



International
Competition
Network

ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques

Commission for the Supervision of
Business Competition (KPPU) Republic of
Indonesia

**[date of completion / updating
of the template: 31/01/2019]**

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: [availability (homepage address) and indication of the languages in which these materials are available]	In Law Number 5 1999, a particular provision for cartel is mentioned in Article 11 The Law Number 5 1999 is available at : http://eng.kppu.go.id/competition-law/ (in English version) http://www.kppu.go.id/id/produk-hukum/uu-no-5-1999/ (in Bahasa version) Law Number 5 Year 1999 regulates cartel and divide them in several articles. There are Price fixing in Article 5, Geographical Allocation in Article 9, Market Allocation in Article 11 and Bid Rigging in Article 22.
B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	N/A
C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	<ol style="list-style-type: none">1. Guidelines on Bid Rigging (Article 22), further information is available at: http://eng.kppu.go.id/newkppu/wp-content/uploads/Guidelines-on-Article-22_ENG.pdf2. Guidelines on Cartel (Article 11), further information is available at:

<p>available]</p>	<p>http://eng.kppu.go.id/newkppu/wp-content/uploads/Pasal-11-KARTEL.pdf</p> <p>3. Guidelines on Cartel (Article 5), further information is available at: http://eng.kppu.go.id/newkppu/wp-content/uploads/pedoman-pasal-5-PENETAPAN-HARGA.pdf</p> <p>The guidelines are available in English version.</p> <p>The Guideline on Cartel put emphasize on the prohibition of cartel that focuses on agreement to regulate the production and/or marketing of goods and/or services intended to influence prices. Article 11 of Law Number 5 Year 1999 adopts a <i>rule-of-reason</i> principle. The formulation of the cartel examined according to the <i>rule-of-reason</i> principle is in conformity with the progress of competition law enforcement that tend to understand and examine business actor's reason in committing an act, which considered to violate the Competition Law. Accordingly, the Commission shall be capable of proving that the business actor's reasons are <i>unreasonable</i>.</p> <p>The Guideline on Bid Rigging prohibits business actors from committing acts which are aimed at hampering or are contradictory to the principles of fair business competition, including restriction of access to market, collusion and other actions intended to eliminate competition. Conspiracy to rig a tender as intended in Article 22 of Law No. 5/1999 is also an action which may result in unfair business competition. Conspiracy in the selection of tender awardees is frequently found in the implementation of goods and or service procurement conducted by the central government or regional government (government procurement), State-Owned Enterprises (BUMN) and private companies. Therefore, Article 22 of Law No. 5/1999 does not only include procurement activities conducted by the Government but also those conducted by state-owned enterprises (BUMN/BUMD) and private companies. Pursuant to the Elucidation of Article 22 of Law No. 5/1999, tenders shall be bids submitted to contract certain work, for the procurement of goods or the provision of services.</p> <p>Guideline on Price Fixing elaborate the application of Article 5 of Law Number 5 Year 1999 that stipulates that business actors shall be prohibited from entering into agreements with their business competitors to fix the price of certain goods and/or services payable by consumers or customers on the same relevant market. Pursuant to the concept stated above, price fixing is one type of agreements on collusion. Therefore, price fixing which is prohibited pursuant to article 5 of Law Number 5 Year 1999 shall be the price fixing derived from an agreement. Without any agreements, the same prices as set by a company and other companies cannot be said to have violated article 5 of Law Number 5 Year 1999.</p>
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these</p>	<p>KPPU has published magazine which discussing cartel in its 39th edition.</p> <p>The Kompetisi magazine is available at http://www.kppu.go.id/id/wp-</p>

materials are available]	content/uploads/2014/01/Kompetisi_39.pdf (it is only available in Bahasa version)
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2. Scope and nature of prohibition on cartels

<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 Number 5 Year 1999 does not define cartel explicitly.</p> <p>For example, Article 11 on cartel states that a business actor is prohibited from entering into an agreement with his rival business actor with an intention to influence prices by arranging production and or marketing of a type of goods and/or service, which then may result in monopolistic practices and or unfair business competition.</p> <p>The definition and explanation about cartel is described in the Guidelines concerning the articles on cartel, price fixing, and bid rigging.</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”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p>	<p>N/A</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>N/A</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>²? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p>	<p>In the Law Number 5 Year 1999, Article 11 on Cartel adopts <i>rule of reason</i> principle, while Article 5 on Price Fixing adopts <i>per se</i> principle and Article 9 on Market Allocation adopts <i>rule of reason</i> principle.</p>

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.

