



**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

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

Chile

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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

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

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

1. Information on the law relating to cartels

A. Law(s) covering cartels:	The Chilean Competition Act, DL 211. www.fne.gov.cl , The text of the act is available in English and Spanish
B. Implementing regulation(s) (if any):	None
C. Interpretative guideline(s) (if any):	FNE's Internal Guideline on Immunity and Reduction of Fines in Cartel Cases ("Guía interna sobre beneficios de exención y reducción de multas en casos de colusión") and the FNE's Internal Guideline for investigations and for proceedings before the Competition Tribunal (Guía Interna para el desarrollo de las investigaciones y para las actuaciones judiciales), both available at www.fne.gov.cl .
D. Other relevant materials (if any):	None

2. Scope and nature of prohibition on cartels

A. Does your law or case law define the term	No, the Chilean Competition Act does not specifically define what the concept of cartel entails. However the generic
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<p>“cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>anticompetitive conduct is established in article 3 of DL 211: "Whoever executes or enters into any act, agreement or convention, either individually or collectively, which hinders, restricts or impedes free competition, or which tends to produce such effects, shall be penalized with the measures indicated..... Furthermore letter a) of the same article states that, among others, “express or tacit agreements between competitors, or concerted practices between them, which confer to them market power and which consist of fixing sale prices, purchase prices, or other commercial terms and conditions, restricting output, allocating territories or market quotas, excluding competitors, or affecting the results of tenders processes (bid rigging).”, will be regarded as deeds, act or contracts that prevent, restrict or hinder free competition</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>No</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>No, there are no exclusions.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>?</p>	<p>No, according to the wording of article 3 of DL 211, cartels may be prosecuted only if they confer market power.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>In Chile, the participation in a hardcore cartel is an administrative offence.</p>

3. Investigating institution(s)

<p>A. Name of the agency,</p>	<p>i) The Fiscalía Nacional Económica (FNE or National</p>
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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.

which investigates cartels:	Economic Prosecutor's Office), is the agency in charge of investigating and prosecuting any infringement of the Competition Act.
B. Contact details of the agency:	Fiscalía Nacional Económica Agustinas N° 853, 2 y 12 Floors, Santiago de Chile Telephone (+56 2) 753 5600 Fax: (+56 2) 753 5607- 7535608 international@fne.gov.cl www.fne.gov.cl The FNE website is in Spanish. However, there is some information available in English, such as the text of the Competition Act.
C. Information point for potential complainants:	Telephone: 56-2-7535600 http://www.fne.gov.cl/?content=contactenos
D. Contact point where complaints can be lodged:	http://www.fne.gov.cl/?content=guia_delacion (only for leniency)
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	Yes, the Chilean Bureau of Investigations (Policia de Investigaciones de Chile) and Carabineros de Chile assist the FNE in some investigation proceedings.

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

A. Name of the agency making decisions in cartel cases:	Tribunal de Defensa de la Libre Competencia (TDLC or Competition Tribunal), is part of the judiciary system, and is empowered to decide on anticompetitive conducts.
B. Contact details of the agency:	Agustinas 640. Piso 19 Santiago, Chile Teléfono: (56-2) 753 8300 www.tdlc.cl
C. Contact point for questions and	Telephone (+562) 753 8300 http://www.tdlc.cl/Portal.Base/Web/VerContenido.aspx?GUID=&ID=349

² Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

consultations:	
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	The FNE has investigative and prosecutorial functions. The 2009 amendments to the Competition Act have radically improved the investigative tools of the FNE, specifically for cartel investigations, granting the National Economic Prosecutor the power to obtain judicial warrants to intercept communications, perform dawn raids and search and seize properties. The amendments have also introduced a leniency programme for cartel enforcement which empowers the FNE to reach agreements with perpetrators and grant full immunity to the first applicant and a substantial reduction of fines to subsequent leniency applicants.
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	Under current legislation, cartels are not a criminal violation.

