



**International  
Competition  
Network**

**ANTI-CARTEL  
ENFORCEMENT  
TEMPLATE**

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

**Jersey**

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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

<b>A. Law(s) covering cartels:</b>	<p>The Competition (Jersey) Law 2005, in particular Part 2. Article 8 of this Law is the central prohibition. This Law is available (english only) at <a href="http://www.jcra.je/pdf/051101%20Competition-Jersey-Law--2005.pdf">http://www.jcra.je/pdf/051101%20Competition-Jersey-Law--2005.pdf</a></p> <p>The JCRA has powers conferred on it by the Postal Services (Jersey) Law 2004 and the Telecommunications (Jersey) Law 2002. For example, the Public Postal Operator's Licence for Jersey Post Limited and the Telecommunications Licence for Jersey Telecom Limited include conditions (condition 22.2(b) and 34.1(b) respectively) that are similar to Article 8 of the Competition (Jersey) Law 2005. These licences are also available (English only) at <a href="http://www.jcra.je">www.jcra.je</a>.</p>
<b>B. Implementing regulation(s) (if any):</b>	None
<b>C. Interpretative guideline(s) (if any):</b>	<p>The JCRA has provided a number of Guidelines with relevance to cartels. These Guidelines are provided on the website <a href="http://www.jcra.je/competition/law/guidelines.aspx">http://www.jcra.je/competition/law/guidelines.aspx</a></p> <p>Available in English</p>
<b>D. Other relevant materials (if any):</b>	<p>Under Article 60 of the Competition (Jersey) Law 2005, the JCRA must attempt to ensure that as far as possible, questions arising in Jersey are dealt with in a manner consistent with the treatment of corresponding questions</p>

	<p>arising under Community (E.U.) competition law. Relevant sources include judgments by the European Court of Justice and the Court of First Instance, decisions taken and guidance published by the European Commission, and interpretations of E.U. competition law by member state courts and competition authorities.</p>
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## 2. Scope and nature of prohibition on cartels

<p><b>A. Does your law or case law define the term “cartel”?</b></p> <p><b>If not, please indicate the term you use instead.</b></p>	<p>Article 8 of the Competition (Jersey) Law 2005 refers to an arrangement with one or more undertakings that has the object or effect of hindering to an appreciable extent competition in the supply of goods or services within Jersey or any part of Jersey.</p>
<p><b>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>1</sup>) and other types of “cartels”?</b></p>	<p>As of present, there have been no cartel cases and hence no need to consider any distinctions.</p>
<p><b>C. Scope of the prohibition of hardcore cartels:</b></p>	<p>n/a</p>
<p><b>D. Is participation in a hardcore cartel illegal <i>per se</i>?</b></p>	<p>n/a</p>
<p><b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b></p>	<p>Participation in cartels can be subject to administrative enforcement and fines by the JCRA as well as private party litigation in Jersey’s Royal Court.</p>

## 3. Investigating institution(s)

<p><b>A. Name of the agency, which investigates</b></p>	<p>Jersey Competition Regulatory Authority</p>
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<sup>1</sup> In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

<b>cartels:</b>	www.jcra.je
<b>B. Contact details of the agency:</b>	address: 6 <sup>th</sup> Floor, Union House Union Street St Helier JE2 3RF Jersey tel: (++44)/(0)1534-514990 fax: (++44)/(0)1534-514991 e-mail: enquiries@jcra.je
<b>C. Information point for potential complainants:</b>	Complaints should be submitted in writing, ideally using the complaint form provided by the JCRA. The complaints form is available in both PDF and MS Word format: <a href="http://www.jcra.je/competition/mergers/makingacomplaint.aspx">http://www.jcra.je/competition/mergers/makingacomplaint.aspx</a>  Before filing a complaint, it is possible to contact any case officer for guidance.
<b>D. Contact point where complaints can be lodged:</b>	address: 6th Floor, Union House Union Street St Helier JE2 3RF Jersey  fax: (++44)/(0)1534-514991  e-mail: enquiries@jcra.je  The e-mail addresses of the individual case officers are available on website <a href="http://www.jcra.je/about/whoware.aspx">http://www.jcra.je/about/whoware.aspx</a>
<b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b>	For entering premises Article 29 of the Competition (Jersey) Law 2005 refers to officers and agents. This implies that the JCRA will be able to expand its resources for such occasions.  Article 34 of the Competition (Jersey) Law 2005 allows for the JCRA to make arrangements with other relevant competition or regulatory authorities regarding assistance in the performance of its functions.