² For the purposes of this template the notion of ‘per se’ covers both ‘per se’ and ‘by object’, as these terms are synonyms used in different jurisdictions.

<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>The Commission only authorized to impose sanctions in the form of administrative measures against business actors violating the provisions of Competition Law</p>
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3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</p>	<p>Commission for the Supervision of Business Competition</p> <p>Investigation of cartel shall be conducted by the Directorate of Investigation in KPPU's Headquarter and Law Enforcement Division in 5 (five) representative offices.</p> <p>KPPU's headquarter and its 5 (five) representative offices are authorized to conduct investigation process on cartel cases that occurred in their <u>respective territory</u>:</p> <p>KPPU's Headquarter: DKI Jakarta Province, West Java Province, Central Java Province, and national cases that occurred in several different provinces.</p> <p>Representative Office of Surabaya: East Java Province, Bali Province, Nusa Tenggara Barat Province, Nusa Tenggara Timur Province.</p> <p>Representative Office of Medan: Nangroe Aceh Darussalam Province, North Sumatera Province, West Sumatera Province, Riau Province.</p> <p>Representative Office of Makassar: All Provinces in Sulawesi Island, Maluku Province, Papua Province, West Papua Province.</p> <p>Representative Office of Balikpapan: All Provinces in Kalimantan (Borneo) Island.</p> <p>Representative Office of Batam: Riau Province, Jambi Province, Bangka Belitung Islands, Riau Islands.</p>
<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>	<p>Commission for the Supervision of Business Competition (KPPU) Headquarter Jalan Ir. H. Juanda 36, Jakarta 10120 Indonesia Phone: 62-21-350 7015, 350 7016, 350 7043 Fax: 62-21-350 7008 email: infokom@kppu.go.id</p> <p>Representatives Offices of KPPU</p> <p>Surabaya Mandiri Building Jl Basuki Rahmat no 129-137, Lt. 7, Room 703, Surabaya, East Java, 60271 Phone. : 6231-545 4146, 534 4410 Fax : 6231-5341949 email : kpd_surabaya@kppu.go.id</p>

	<p>Medan Jalan Gatot Subroto Nomor 148 B, Sekip, Medan Petisah Medan, North Sumatera, 201113 Phone. : 6261-4558133 / 88741230 Fax : 6261-4148603 email : kpd_medan@kppu.go.id</p> <p>Balikpapan State Finance Building Balikpapan 3rd Floor Jalan Jend. Ahmad Yani No.28, Balikpapan East Kalimantan, 76113 Phone. : 0542-730373 Fax : 0542-415-939 email : kpd_balikpapan@kppu.go.id</p> <p>Makassar State Finance Building (GKN) II 6th Floor Jalan Urip Sumohardjo Km.4 Makassar South Sulawesi, 90174 Phone. : 62411-429927/429957 Fax. : 62411-429958 email : kpd_makassar@kppu.go.id</p> <p>Batam Graha Pena Building 6th Floor Jalan Raya Batam Center Teluk Tering, Batam City Batam, Kepulauan Riau, 29461 Phone. : 0778-469337 Fax. : 0778-469433 email : kpd_batam@kppu.go.id</p>
<p>C. Information point for potential complainants:</p>	<ol style="list-style-type: none"> 1. The complaint is addressed directly to the Chairman of the Commission with -Complaint- as the subject. The reports can be sent via the following address: The Chairman of Commission for The Supervision of Business Competition Jl. Ir. H. Juanda No. 36 Jakarta Pusat 10120 DKI Jakarta Phone. (021) 3507015, 3507016, 3507043 Fax. (021) 3507008 2. The Complainant Identity The complainant shall include their identity and contact details, as of the following: <ul style="list-style-type: none"> o Full Name o Complete Address o Phone number / faximile 3. Reported Parties Identity The complainant include the identity of the alleged party that violated the law, as of the following: <ul style="list-style-type: none"> o Full Name o Complete Address o Phone number / faximile (The reported party could be more than one) 4. Explanation on the Case Chronology The Complainant explain clearly and completely about the background of the case violation. The explanation is written in good Indonesian language, simple and