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases:	Cartel investigations may be initiated by the FNE ex officio, by a complaint, or after a leniency application.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	According to the FNE's Internal Guideline for investigations and for proceedings before the Competition Tribunal, the lodging of complaints may be done by any means. In case the complaint is made orally, the FNE's receiver officer will record the details of the complaint in a document that will be signed by him and by the complainant. The complainant must indicate his identity, the market where the conduct takes place, the identity of the economic agents involved and the conduct that constitutes the infringement. The complainant may request that his identity be kept confidential. The guideline is available at http://www.fne.cl/?content=guia_investigacion
C. Legal requirements for lodging a complaint against a cartel:	None
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	The FNE has discretion in this respect and it may initiate the investigations it deems appropriate. However, the FNE has to examine the admissibility of the complaint. Also, although not stated in the law but in the internal investigation's guideline, the FNE has to notify the complainant if it decides against taking action upon the complaint.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its	As stated above, the only duty the FNE has in this regard (according to the FNE's internal investigation guidelines) is to notify the complainant if it decides not to take action.

reasons?	
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?	60 days.

6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	FNE's Internal Guideline on Immunity and Reduction of Fines in Cartel Cases ("Guía interna sobre beneficios de exención y reducción de multas en casos de colusión"). Available at http://www.fne.gov.cl/?content=guia_delacion .
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Yes.
C. Who is eligible for full leniency?	Only the first applicant is eligible for full leniency. He/she has to provide information that leads to proving the existence of the cartel conduct and identifying those responsible for it. The beneficiary cannot be the ring leader who coerced the other participants.
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? 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?	No, the law states the eligibility will depend on whether the applicant provides information that leads to proving the existence of the cartel conduct and identifying those responsible for it. Eligibility is not based upon the opportunity in which this information is submitted.

³ 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>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Both, individuals and businesses.</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>According to article 39 bis of the Competition Act, the conditions to be fulfilled for the applicant to obtain full leniency are the following: be the first to submit evidence to the FNE, within the group of the cartel participants; confess to the cartel conduct; provide precise, veracious and verifiable evidence that amount to an effective contribution to establishing the existence of the collusion and identifying the other participants in the cartel; commit not to disclose his application for the benefits until the FNE has filed the case or has ordered the case to be archived; declare he has terminated his participation in the conduct immediately after he applies for the Application Marker; declare he was not the organizer of the cartel, and that he did not coerce the others to participate in it.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>In order to benefit from a fine reduction, the FNE shall verify that, besides the fulfillment of the requirements set forth in letter F) of the present Section, the applicant provided evidence additional to that supplied by the beneficiary of full immunity.</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>	<p>None.</p>
<p>I. Are there formal requirements to make a leniency application?</p>	<p>The only way to submit a leniency application is by completing a specific on-line application form. This form requires the applicant to provide the following minimum information: identity of the applicant; identity of the applicant's representative(s), if applicable; and a general description of the cartel conduct. Moreover, although not obligatory fields in the form, the applicants are also requested to supply information on the product or service affected and timeframe and geographic scope in which the cartel conduct took place. The application form can be found at http://www.fne.gob.cl/?content=solicitud</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>Yes, the leniency application process has the following steps: Application, planning meetings, delivery of the evidence, analysis by the FNE and final decision.</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 written notification of the FNE's final decision confirms that the applicant is eligible for leniency and that the FNE's will request the Tribunal the granting of the respective benefit. If the Tribunal determines the existence of the conduct, it may not impose a fine to a person that has been identified as beneficiary of an exemption, nor impose a fine greater than that requested by the Prosecutor to a person identified as beneficiary of a fine reduction, unless it is demonstrated during the process that said beneficiary was the organizer of the illegal conduct coercing on</p>