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

<b>A. Name of the agency making decisions in cartel cases:</b>	
<b>B. Contact details of the agency:</b>	
<b>C. Contact point for questions and consultations:</b>	Rob van der Laan, Senior Competition Investigator r.vanderlaan@jcra.je

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

	tel: (++44)/(0)1534-514989
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	
<b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>	

## 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating investigations in cartel cases:</b>	Article 26 of the Competition (Jersey) Law 2005 states that the JCRA may conduct an investigation if it has a reasonable cause to suspect a breach of Article 8(1). There is no limitation as to the source for concluding that there is a reasonable cause to suspect.
<b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b>	Complaints should be submitted in writing, ideally using the complaints form provided by the JCRA. The complaints form is available in both PDF and MS Word format on website: <a href="http://www.jcra.je/competition/mergers/makingacomplaint.aspx">http://www.jcra.je/competition/mergers/makingacomplaint.aspx</a>
<b>C. Legal requirements for lodging a complaint against a cartel:</b>	There is no limitation on the persons that may file a complaint with the JCRA.
<b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</b>	The JCRA will register receipt of the complaint however it not obliged to take action.
<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>	No. However, it is standing practice to inform complainants who are aggrieved persons as per Article 51 of the Law if and when the JCRA either concludes that there is no reason to suspect or when it is decided that there will be no investigation for the time being.
<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

## 6. Leniency policy<sup>3</sup>

<p><b>A. What is the official name of your leniency policy (if any)?</b></p>	<p>Leniency Policy Under the Competition (Jersey) Law 2005, published on website: <a href="http://www.jcra.je/competition/mergers/leniencypolicy.aspx">http://www.jcra.je/competition/mergers/leniencypolicy.aspx</a></p>
<p><b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</b></p>	<p>Yes.</p>
<p><b>C. Who is eligible for full leniency ?</b></p>	<p>Only the first participant of a cartel to come forward is eligible for full immunity provided some conditions are met. One of these conditions is that the JCRA does not already have sufficient information to suspect the existence of the alleged cartel activity.</p>
<p><b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b></p> <p><b>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</b></p>	<p>One of the conditions for full leniency is that the JCRA does not already have sufficient information to suspect the existence of the alleged cartel activity, however this is not a condition for significant reduction in penalty.</p>
<p><b>E. Who can be a beneficiary of the leniency program</b></p>	<p>Undertakings</p>

<sup>3</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.

<b>(individual / businesses)?</b>	
<b>F. What are the conditions of availability of full leniency:</b>	<p>The undertaking must:</p> <ul style="list-style-type: none"> <li>– provide the JCRA with access to all information available to them regarding the existence, activities, operation and membership of the cartel. Information includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic information, but does not include information protected from disclosure by legal professional privilege;</li> <li>– maintain continuous, complete and expeditious co-operation with the JCRA throughout its investigation and any ensuing proceedings;</li> <li>– use best efforts to ensure that each of the business's related entities provides all assistance reasonably requested by the JCRA;</li> <li>– refrain from further participation in the cartel (unless the JCRA directs otherwise); and</li> <li>– have not coerced others to take part in the cartel at any time on or after 1 November 2005.</li> </ul> <p>The exact description of the conditions is listed in the Attachment of the Leniency document available on website  <a href="http://www.jcra.je/pdf/051027%20JCRA%20LENIENCY%20POLICY.pdf">http://www.jcra.je/pdf/051027%20JCRA%20LENIENCY%20POLICY.pdf</a></p>
<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>	See answer under 6/F
<b>H. Obligations for the beneficiary after the leniency application has been accepted:</b>	See answer under 6/F
<b>I. Are there formal requirements to make a leniency application?</b>	If a business decides to apply for leniency, this may be done in writing or in person. A leniency application must be made by an officer who has the authority to represent the business for this purpose.