	<p>focused on the alleged violation.</p> <p>5. Alleged article that was violated The complainant have to determine which article in the law that has been allegedly violated. The complainant also need to explain indication of violation that has been done by the reported party in each articles. Law Number 5 /1999 can be obtained by www.kppu.go.id</p> <p>6. Supporting Documents The complainant should attach the documents that could be used as evidence of the alleged violation.</p> <p>7. Witnesses The complainant should attached identity of the parties that could be summoned as witness/es.</p>
<p>D. Contact point where complaints can be lodged:</p>	<p>Complaints could be lodged by post, facsimile and email to: The Chairman of Commision for The Supervision of Business Competition Jl. Ir. H. Juanda No. 36 Jakarta Pusat 10120 DKI Jakarta Phone. (021) 3507015, 3507016, 3507043 Fax. (021) 3507008 Email: infokom@kppu.go.id</p>
<p>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</p>	<p>No.</p>

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

<p>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</p>	<p>N/A</p>
<p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and</p>	<p>N/A</p>

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

languages available on the website]	
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

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	The source of case investigation: <ul style="list-style-type: none"> a. Complaint b. Ex-Officio
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>There is no specific form to be filled out, but there are several requirements for the complaint:</p> <ol style="list-style-type: none"> 1. The complaint is addressed directly to the Chairman of the Commission with -Complaint- as the subject. The reports can be sent via the following address: The Chairman of Commission for The Supervision of Business Competition Jl. Ir. H. Juanda No. 36 Jakarta Pusat 10120 DKI Jakarta Phone. (021) 3507015, 3507016, 3507043 Fax. (021) 3507008 2. The Complainant Identity The complainant shall include their identity and contact details, as of the following: <ul style="list-style-type: none"> o Full Name o Complete Address o Phone number / faximile 3. Reported Parties Identity The complainant include the identity of the alleged party that violated the law, as of the following: <ul style="list-style-type: none"> o Full Name o Complete Address o Phone number / faximile (The reported party could be more than one) 4. Explanation on the Case Chronology The Complainant explain clearly and completely about the background of the case violation. The

	<p>explanation is written in good Indonesian language, simple and focused on the alleged violation.</p> <p>5. Alleged article that was violated The complainant have to determine which article in the law that has been allegedly violated. The complainant also need to explain indication of violation that has been done by the reported party in each articles. Law Number 5 /1999 can be obtained by www.kppu.go.id</p> <p>6. Supporting Documents The complainant should attach the documents that could be used as evidence of the alleged violation.</p> <p>7. Witnesses The complainant should attached identity of the parties that could be summoned as witness/es.</p> <p>This information has been shared on kppu website: www.kppu.go.id or http://eng.kppu.go.id</p>
<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>N/A</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>Yes, we should clarify each complaints received.</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>KPPU will notify the complainant of any decision on their complaints.</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>Based on KPPU's Case Handling Procedure:</p> <p>(1) In the event that the Report has not complied with the provisions as contemplated in Article 11 paragraph (2), the concerned work unit shall notify and return the report to the Reporting Party not later than ten (10) days after the receipt of the report.</p> <p>(2) The Reporting Party shall complete the report which has not complied with the provisions as contemplated in Article 11 paragraph (2) not later than ten (10) days since the date of the return of the report.</p> <p>(3) If the Reporting Party does not complete the report within the period specified in paragraph (2), such report shall be declared in complete and the handling there of shall be suspended.</p> <p>(4) If the Reporting Party does not complete its report within a</p>

	period of ten (10) days as contemplated in (2), the Reporting Party can submit new report if new and complete evidence is found.
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6. Leniency policy⁴

A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]	N/A
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	N/A
C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?	N/A
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?	N/A
E. Who can be a beneficiary of the leniency program (individual / businesses)?	N/A
F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not	N/A

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

<p>to be the ringleader, cease the infringement, restitution, etc.]</p>	
<p>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?]</p>	<p>N/A</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>N/A</p>
<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>N/A</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>N/A</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>N/A</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p>	<p>N/A</p>
<p>M. Do you have a marker system? If yes, please describe it.</p>	<p>N/A</p>

N. Does the system provide for any extra credit⁵ for disclosing additional violations? [e.g. a hardcore cartel in another market]	N/A
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	N/A
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	N/A
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:	N/A
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?	N/A
S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?	N/A
T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.	N/A

7. Settlement

A. Does your competition regime allow settlement? If yes, please indicate its	N/A
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⁵ 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.