	others to participate in it.
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?	The legal basis for granting leniency is found in Article 39 bis of the Competition Act. If the cartel conduct is proved, leniency is granted by way of a formal decision of the Competition Tribunal at the request of the National Economic Prosecutor.
M. Does your legislation have a marker system? If yes, please describe it.	Yes it does. The marker will be given to the applicant in the planning meeting, though its time and date will be that of the submission of the leniency application.
N. Does the system provide for any extra credit⁴ 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.	Yes, up until the moment of the formal accusation, when the identity of the applicant/applicants has to be disclosed.
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:	http://www.fne.gov.cl/?content=guia_delacion Dedicated line for leniency (24/7): Telephone: +56 9 92374542
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?	Yes, but only in one situation. If the Tribunal determines the existence of the conduct, it may not impose a fine to a person that has been identified as beneficiary of an exemption, nor impose a fine greater than that requested by the Prosecutor to a person identified as beneficiary of a fine reduction, unless it is demonstrated during the process that said beneficiary was the organizer of the illegal conduct coercing on others to participate in it.
S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?	No, but it does not prohibit it either.

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

7. Investigative powers of the enforcing institution(s)⁵

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>The FNE, prior notice to the Chairman of the Competition Tribunal, may order that investigations be dealt with as confidential. Also, provided the Competition Tribunal has approved so, the National Economic Prosecutor may direct that no notice be given to the affected party of the initiation of the investigation.</p> <p>The FNE may request the cooperation of any public servant and public service, and of any state-owned enterprises, all of which are compelled to cooperate. The FNE can also request from them background information it may consider necessary for the investigations.</p> <p>The FNE may request information from private parties. The FNE may also summon to declare or request the declaration in writing of the representatives, managers, advisors and dependants of the entities or persons that might have information about acts or agreements that are the object of a FNE's investigation.</p> <p>The National Economic Prosecutor may request judicial warrants to intercept communications, perform dawn raids and search and seize properties. The warrant has to be approved both by the TDLC and by a Court of Appeals' Judge.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Yes. Please refer to letter A) of this Section.</p>
<p>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)?</p>	<p>No.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the</p>	<p>No, although it is important to bear in mind that these investigative powers have been just introduced into our legislation.</p>

⁵ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁶ “Searches/raids” means all types of search, raid or inspection measures.

courts? If yes, please briefly describe them.	
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8. Procedural rights of businesses / individuals

A. Key rights of defence in cartel cases:	<p>The investigations performed by the FNE are of an administrative nature and therefore, the rights of the parties being investigated at this stage may be more limited. For instance, the FNE, prior notice to the Chairman of the Competition Tribunal, may order that investigations be dealt with as confidential. Also, provided the Competition Tribunal has approved so, the National Economic Prosecutor may direct that no notice be given to the affected party of the initiation of the investigation.</p> <p>Regarding the proceedings before the Competition Tribunal, and as this tribunal is a judicial body, the rights of defence in cartel cases before it are the same as those guaranteed in any case before the judiciary.</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?	<p>The Competition Tribunal may declare that information containing trade/business secrets the disclosure of which is likely to cause damages to a party to the trial or to a third party, be treated as confidential or reserved. This declaration is made upon a founded request by a party, and regardless whether such information was provided voluntarily or under a compulsory legal order.</p> <p>Likewise, the National Economic Prosecutor may order, ex-officio or at the request of the interested party, that certain parts of the file be reserved or kept confidential, provided that the objective is to protect the identity of those who made the statements or contributed information according to Article 39 bis, or that contain formulas, strategies or commercial secrets or any other element the dissemination of which could significantly affect the competitive development of its holder, or to protect the effectiveness of the investigations conducted by the Office of the National Economic Prosecutor.</p>

