



International  
Competition  
Network

# **ANTI-CARTEL ENFORCEMENT TEMPLATE**

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

**Sweden**

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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.

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

## 1. Information on the law relating to cartels

**A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]**

- A. The Swedish Competition Act (SFS 2008:579), as amended.
- The Swedish Competition Act entered into force 1 November 2008, replacing the 1993 Competition Act. The Act includes rules that cover the prohibition of cartels and the abuse of dominance, as well as competition neutrality and merger control. The Act is in many parts harmonized to be coherent with the EU rules on competition.
  - Chapter 2, section 1 of the Competition Act prohibits anti-competitive agreements. Available at: [www.kkv.se](http://www.kkv.se)
  - Language: Swedish (English translation available)

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

	<ul style="list-style-type: none"> <li>• The Treaty on the Functioning of the European Union (Art 101) <ul style="list-style-type: none"> <li>○ Sweden is party to the Treaty on the Functioning of the European Union through its membership of the European Union (EU). The treaty provisions relating to competition are applied when the investigated conduct may affect trade between Member States. The treaty provisions and the provisions in the Competition Act can have parallel application. (Art. 3(1) of Council Regulation (EC) 1/2003, see also Competition Act, Chapter 1 Section 3).</li> <li>○ Available at: <a href="http://eur-lex.europa.eu/">http://eur-lex.europa.eu/</a></li> <li>○ Language: Swedish, English</li> </ul> </li> <li>○ Trading Prohibition Act (SFS 2014:836) <ul style="list-style-type: none"> <li>○ Available at: <a href="http://www.notisum.se/rnp/sls/lag/19860436.htm">http://www.notisum.se/rnp/sls/lag/19860436.htm</a></li> <li>○ Language: Swedish</li> </ul> </li> </ul>
<p><b>B. Implementing regulation(s) (if any):</b>  [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<ul style="list-style-type: none"> <li>○ The Swedish Competition Regulation (SFS 2008:604) <ul style="list-style-type: none"> <li>○ Available at: <a href="http://www.notisum.se/rnp/sls/lag/20080604.htm">http://www.notisum.se/rnp/sls/lag/20080604.htm</a></li> <li>○ Language: Swedish</li> </ul> </li> </ul>
<p><b>C. Interpretative guideline(s) (if any):</b>  [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>Konkurrensverkets allmänna råd om avtal av mindre betydelse (Bagatellavtal) som inte omfattas av förbudet i 2 kap. 1 § konkurrenslagen (SFS 2008:579)</p> <ul style="list-style-type: none"> <li>○ “The competition authority’s general guidelines concerning agreements of minor importance which are not subject to the prohibition in 2 Chapter 1 § Competition Act (SFS 2008:579)“</li> <li>○ Published: 28 January 2009</li> <li>○ Available at: <a href="http://www.konkurrensverket.se/globalassets/publikationer/kkvfs/kkvfs_2009-1.pdf">http://www.konkurrensverket.se/globalassets/publikationer/kkvfs/kkvfs_2009-1.pdf</a></li> <li>○ Language: Swedish</li> </ul> <p>Konkurrensverkets allmänna råd om näringsförbud vid överträdelser av</p>

	<p>konkurrensreglerna</p> <ul style="list-style-type: none"> <li>○ "The Swedish Competition Authority's general guidelines concerning trading prohibition as a result of infringements of the competition rules"</li> <li>○ Published: 30 December 2014</li> <li>○ Available at:  <a href="http://www.konkurrensverket.se/globalassets/publikationer/kkvfs/kkvfs_2015-2.pdf">http://www.konkurrensverket.se/globalassets/publikationer/kkvfs/kkvfs_2015-2.pdf</a>   <a href="http://www.konkurrensverket.se/globalassets/english/competition/kkvfs-2015_2-english-version.pdf">http://www.konkurrensverket.se/globalassets/english/competition/kkvfs-2015_2-english-version.pdf</a></li> </ul> <p>Language: Swedish, English</p> <p>Konkurrensverkets allmänna råd om eftergift och nedsättning av konkurrensskadeavgift</p> <ul style="list-style-type: none"> <li>○ "The Swedish Competition Authority's general guidelines on immunity from fines and reduction of fines"</li> <li>○ Published: 30 December 2014</li> <li>○ Available at:  <a href="http://www.konkurrensverket.se/globalassets/publikationer/kkvfs/kkvfs_2015-1.pdf">http://www.konkurrensverket.se/globalassets/publikationer/kkvfs/kkvfs_2015-1.pdf</a>   <a href="http://www.konkurrensverket.se/globalassets/english/competition/kkvfs-2015_1-english-version.pdf">http://www.konkurrensverket.se/globalassets/english/competition/kkvfs-2015_1-english-version.pdf</a> (English)</li> </ul> <ul style="list-style-type: none"> <li>○ Language: Swedish, English</li> </ul>
<p><b>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</b></p>	