<b>application?</b>	Leniency applications must be directed to the Executive Director of the JCRA.
<b>J. Are there distinct procedural steps within the leniency program?</b>	No. Following the leniency application, there is only one more formal procedural step: the approval (or not) of the leniency application.
<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>	The business applying for leniency will be informed as soon as possible whether the application is approved. The business will be required to sign and comply with a Conditional Grant of Immunity Agreement as a condition for approval.
<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>	The legal base is implied in Article 39 of the Competition (Jersey) Law 2005 that allows the JCRA to set a fine but that does not impose minimum fines.
<b>M. Does your legislation have a marker system? If yes, please describe it.</b>	No
<b>N. Does the system provide for any extra credit<sup>4</sup> for disclosing additional violations?</b>	The current leniency policy does not address this situation. The JCRA will make a decision on the issue should it become necessary to do so.
<b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b>	The JCRA is obliged to keep the information it receives in a leniency application confidential, subject to its use to conduct an investigation of the alleged cartel. The JCRA will endeavour, to the fullest extent possible, to keep the identity of a person granted immunity confidential
<b>P. Is there a</b>	Article 53 of the Competition (Jersey) Law 2005 allows a person to

<sup>4</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.



<b>possibility of appealing an agency's decision rejecting a leniency application?</b>	appeal against the imposition of a financial penalty of the amount of any such penalty on the person by the JCRA.
<b>Q. Contact point where a leniency application can be lodged</b>	<p>Leniency applications can be submitted in writing or in person and must be done directed to:</p> <p style="text-align: center;">The Executive Director of the JCRA:</p> <p>address: 6th Floor, Union House Union Street St Helier JE2 3RF Jersey</p> <p>tel: (++44)/(0)1534-514990</p>
<b>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</b>	<p>Full cooperation throughout the investigation and the subsequent proceedings is a condition for leniency. When not full cooperation is obtained, the leniency may be revoked.</p> <p>Article 53 of the Competition (Jersey) Law 2005 allows a person to appeal against the imposition of a financial penalty of the the amount of any such financial penalty imposed on the person by the JCRA. If Leniency was revoked, this may result in a higher fine and hence the revocation could be appealed against at this point in the proceedings.</p>
<b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b>	n/a

## 7. Investigative powers of the enforcing institution(s)<sup>5</sup>

<b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>6</sup>, electronic or computer searches, expert opinion, etc. and indicate whether</b>	The JCRA has powers to require provision of information and documents (Article 27 of the Competition (Jersey) Law 2005), the power to obtain information stored on a computer (Article 28) and to enter premises and to search these (Articles 29 and 30). The Bailiff must grant a warrant that authorizes entry onto premises before the JCRA can search these.
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<sup>5</sup> "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

<sup>6</sup> "Searches/raids" means all types of search, raid or inspection measures.

<b>such measures requires a court warrant.</b>	
<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>	n/a
<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>	n/a
<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>	n/a

## 8. Procedural rights of businesses / individuals

<b>A. Key rights of defence in cartel cases:</b>	<p>The Competition (Jersey) Law 2005 contains a protection for information covered by the attorney client privilege. The Law also contains a protection against self-incrimination, concerning which a JCRA Guideline states that the JCRA cannot require the provision of answers that might involve an admission of the existence of a law infringement, which the JCRA has a duty to prove. The JCRA may, however, request documents or information concerning facts, such as whether a person attended a particular meeting or whether a particular communication took place.</p> <p>Finally, the JCRA is subject to the general administrative law principles of reasonableness, proportionality, and due process, and its actions could be potentially subject to judicial review under Jersey Royal Court's Rules, in addition to the statutory right of appeal contained in the Law.</p>
<b>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information</b>	n/a

is provided under a compulsory legal order or provided under informal co-operation?	
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## 9. Limitation periods and deadlines