public availability (link to the relevant rules, guidelines, etc.).	
B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?	N/A
C. What is the reward of the settlement for the parties?	N/A
D. May a reduction for settling be cumulated with a leniency reward?	N/A
E. List the criteria (if there is any) determining the cases which are suitable for settlement.	N/A
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.].	N/A
F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].	N/A
G. Does a settlement necessitate that the parties acknowledge their liability for the violation?	N/A
H. Is there a possibility for settled parties to appeal a settlement decision at court?	N/A

8. Commitment

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
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<p>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there commitments which are excluded from the commitment possibility?</p>	N/A
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	N/A
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	N/A
<p>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.]</p>	N/A
<p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p>	N/A
<p>J. Describe how your authority monitors the parties' compliance to the commitments.</p>	N/A
<p>K. Is there a possibility for parties to appeal a commitment decision at court?</p>	N/A

9. Investigative powers of the enforcing institution(s)⁶

<p>A. Briefly describe the investigative measures available to the enforcing</p>	<p>The investigative measures that available are as follow:</p> <ol style="list-style-type: none"> a. Summon business actors alleged of having violated the provisions of the law b. Summon and present witnesses, expert witnesses, and
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⁶ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

<p>agency such as requests for information, searches/raids⁷, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>any persons deemed to have knowledge about the violation of the provisions of the law</p> <ul style="list-style-type: none"> c. Request the statement of Government institutions related to the investigation and or examination of business actors who have violated the provisions of the law d. Obtain, examine and or assess letters, documents or other instruments of evidence for the purpose of investigation and or examination e. Seek the assistance of investigators (from National Police) to present business actors, witnesses, expert witnesses, or any persons who are not prepared to appear in response to the Commission's summon. <p>All of those measures do not require a court warrant.</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>N/A</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>N/A</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>N/A</p>

10. Procedural rights of businesses / individuals

<p>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</p>	<p>Key rights of defence in cartel cases:</p> <ul style="list-style-type: none"> a. Right of access to documents in the possession of the enforcing authority (before the hearing process) b. Right to respond to that case in writing (during the hearing process) c. Right to respond orally (during the hearing process) d. Right to legal representation before the enforcing
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⁷ “Searches/raids” means all types of search, raid or inspection measures.

<p>orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</p>	<p>authorities</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p>	<p>As a mentioned in Article 39 Law Number 5 Year 1999, the Commission shall be obligated to keep confidential the information obtained from business actors classified as company secret. The business actors shall required the document with provide stamps „CONFIDENTIAL for those documents with indicates to company confidential.</p>

11. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?</p>	<p>As in Law Number 5 Year 1999 Article 38 paragraph (1) and paragraph (2), the Commission shall be obligated to conduct a preliminary examination, and within 30 (thirty) days after receiving the report concerned, the Commission shall be obligated to determine whether or not follow-up examination is required.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</p>	<p>The Commission shall be obligated to complete follow-up examination within 60 (sixty) days from the start of follow-up examination, the time frame for follow-up examination may be extended by not more than 30 (thirty) days.</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>The business actor concerned may appeal to the District Court by no later than 14 (fourteen) days after receiving notification of the Commission's decision. A business actor not appealing within the time frame as intended in aforementioned above shall be deemed to have accepted the Commission's decision. This provision is mentioned on Article 44 Law Number 5 year 1999.</p>

12. Types of decisions

<p>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<p>a. Impose administrative sanctions on business actors violating the provisions of this Law.</p> <p>b. Ordering to bring the violation to an end.</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 measures⁸ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁹.) 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>

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

<p>A. Grounds for the imposition of procedural sanctions / fines [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</p>	<p>The ground for the imposition of procedural fines:</p> <p>a. refusing to be examined,</p> <p>b. refusing to provide information required for investigation and or examination,</p> <p>c. Impeding the investigation and or examination process.</p>
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⁸ 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].

⁹ Only for agencies which answered “yes” to question 2.B. above

investigative measures, etc.]:	
B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):	Administrative and criminal sanctions
C. On whom can procedural sanctions be imposed?	Business actors and or other parties
D. Criteria for determining the sanction / fine:	N/A
E. Are there maximum and / or minimum sanctions / fines?	Administrative fines of not less than Rp.1,000,000,000,- (Rupiah one billion) and not more than Rp.5,000,000,000,- (Rupiah five billion) or the criminal sanction of imprisonment as replacement of fine for no longer than 3 (three) months.

14. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): 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?]	According to Article 47 Law Number 5 Year 1999, the Commission shall be authorized to impose sanctions in the form of administrative measures against business actors violating the provisions of this Law.
B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]	<p>KPPU will use the amount of sales/procurement of goods and services of the reported party at the concerned market. In general, the sales will be calculated on the basis of the total sales in the year before the violation was committed. It is aimed at facilitating the estimation of the sales of the business actors involved in a violation when the data on its annual sales are not available. In a procurement case, determining the sales is not based on the calculation of the sales of the year prior to the violation was committed, but based on the price of the procurement winner.</p> <p>In the violation committed by a group of reported parties, the sales will be calculated by accumulating the total sales of the members of the group.</p> <p>In determining the amount of the sales of the reported party, KPPU will use the estimated value of sales which mostly reflects its actual sales. The amount of the sales will be determined before VAT or other taxes directly related to such sales.</p>

	<p>If the data furnished by the reported party is incomplete or unreliable, then KPPU may determine reported parties' sales on the basis of such incomplete data and/or other relevant and factual information.</p> <p>To determine whether the proportion of the sales considered in the case shall be at the highest or lowest level of the scale, KPPU will consider some factors as follows:</p> <ol style="list-style-type: none"> 1. size of the company, 2. type of violation, 3. combined market shares of the reported parties, 4. geographic coverage of the violation, and 5. violation having been committed or not. <p>The basic value of the fine can be increased if KPPU finds the aggravating factors as follows:</p> <ul style="list-style-type: none"> - If the reported party continues or repeat the same violation when KPPU finds that the reported party has violated the provisions of Law Number 5 Year 1999, therefore, the basic value can be increased up to 100% for each violation committed. - If the reported party rejects to be examined, to provide information required in the examination and/or investigation or hinder the examination and/or investigation process. - To the leader or initiator of the violation, KPPU will give a special attention to the measures taken by the initiator in playing its roles to pose a pressure or threat other parties. <p>The basic value of the fine can be reduced if KPPU finds the mitigating factors as follows:</p> <ul style="list-style-type: none"> - The reported party proves that he has stopped the violations immediately after KPPU conducts an investigation. - The reported party proves that the violation has been committed unintentionally. - The reported party proves that his involvement is minimal. - The reported party acts cooperatively during the examination/investigation process . - If the actions are to implement the applicable laws and regulations or based on the approval of the competent authorities. - The reported party makes a statement on his willingness to change his attitudes in relation to the violation. <p>KPPU will give special attention to the requirement to assure that the fine will produce sufficient deterrent effect. Finally, it will improve the amount of the fine to be imposed to the reported party who has a turnover higher than the sales of goods and services in relation to such violations.</p> <p>KPPU will also consider the requirement to increase the amount of the fine with an objective to exceed the amount of the profits generated from the violation whose value may be calculated.</p>
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>Minimum fines is Rp.1,000,000,000,- (Rupiah one billion) and the maximum fines is Rp.25,000,000,000,- (Rupiah twenty-five billion)</p>

<p>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]</p>	<p>The Guidelines on Administrative Sanction is available at http://eng.kppu.go.id/newkppu/wp-content/uploads/Guideline-on-Administrative-Measures-Article-47.pdf</p>
<p>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?</p>	<p>Yes. A challenge to a decision imposing fine have an automatic suspensory effect on that fine, fine will be able to execute when the decision have been affirmed by District Court/Supreme Court.</p>

15. Possibilities of appeal

<p>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>N/A</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</p>	<p>The business actor shall appeal the Commission's Decision to the District Court and Supreme Court.</p> <p>The business actor concerned may appeal to the District Court by no later than 14 (fourteen) days after receiving notification of the Commission's decision. A business actor not appealing within the time frame as intended in aforementioned above shall be deemed to have accepted the Commission's decision. This provision is mentioned on Article 44 Law Number 5 year 1999.</p> <p>According to the Article 45 Law Number 5 Year 1999, the District Court must examine appeals filed by business actors within 14 (fourteen) days as from the receipt of the appeal concerned. The District Court must render a decision within 30 (thirty) days as from the commencement of the examination of the aforementioned appeal.</p> <p>A party filing an appeal in respect of the District Court's decision may appeal to the Supreme Court of the Republic of Indonesia within 14 (fourteen) days. The Supreme Court must render a decision within 30 (thirty) days from the time at which the appeal is received.</p> <p>In the event that there is no appeal, the Commission's decision shall have permanent legal force.</p>