## 2. Scope and nature of prohibition on cartels

<p><b>A. Does your law or case law define the term “cartel”? [Please quote.]</b></p> <p><b>If not, please indicate the term you use instead. [Please quote.]</b></p>	<p>There is no definition of the term “cartel” in the Competition Act. All agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition within the (national) market in an appreciable way are prohibited, if not stated otherwise in the Competition Act.</p> <p>There is a definition of the term cartel in the 2014 Damages Directive (Directive 2014/104/EU of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union):  “cartel means an agreement or concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices such as, but not limited to, the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors”.</p> <p>In the draft bill of the Swedish act which will implement the Damages Directive, Chapter 1 Section 2 para. 8, a cartel is defined as:  “An agreement or coordinated behaviour between two or more competitors with the aim to coordinate their competitive behaviour on the market or influence the relevant parameters of competition.”</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>2</sup>) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</b></p>	<p>The legislation does not explicitly make a distinction between “hardcore cartels” and other unlawful agreements. However, the severity and nature of the violation are considered in the Competition Act. For example, the distinction between hardcore cartels and other violations may be relevant for the assessment of appreciable effect or when determining the size of an administrative fine. In the preparatory works, hardcore cartels with the aim of price fixing, market sharing or limiting production are given as examples of violations which by their very nature are damaging to competition.</p> <p>Furthermore, if a horizontal cartel involves price fixing, limiting or controlling production or market sharing, an individual can be prohibited from conducting trade (“trading prohibition”). Two additional requirements have to be met for this to happen:</p> <ol style="list-style-type: none"> <li>1. The individual has grossly neglected his or her responsibility within the business.</li> <li>2. A prohibition is in the public interest. This may be the case where the actions taken were aimed to severely prevent, restrict or distort competition and the violation has been systematic or has been aimed to achieve a considerable gain for the own business or considerable</li> </ol>

<sup>2</sup> In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

	damage for others.
<b>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.]</b>	See answer to question B.
<b>D. Is participation in a hardcore cartel illegal <i>per se</i><sup>3</sup>? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</b>	There is no <i>per se</i> prohibition against participation in a hardcore cartel, but any agreement which fixes prices, limits its output, shares markets, customers or sources of supply or involves other cartel behaviour such as bid-rigging will be regarded as so-called object infringements. Although not covered by any <i>per se</i> rule, object infringements are in effect very unlikely to be covered by any exception to Ch.2 s.1 of the Competition Act or Art 101 TFEU.
<b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b>	It is an administrative offence. When a violation is established the fine that is imposed on the undertaking is administrative in nature.

### 3. Investigating institution(s)

<b>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</b>	The Swedish Competition Authority ("SCA")
<b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b>	<p>The Swedish Competition Authority</p> <p>Postal address: Konkurrensverket, 103 85 Stockholm</p> <p>Visiting address: Torsgatan 11, 103 85 Stockholm, Sweden</p> <p>Phone number: +46 (0)8-700 16 00</p> <p>Fax: +46 (0)8-24 55 43</p> <p>Email: konkurrensverket@kkv.se</p> <p>Website: www.kkv.se</p>

<sup>3</sup> For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

	Languages: Swedish and English
<b>C. Information point for potential complainants:</b>	See section 3 (B) above
<b>D. Contact point where complaints can be lodged:</b>	<p>Visiting address: Torsgatan 11</p> <p>Postal address: Konkurrensverket 103 85 Stockholm</p> <p>Phone: +46 (0)8-700 16 00 (Ask to be connected to the unit for tip-offs and complaints)</p> <p>Fax: +46 (0)8-24 55 43</p> <p>E-mail address: <a href="mailto:konkurrensverket@kkv.se">konkurrensverket@kkv.se</a></p> <p>The SCA advises that documentation that is sent via email, post or fax is treated as a public document and registered as such. The Authority may be obliged according to Swedish law to release public documents unless they contain confidential information. The identity of the sender is often not treated as confidential. Therefore, if a complainant wishes to remain anonymous, they should consider first contacting the SCA via telephone.</p>
<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>	The Swedish Enforcement Agency (Kronofogdemyndigheten) - may assist the SCA when conducting a dawn raid.