<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 in the merits of the case must be made?</b>	There is no such limitation period.
<b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</b>	There is no deadline for the completion of an investigation or to make a decision in the merits.
<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?</b>	A decision that a person is in breach of Article 8 or whereby a financial penalty is imposed may be appealed with 28 days or within such a further period as the Royal Court may allow (Article 53 of the Competition (Jersey) Law 2005).

## 10. Types of decisions

<b>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.</b>	<p>Any type of direction as the JCRA considers appropriate to bring the breach to an end (Article 36(1) of the Competition (Jersey) Law 2005).</p> <p>The Authority can impose a financial penalty if it is satisfied that the breach was committed intentionally, negligently or recklessly (Article 39(1) of the Competition (Jersey) Law 2005).</p> <p>The JCRA may, in certain situations, impose interim measures if it has reasonable cause to suspect a breach of the Law and the investigation has not been completed (Article 40 of the Competition (Jersey) Law 2005).</p>
<b>B. Please list which types of decisions on the merits of the case can be</b>	n/a

<p>made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</p>	
<p><b>C. Can interim measures<sup>7</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>8</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>The JCRA may impose interim measures (Article 40 of the Competition (Jersey) Law 2005) if it a reasonable cause to suspect a breach of the Law and an interim direction (interim directions) is (are) necessary to prevent serious, irreparable damage to a person or class of persons or to protect the public interest.</p>

## 11. Sanctions for procedural breaches (non-compliance with procedural obligations)<sup>9</sup>

<p><b>A. Grounds for the imposition of procedural sanctions / fines:</b></p>	<p>Supplying no or false information in response to a request (Article 27(4) and Article 55) Obstruction of investigations (Article 31(3) and Article 33) Not providing access to computers (Article 28(5))</p>
<p><b>B. Type and nature of the sanction (civil, administrative, criminal, combined):</b></p>	<p>Articles 27(4), 28(5), 31(3) and 33 list offences that are liable to a fine. Article 55 lists offences that are liable to imprisonment for a term not exceeding 5 years or to a fine, or to both.</p>
<p><b>C. On whom can procedural sanctions be imposed?</b></p>	<p>All article referred to above refer to a "person".</p>
<p><b>D. Criteria for determining the sanction / fine:</b></p>	<p>n/a</p>
<p><b>E. Are there maximum and / or minimum sanctions /</b></p>	<p>n/a</p>

<sup>7</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>8</sup> Only for agencies which answered "yes" to question 2.C. above

<sup>9</sup> 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.

fines?	
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## 12. 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?</b>	The JCRA can impose on an undertaking administrative fines of up to 10% of the turnover of the undertaking during the period of the breach of the prohibition up to a maximum of 3 years.  Representatives of undertakings can only be sanctioned as "persons" for procedural breaches of the Competition (Jersey) Law 2005.
<b>B. Criteria for determining the sanction / fine:</b>	n/a
<b>C. Are there maximum and / or minimum sanctions / fines?</b>	The JCRA can impose on an undertaking administrative fines of up to 10% of the turnover of the undertaking during the period of the breach of the prohibition up to a maximum of 3 years.
<b>D. Guideline(s) on calculation of fines:</b>	n/a
<b>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?</b>	The making of an appeal against the imposition or amount of a financial penalty under Article 53 of the Law does suspend the effect of a decision or direction to which the appeal relates unless the Court orders otherwise.

## 13. Possibilities of appeal

<b>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?</b>	Article 53 of the Competition (Jersey) Law 2005 states the procedures for appeals against a decision by the JCRA that a person is in breach of Article 8(1) of the Law.
<b>B. Before which court or agency should such a</b>	The Royal Court of Jersey

<b>challenge be made? [if the answer to question 13/A is affirmative]</b>	
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