects in the economic activity. |
| B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation] | To determine the amount of the fine to be imposed in each case will be taken into account the seriousness of the offense, the size of the firm, whether or not there is recurrence and other aggravating or mitigating circumstances of the act or fact. (article 104 Law 45). |
| C. Are there maximum and / or minimum sanctions / fines? | In the case of absolute monopolistic practices, with a fine of up to one million balboas (B/. 1,000,000.00). (article 104 Law 45). |
| 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] | N/A |
| E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria? | N/A. |

15. Possibilities of appeal

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| 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? | The Law of 45 October 31, 2007 expressed in article 126, the following: "Article 126. <u>Court of Appeal</u> . It creates the Third Superior Court of Justice of the First Judicial District, composed of the judges. This court will hear appeals against the judgments or orders in the first instance by circuit courts., the causes listed in article 124 of this Law." |
| B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative] | The Third Superior Court of Justice. |