#### 4. Decision-making institution(s)<sup>4</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: [if there is more than one agency, please describe the allocation of responsibilities.]</b>	Same as section 3. If the SCA wishes to impose fines, it must submit a summons application to the Patent and Market Court (enters into effect 1 <sup>st</sup> of September 2016).
<b>B. Contact details of the agency: [address, telephone and fax including the country code,</b>	

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

email, website address and languages available on the website]	
C. Contact point for questions and consultations:	
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	

## 5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	Cartel investigations are normally initiated by complaints, tip-offs or leniency applications. Investigations may also be initiated ex officio or on the basis of information received through the European Competition Network (ECN) in accordance with Regulation 1/2003.
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).]	No formal criteria are required. Complaints are normally phoned, emailed or posted in to the SCA. If the complaint is prioritized at this stage it goes through a preliminary investigation. Depending on the result of the preliminary investigation the case is either closed or moves on to the stage of a more comprehensive investigation.
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?]	There are no specific requirements.
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.]	The SCA has discretion as to whether or not to take action with regard to a complaint. The SCA's prioritization policy is available here: <a href="http://www.konkurrensverket.se/globalassets/english/about-us/english_prioritisation_policy_for_enforcement.pdf">http://www.konkurrensverket.se/globalassets/english/about-us/english_prioritisation_policy_for_enforcement.pdf</a>
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	If the SCA receives an official complaint, it will open a case file on the matter. If the SCA does not intend to pursue the complaint, the matter will be closed by way of a formal, written decision which will either be addressed to the complainant or otherwise communicated to him/her. If a case is deprioritized at an early stage, the decision will be motivated simply by a general reference to the SCA's prioritization policy. In cases

	where the Authority has done a more thorough examination before deciding to close the matter, a fuller explanation of the SCA's reasons for the decision will be given.
<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, there is no specific time limit but the Administrative Procedure Act states that every case where there is a private party involved should be handled in as simple, expedient and cost-effective a manner as possible.

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

<b>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</b>	<p>The possibility of leniency is provided for in the Swedish Competition Act. An English translation of the competition authority's general guidelines on immunity from fines and reduction of fines is available here: <a href="http://www.konkurrensverket.se/globalassets/english/competition/kkvfs-2015_1-english-version.pdf">http://www.konkurrensverket.se/globalassets/english/competition/kkvfs-2015_1-english-version.pdf</a></p> <p>The SCA can give leniency in all cases concerning anti-competitive cooperation and is not limited only to hardcore cartels.</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>	Both full leniency and partial leniency.
<b>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</b>	<p>Full leniency may be granted to a company in three situations:</p> <ol style="list-style-type: none"> <li>1. The company is first to notify a violation to the SCA and the notification contains information which will enable the SCA to carry out a targeted inspection<sup>6</sup>,</li> <li>2. The company is first to submit evidence which, in the SCA's view, enables the finding of an infringement, or</li> <li>3. The company provides highly significant assistance to the investigation of the infringement.</li> </ol> <p>Only one of the participating companies in the cartel may receive full</p>

<sup>5</sup> For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

<sup>6</sup> See also question 6 M regarding marker systems.

	<p>leniency. A company which has coerced another company to participate in the anti-competitive cooperation may not receive full leniency.</p> <p>A private person is eligible for full leniency in relation to the trading prohibition sanction, if he or she has substantially facilitated the investigation of the violation.</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>As indicated in section 6 (C) the different grounds for full leniency depend on how far the investigation has proceeded and how much information the SCA already has.</p>
<p><b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b></p>	<p>Undertakings and private persons may be beneficiaries of leniency as indicated in section 6 (C).</p>
<p><b>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.]</b></p>	<p>See section 6 (C).</p>
<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</b></p>	<p>Undertakings that do not qualify for immunity may benefit from a reduction of any fine that would otherwise have been imposed. In order to qualify for a reduction of fines, the undertaking must provide the Competition Authority with evidence of the alleged illegal anti-competitive cooperation which represents significant added value relative to the evidence already in the Competition Authority's possession at the time of the application.</p> <p>When assessing the appropriate level of reduction of fines, the Competition Authority will consider whether any other undertaking has already provided the Competition Authority with evidence, which in the Authority's view represents significant added value to the investigation.</p>