9. 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 in the merits of the case must be made?	<p>The statute of limitations to prosecute cartel conducts is of five years. This limitation period does not start to run while the effects ascribed to such conducts persist in the market. The limitation period is interrupted by the initiation of proceedings before the Tribunal, either by the FNE or by a private party.</p>
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<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>The Tribunal has to issue its final decisions within 45 days counted from the completion of the hearings.</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?</p>	<p>The Tribunal has to issue its final decisions within 45 days counted from the completion of the hearings.</p>

10. Types of decisions

<p>A. Please 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 decisions may be restrictive, corrective or punitive. The types of decisions that may be made are to amend or terminate the acts, contracts, agreements, systems or arrangements deemed contrary to the competition act provisions, to order the amendment or dissolution of the partnerships, corporations or any other private legal entities involved in the anticompetitive violations; and to impose fines.</p>
<p>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</p>	<p>The same types of decisions described in section 10 A.</p>
<p>C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) 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>The Competition Tribunal may, ex officio, or upon a party's request, at any stage of the procedure or before its initiation, order the application of all the interim measures it deems necessary to prevent any adverse effects brought about by the conducts it is examining and to safeguard the common interest. The measures so imposed are provisional and may be revoked at any stage by the Tribunal. When requested by a party, the petitioner has to submit sufficient information to substantiate the grounds of its request. The Tribunal may, if it deems it necessary, ask the petitioner for a security before granting the measure.</p>

⁷ 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].

⁸ Only for agencies which answered “yes” to question 2.C. above

11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

A. Grounds for the imposition of procedural sanctions / fines:	<p>1. In the context of the FNE's enforcement actions, hindering the investigation conducted by the FNE</p> <p>2. The non compliance with the TDLC orders.</p>
B. Type and nature of the sanction (civil, administrative, criminal, combined):	<p>1. In the case of answer A.1, individuals who obstruct investigations opened by the National Economic Prosecutor's Office in the area of their functions may be arrested for up to 15 days</p> <p>2. In the case of answer A.2, fines and arrest.</p>
C. On whom can procedural sanctions be imposed?	Individuals and representatives of the legal entity.
D. Criteria for determining the sanction / fine:	In all cases, these sanctions are ordered by a Court of Law. In the case described in A.1. the sanction is issued by a Criminal Court (Juez de Garantia), and in the case described in A.2., by the TDLC itself. Both decisions are subject to the respective Tribunal's discretion.
E. Are there maximum and / or minimum sanctions / fines?	<p>1. In the case of answer A.1, there is a maximum of 15 days of imprisonment</p> <p>2. In the case of answer A.2. the imprisonment may be for up to 2 months and fines for up to US\$ 160 aprox. Both sanctions can be reimposed. In case of non compliance of the payment of the fine imposed in the final judgement, the Tribunal shall compel the payment of it, plus that of an additional fine, proportional to the original fine .</p>

12. 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 Competition Tribunal may impose two types of sanctions: it may impose a pecuniary sanction or it may order the modification or dissolution of companies, corporations and other private entities that were involved in the anticompetitive acts, contracts, agreements, systems or pacts. However, civil redress may be sought before a civil court once a final condemnatory decision of the Competition Tribunal exists.</p>
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⁹ In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

	Sanctions may be imposed on businesses, their managers and directors and any person involved in the conduct.
B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]	The circumstances that the Tribunal may consider when determining the fines are, among others, the economic benefit derived from the infringement, the seriousness of the conduct and the recidivism of the offender.
C. Are there maximum and / or minimum sanctions / fines?	The 2009 Competition Act amendments, increased the maximum amount of the fines up to US\$23 million aprox.
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]	None.
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?	The filing of an appeal does not suspend the implementation of the ruling, except in relation to the payment of fines. However, upon petition of a party, the court that hears the appeal may suspend the effects of the ruling, totally or partially.

13. Possibilities of appeal

A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	Yes, Chilean legislation provides for an appellate procedure (Recurso de Reclamación) before the Supreme Court of Justice, on the grounds of questions of law or fact
B. Before which court or agency should such a challenge be made?	Before the Supreme Court of Justice