<p><b>initiation of investigations?]</b></p>	
<p><b>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</b></p>	<p>In order to be eligible for full or partial leniency there are several conditions that must be fulfilled, in addition to the conditions noted in 6 (C) and (G)., The undertaking must also satisfy the following cumulative cooperation conditions:</p> <ul style="list-style-type: none"> <li>- It provides all information it has concerning the infringement,</li> <li>- It co-operates fully with the Competition Authority throughout the investigation,</li> <li>- It does not destroy evidence or hinder the Competition Authority's investigation, and</li> <li>- It ends its involvement in the illegal cooperation.</li> </ul> <p>Immunity from fines will not be granted if the undertaking has coerced another undertaking to participate in the illegal anti-competitive cooperation.</p>
<p><b>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</b></p>	<p>An application can be written or oral but the company has to give a full account of all the relevant details of the infringement, such as the parties involved, the relevant geographic market and products concerned, the timeframe of the infringement, the nature of the conduct, etc. It must also provide copies of the relevant evidence that concerns the reported violation. In the application, the undertaking should provide the name, address and telephone number of a contact person. The undertaking should also state whether it has reported, or intends to report, the infringement to any other competition authorities within the European Union.</p>
<p><b>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</b></p>	<p>An application should be made by an authorised representative from the company or a representative with a power of attorney. The application may be anonymous at first, describing a hypothetical situation in order to establish whether or not the company might be eligible for full immunity. The SCA may at this stage provide a non-binding preliminary answer. The Authority cannot guarantee that another undertaking will not report the infringement before the anonymous undertaking has made a full application or applied for a marker.</p> <p>When an application has been submitted, upon request the SCA may declare the applicant eligible for immunity through a decision which becomes binding for the Authority and the Courts, subject to the conditions listed in section 6 (H) above.</p>
<p><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></p>	<p>Complete certainty regarding the eligibility for leniency can only be achieved once the SCA has issued a court summons for a fine against the other cartel members. As stated in 6 (J), a binding declaration providing the applying party with conditional immunity may be given as soon as SCA has established that:</p> <ol style="list-style-type: none"> <li>1. The company was first to report a violation, and</li> <li>2. The information provided was sufficient for SCA to take action.</li> </ol> <p>Conditional immunity can only be given when the company is first to report and not when a company merely provides additional information</p>

	to an ongoing investigation. See section 6 (H) for the conditions that have to be met.
<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>	<p>The legal basis for the SCA's leniency programme is provided in Ch.3, s.12-15 of the Competition Act.</p> <p>A binding declaration of conditional immunity is granted through a formal decision by the Director General of the SCA. A decision to grant partial leniency may only be taken by the Patent and Market Court.</p>
<b>M. Do you have a marker system? If yes, please describe it.</b>	<p>Yes.</p> <p>An undertaking that wishes to apply for immunity from fines can be provided with a marker, i.e. be granted a respite to submit complete information. For an undertaking to receive such a marker, however, its report must contain information concerning</p> <ul style="list-style-type: none"> <li>a) which product the infringement relates to;</li> <li>b) which undertakings are participating in the infringement; and</li> <li>c) what the purpose of the infringement is (e.g., market division, or fixing purchase or sales prices).</li> </ul> <p>The undertaking should inform the SCA of what information collection measures the applicant will take, how long this will take, and what type of information the undertaking will be submitting. The Authority will set a deadline for the provision of information in consultation with the undertaking. As a general rule, respite will be granted for up to two weeks. A longer respite may be granted only if the undertaking can show that circumstances will not reasonably allow for the information to be provided within two weeks.</p> <p>When receiving an application for a marker, the Authority will inform the undertaking if there is another undertaking ahead of them in the queue.</p> <p>If the undertaking provides the required information before the expiry of the respite period, the information shall be deemed to have been provided when the marker application was made. Failure of the undertaking to submit the required information within the respite period will result in the loss of its marker.</p>
<b>N. Does the system provide for any extra credit<sup>7</sup> for disclosing additional violations? [e.g. a hardcore cartel in another market]</b>	No, the provisions in the Competition Act concern leniency in relation to the violation that is being disclosed.
<b>O. Is the agency required to keep the identity of</b>	During the investigation confidentiality applies to the beneficiaries and the information that is provided. However, such confidentiality is lifted, at least in respect of the other parties to the investigation, at the latest

<sup>7</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.

the beneficiary confidential? If yes, please elaborate.	when the Authority issues a statement of objections.
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	No. However, the SCA's rejection of a leniency application may still be contested in the context of the full trial of the infringement case.
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:	See section 3 (D)
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?	When a decision is taken by the SCA to grant leniency this decision becomes binding on the authority and the courts. The decision is conditional upon the requirements in chapter 3 section 14 being fulfilled throughout the investigation, as noted in section 6 (H) above.
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.	

## 7. Settlement

A. Does your competition regime allow settlement?  If yes, please indicate its public availability (link to the relevant rules,	The Swedish Competition Authority may decide on a fine order on its own initiative if the SCA considers that the material circumstances concerning the infringement are clear and if the company consents to the order. The fine order is voluntary for the undertakings, i.e. they can choose whether or not to accept it. However, no discount or reduction on the level of fine is available as a result of accepting a fine order. The Swedish Competition Act, Chapter 3, Article 16-19. Available at <a href="http://kvv.se">kvv.se</a>
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<p><b>guidelines, etc.].</b></p>	<ul style="list-style-type: none"> <li>○ <a href="http://www.konkurrensverket.se/en/Competition/Sanctions/">http://www.konkurrensverket.se/en/Competition/Sanctions/</a></li> </ul> <p>The level of fines is calculated by reference to the rules laid down in chapter 3, article 8-11 of the Swedish Competition Act and SCA's 2009 guidelines on the method of setting administrative fines, available at <a href="http://www.konkurrensverket.se/globalassets/english/competition/method-of-setting-administrative-fines.pdf">http://www.konkurrensverket.se/globalassets/english/competition/method-of-setting-administrative-fines.pdf</a></p>
<p><b>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b></p>	<p>All types of agreements that are prohibited under article 101 TFEU and the Swedish Competition Act, Chapter 2, Article 1 are eligible for a fine order. The circumstances of the infringement must, however, be clear.</p> <ul style="list-style-type: none"> <li>○ The Swedish Competition Act, Chapter 3, Article 16.</li> </ul>
<p><b>C. What is the reward of the settlement for the parties?</b></p>	<p>The parties are spared the costs and effort associated with court proceedings. Further, no acknowledgement of liability is required, only the undertakings' validation of the circumstances regarding the infringement, as described by the SCA, is required.</p>
<p><b>D. May a reduction for settling be cumulated with a leniency reward?</b></p>	<p>If an undertaking is eligible for a leniency reward, this is reflected in the calculation of the fine, i.e. the fine order is reduced by the corresponding amount (of the leniency reward).</p> <p>Accepting a fine order is not, in itself, grounds for a reduction (see above), and therefore there are no cumulated effects.</p>
<p><b>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</b></p>	<p>The SCA can only issue a fine order in cases where it considers that the material circumstances concerning the infringement are clear. When the circumstances of the conduct are unclear or when there are legal issues that may be relevant for the assessment of similar cases, a court should review the case. This applies even if the undertaking wants to accept a fine order.</p> <ul style="list-style-type: none"> <li>○ The Swedish Competition Act, Chapter 3, Article 16.</li> </ul>
<p><b>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</b></p>	<p>The SCA decides whether it is appropriate to issue a fine order or to bring an action for fines to the court. The undertaking must consent to the fine order for the decision to be valid.</p> <p>A fine order is imposed after the investigation is concluded, before initiating possible court proceedings.</p>
<p><b>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</b></p>	<p>One efficiency is that no court proceedings are required, which saves time and resources. The decision can be rather short (usually 5-10 pages). However, an SO will typically have been issued to the undertakings concerned before a fine order is imposed. According to the Swedish Competition Act, Chapter 3 Article 17, a fine order must contain:</p> <ol style="list-style-type: none"> <li>1) The undertakings which the fine order is addressed to,</li> <li>2) The infringement and the circumstances necessary to</li> </ol>

	<p>characterise it,</p> <p>3) The provisions applicable to the infringement,</p> <p>4) The fine that the order imposes on the company.</p>
<b>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</b>	No acknowledgement of liability is required. Only the undertakings' validation of the material circumstances regarding the infringement, as described by the SCA, is required.
<b>H. Is there a possibility for settled parties to appeal a settlement decision at court?</b>	<p>A fine order that has been accepted is regarded to be a legally binding judgment, and the decision is not appealable by the parties nor by a third party.</p> <p>However, the parties subject to the fine order may appeal in the limited circumstances of a miscarriage of justice, which is only possible if one of the procedural errors specified in the Swedish Code of Judicial Procedure (1942:740) Chapter 59, Section 6 occurred in relation to the signed fine order.</p> <ul style="list-style-type: none"> <li>○ The Swedish Competition Act, Chapter 3, Article 19.</li> </ul>

## 8. Commitment

<b>A. Does your competition regime allow the possibility of commitment?</b>	<p>Yes, the SCA can accept commitments from undertakings which are submitted within the course of an investigation of alleged anti-competitive conduct, potentially violating European and national competition rules.</p> <ul style="list-style-type: none"> <li>○ Chapter 3, Article 4 of the Swedish Competition Act.</li> </ul>
<p><b>If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].</b></p>	
<b>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b>	<p>All types of restrictive agreements are as such eligible for commitments, however not all are suitable (see 8C). If the question has been raised as to whether an undertaking has infringed any of the prohibitions regarding anti-competitive conduct, a commitment offered by the undertaking may result in a decision by the SCA stating that there are no longer grounds for action. (Decisions made by the SCA may cover a specified period.)</p> <p>Chapter 3, Article 4 of the Swedish Competition Act.</p>
<b>Are there commitments which are excluded from the commitment possibility?</b>	
<b>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</b>	<p>The Swedish Competition Act does not include a provision regarding which type of infringements are appropriate or not for commitment decisions. The preparatory works to the Act stipulate that commitments are not an appropriate tool regarding hardcore cartel infringements. Commitment decisions may not be an appropriate measure in cases concerning serious infringements.</p> <p>The SCA's experience shows that adoption of commitment decisions is particularly well-suited to cases concerning complex markets and cases where the conduct consists of</p>

	complex contractual activities and exhibits both positive and negative elements.
<b>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</b>	Commitments can be both behavioural and structural.
<b>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</b>	The SCA is able to accept commitments at an early stage of an investigation. According to the wording of the provision, it is sufficient that a <i>question has been raised as to whether an undertaking infringes any of the prohibitions</i> for the SCA to be able to decide on whether to accept offered commitments or not. In contrast to other jurisdictions, there is no requirement for the SCA to first issue a statement of objections in order to accept commitments. At the same time, the Swedish Competition Act does not foresee a deadline during an investigation by which commitments can be submitted to the SCA.
<b>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</b>	No, there are no such criteria.
<b>J. Describe how your authority monitors the parties' compliance to the commitments.</b>	<p>The decision to accept a commitment can be made subject to the penalty of a fine. If the undertaking bound by the commitment decision breaches the commitment, the SCA can submit a claim to the courts for the payment of the fine.</p> <p>The SCA may revoke its commitment decision where (i) there has been a change in any of the facts which were material to the making of the decision, (ii) the parties commit a breach of any obligation attached to the decision, or (iii) the decision is based on incomplete, incorrect or misleading information which the parties have submitted.</p> <p>Chapter 6 Article 1 of the Swedish Competition Act Chapter 3 Article 4 of the Swedish Competition Act</p> <p>The practical means of monitoring a specific commitment would normally be agreed and decided as part of the SCA's decision to accept the commitments. This will differ depending on the nature of the commitments, but could include the appointment of a monitoring trustee or a duty on the undertaking to submit regular reports to the SCA regarding the undertaking's compliance with the commitments.</p>
<b>K. Is there a possibility for parties to appeal a commitment decision at court?</b>	<p>The decision of the SCA to accept commitments cannot be appealed.</p> <p>Chapter 3 Article 7 of the Swedish Competition Act</p>

## 9. Investigative powers of the enforcing institution(s)<sup>8</sup>

<p><b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>9</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b></p>	<p>The SCA may order a company to provide information and/or appear for questioning. It may also, provided that a court warrant has been issued, conduct a search at a company to investigate allegations of anti-competitive cooperation. A court warrant may be issued if three requirements are met;</p> <ol style="list-style-type: none"> <li>1. There are reasonable grounds to suspect that a violation has been conducted.</li> <li>2. The company does not submit to a request to provide information or appear for questioning, or there is a risk that evidence may be withheld or tampered with/distorted/corrupted, and</li> <li>3. The importance of the measure outweighs the intrusion or any other negative effects of the measure.</li> </ol> <p>A search may be conducted at a company not part of the investigation if;</p> <ol style="list-style-type: none"> <li>1. The conditions above are fulfilled,</li> <li>2. There is particular reason to suspect that there will be evidence at the company's premises, and</li> <li>3. The company does not submit to a request to provide information or appear for questioning, or there is a risk that evidence may be withhold or tampered with /distorted/corrupted.</li> </ol> <p>While conducting the search SCA may collect electronically stored information as well as documents in paper form, limited only by legal professional privilege and business secrets of a technical nature. Furthermore, the SCA may request oral explanations from staff while conducting the search at the company.</p> <p>SCA may request assistance from the Swedish Enforcement Agency when conducting a search.</p>
<p><b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</b></p>	<p>A court decision authorizing the SCA to conduct a search may include residences and other spaces which are employed by board members or employees of the investigated companies. The same conditions must be fulfilled as when a search may be warranted at a company not part of the investigation, with the additional condition that the investigation must concern a severe violation.</p>
<p><b>C. May evidence not falling</b></p>	<p>If evidence not falling under the scope of the authorisation is</p>

<sup>8</sup> “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

<sup>9</sup> “Searches/raids” means all types of search, raid or inspection measures.

<p><b>under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</b></p>	<p>found during a search, the SCA is not authorised to seize it. A new application has to be filed with the court. If the information relates to the case currently under investigation an application has to be made to expand the scope of the authorisation. If the information relates to an unrelated infringement, a completely new application has to be filed with the court.</p>
<p><b>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p>	<p>The case <i>Assa v Konkurrensverket</i> (MD 2015:15) concerned a situation where the SCA had been authorised by the district court to conduct a dawn raid at a company suspected of abuse of dominance. During the investigation, as a part of the dawn raid, certain digitally stored material was collected and moved to the offices of the SCA, with the approval of the investigated company. When reviewing the collected material, the SCA found evidence giving rise to new suspicions and therefore wanted to extend the scope of the search of the collected material.</p> <p>On appeal, the Swedish Market Court concluded that extending the scope of the investigation in order to review already collected and moved material was not legally permissible. According to the principle of legality, any use of public authority must be supported by law. The Competition Act gives the SCA the power to search through documents at the premises of a company under investigation. In order to search digitally stored material at the SCA's premises however, the Authority must have the explicit approval of the investigated company. The company had only given such approval with respect to the scope of the initial inspection and not the extended inspection. Consequently, the Court concluded that the SCA did not have any legal authority to make extended searches in the material already held at the Authority's premises, and overturned the approval given previously by the district court.</p>

## 10. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in 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</b></p>	<p>Undertakings or individuals obliged to provide information or which are the subject of an investigation have the general right not to be excessively burdened by the process.</p> <p>An undertaking which is party to an investigation may access information relating to that investigation if it is not of utmost importance that the information is kept confidential, considering any private or public interest at stake. Confidentiality applies to a complaint or any other statement if it is likely that the individual will suffer significant damage if the information is revealed. (Chapter 10, Section 3 of the Public Access to Information and Secrecy Act)</p> <p>The investigated parties are invited to "state-of-play meetings" during the course of the investigation, where they are informed of the status of the case and, where appropriate, the SCA's preliminary focus or views.</p>
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<p><b>legal provisions.</b></p>	<p>The SCA sends the draft of summons application (similar to a Statement of objections) to the investigated parties, inviting written comments or clarifications, before going to court. (Chapter 3, Section 5 of the Competition Act)</p> <p>The investigated parties also have a right to access to the case file and all evidence relied upon by the SCA. (Sections 16-17 of the Administrative Procedure Act, subject to the limitation imposed by Chapter 10, Section 3 of the Public Access to Information and Secrecy Act, see above)</p> <p>Upon request, the investigated parties have a right to an oral hearing at the SCA before the Authority makes a final decision on the case.</p> <p>General rights of due process, including a right to legal representation and a right against self-incrimination, are safeguarded in the Swedish constitution, as well as by the European Convention on Human Rights and the EU Charter of Fundamental Rights and Freedoms.</p>
<p><b>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.</b></p>	<p>Confidentiality applies within SCA's operations in relation to business secrets. (Chapter 30, Section 1 of the Public Access to Information and Secrecy Act)</p> <p>Furthermore, when investigative measures are being taken by SCA there is no obligation to disclose business secrets of a technical nature. (Chapter 5, Section 12 of the Competition Act)</p> <p>There is no difference made on the basis of how the information was collected.</p>

## 11. Limitation periods and deadlines

<p><b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?</b></p>	<p>Administrative fines may be imposed only if the summons application has been served within five years from the discontinuation of the violation.</p> <p>If the company concerned is notified of a decision to investigate or is given an opportunity to comment on a draft of a summons application by the SCA, this later date becomes the starting point of the limitation period. In that case an administrative fine may be imposed only if the summons application has been served within 10 years from the discontinuation of the violation.</p>
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</b></p>	<p>See section 11 (A).</p>
<p><b>C. What are the deadlines,</b></p>	<p>Only decisions regarding sanctions may be challenged. A</p>

<p><b>statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</b></p>	<p>decision by SCA imposing sanctions may be challenged by a party whom the decision concerns. The petition has to be received by the SCA within 3 weeks from the date the decision was communicated to the party concerned. A decision by the Patent and Market Court may be challenged within 3 weeks from the date when the judgment was published. This means in effect that it takes 3 weeks until a verdict acquires legal force.</p>
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## 12. Types of decisions

<p><b>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</b></p>	<ol style="list-style-type: none"> <li>1. The SCA may order a company to end a violation of the prohibitions in Chapter 2 Sections 1 and 7, or Articles 101 or 102 TFEU. An order to end a violation may be sanctioned with a conditional fine.</li> <li>2. The Patent and Market Court may decide that a company must pay an administrative fine according to Chapter 3 Section 5 of the Competition Act. See also question 10 (C).</li> <li>3. The SCA may, instead of suing for an administrative fine at the Patent and Market Court, directly order the company to pay a fine (a "fine order"). It may only do so if it finds the circumstances of the case sufficiently clear and the investigated party agrees to submit to the fine order.</li> <li>4. The Patent and Market Court may decide on a trading prohibition for an individual pursuant to Sections 2 (a) and 8 of the Trading Prohibition Act.</li> <li>5. The civil courts may decide on compensation for damages suffered as a result of a violation of the prohibitions in the Competition Act, see Chapter 3 Section 25 of the Act. See also question 12 (C)</li> <li>6. The SCA may decide that the case will be terminated if its continuation is deemed unnecessary or the defending party may not be found liable for a violation of the competition rules.</li> </ol>
<p><b>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</b></p>	<p>Same as 12 (A).</p>

<p><b>C. Can interim measures<sup>10</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>11</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 SCA may make an interim order during the investigation if it is appropriate for reasons of urgency, see Chapter 3 Section 3 of the Competition Act. The Swedish Patent and Market Court may do so when court proceedings have been initiated.</p>
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### 13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p><b>A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</b></p>	<p>The SCA may order a company or another party to provide information or appear for questioning. Such an order may be sanctioned with a conditional fine which becomes payable in the case of failure to comply with the order. Furthermore, a decision to investigate the premises of a company may also be sanctioned with a conditional fine.</p>
<p><b>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</b></p>	<p>Administrative sanction.</p>
<p><b>C. On whom can procedural sanctions be imposed?</b></p>	<p>On a person or undertaking subjected to an order sanctioned with a conditional fine (see section 13 (A) above).</p>
<p><b>D. Criteria for determining the sanction / fine:</b></p>	<p>The criteria for determining the conditional fine is whether a party has failed to submit to an order by SCA and whether or not there were circumstances providing a valid excuse for doing so.</p>

<sup>10</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>11</sup> Only for agencies which answered “yes” to question 2.B. above

<p><b>E. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>A conditional fine is calculated with respect to the economic situation of the company concerned and other relevant circumstances. There is no maximum or minimum but a penalty must be effective and reasonable.</p>
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## 14. Sanctions on the merits of the case

<p><b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b></p> <p><b>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</b></p>	<p>Administrative.</p> <p>Sanctions may be imposed on both businesses and representatives (See section 2 (B and E)).</p>
<p><b>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</b></p>	<p>The purpose of the administrative fine is to deter the prohibited behavior and to discourage other companies from violating the competition rules. The fine is calculated in four stages:</p> <ul style="list-style-type: none"> <li>• A starting amount is calculated based on the undertaking's turnover in the relevant market in the last full year of the infringement.</li> <li>• Multipliers are applied to the turnover figure, for: <ul style="list-style-type: none"> <li>- gravity (taking into account the nature of the violation, the size of the market and the actual or potential effects on the market), and</li> <li>- duration of the violation.</li> </ul> </li> <li>• The fine is adjusted based on aggravating or mitigating circumstances.</li> <li>• Other circumstances not related to the actual violation are considered such as if it is a repeat violation, if the company ended the violation as soon as possible after being notified of the SCA's investigation and the economic/financial status of the company.</li> </ul>

<p><b>C. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>The amount of the administrative fine may not exceed 10 % of the undertaking's net turnover in the preceding business year. This amount is not limited to the turnover on the relevant product or geographical market. However, the amount only includes the turnover of the violating company, not the group of companies of which it may be part. There are no minimum fines.</p>
<p><b>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b></p>	<p>Yes. The SCA has published guidelines called "Method for setting administrative fines".</p> <p>Available in English translation at:  <a href="http://www.konkurrensverket.se/globalassets/english/competition/method-of-setting-administrative-fines.pdf">http://www.konkurrensverket.se/globalassets/english/competition/method-of-setting-administrative-fines.pdf</a></p>
<p><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></p>	<p>An order to end a violation may be appealed to the Patent and Market Court. The challenge will not have a suspensory effect but the court may decide on a stay of execution of the decision. For this, the appealing party must prove that 1) there is a high probability that he or she will be successful on the merits 2) he or she will suffer significant and irreparable damage if the imposition remains and 3) the interest of the appellant weighs heavier than those of competitors and consumers.</p> <p>A decision to impose administrative penalties is taken by the Patent and Market Court and may be appealed to the Patent and Market Court of Appeal. The Patent and Market Court decision will not become legally binding until the deadline/time-limit to appeal has passed, and if it is appealed the challenge will have suspensory effect.</p>

## 15. Possibilities of appeal

<p><b>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</b></p>	<p>An imposition and a decision by the district court may be appealed as stated in section 14 (E).</p>
<p><b>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</b></p>	<p>See section 14 (E).</p>