



International  
Competition  
Network

# CHARTS SUMMARISING INFORMATION SHARING MECHANISMS

CARTEL WORKING GROUP  
Subgroup 2: Enforcement Techniques

New Zealand  
July 2012

<b>QUESTION</b>		
<b>MECHANISMS FOR INFORMATION SHARING</b>		
<b>1</b>	<b>Details of the relevant point of contact at your agency for information requests</b>	<b>NEW ZEALAND COMMERCE COMMISSION</b> Kate Morrison Fazleen Ismail
1.a)	Position	General Manager Competition Manager Advocacy & Development
1.b)	Branch or office	Wellington
1.c)	e-mail address (please include a general email address for a group inbox if possible)	<a href="mailto:international@comcom.govt.nz">international@comcom.govt.nz</a> <a href="mailto:kate.morrison@comcom.govt.nz">kate.morrison@comcom.govt.nz</a> <a href="mailto:fazleen.ismail@comcom.govt.nz">fazleen.ismail@comcom.govt.nz</a>
1.d)	Telephone number (please include a general branch or office telephone number if possible)	64 4 924 3600
<b>2</b>	<b>What formal and informal mechanisms does your agency make available to alert other competition agencies to matters currently being investigated by your agency?</b> (Please put a cross next to all those that apply.)	
2.a)	Markets or conduct that the agency has identified as investigation priorities are listed on the official agency website	
2.b)	Obligations under bi-lateral competition agreements to notify agencies in jurisdictions that may be affected by the investigation	
2.c)	Obligations under multi-lateral cooperation agreements	
2.d)	Public announcement of cartel investigations on agency website	
2.e)	Formal/informal internal obligations	
2.f)	Other (please specify)	Bilateral calls between ourselves and the ACCC. And ourselves and the Canadian Competition Bureau. Multilateral calls between ourselves, the ACCC and the Competition Commission of Singapore.

2.g)	None	
<b>3</b>	<b>Do you currently have any cooperation agreements relating to information sharing (bilateral and/or multilateral) [Y/N]</b>	Y
<b>4</b>	<b>If you answered Y to Question 3 above, please indicate the scope of the cooperation agreement below (Please put a cross next to all those that apply.)</b>	
4.a)	Provides for a specific section on information exchanges	x
4.b)	Provides for a general section on cooperation in enforcement	
4.c)	Other (please specify)	
<b>5</b>	<b>Has your agency established any other cooperation agreements? [Y/N]</b>	Y
<b>6</b>	<b>Has your agency tried to establish a cooperation agreement with another agency and been unsuccessful? [Y/N]</b>	N
<b>7</b>	<b>Does your agency publish information about its past cartel investigations?[Y/N] If YES, where?:</b>	Y
7.a)	Website	
7.b)	Annual reports and/or other reports	x
7.c)	Other (please specify).	
<b>8</b>	<b>Which of the following types of cartel enforcement regimes does your agency operate? (Please put a cross next to the most appropriate answer)</b>	
8.a)	Criminal	
8.b)	Civil/administrative	x A bill is currently before the New Zealand parliament proposing the introduction of criminal sanctions for cartel conduct.
8.c)	Hybrid	
<b>9</b>	<b>Do your answers vary depending on the cartel enforcement regime in which you operate and the cartel enforcement regime of the agency with which you are cooperating/sharing information? [Y/N] If Y, Please provide a brief explanation.</b>	Y. Different considerations if dealing with an agency that enforces a criminal regime.

<b>10</b>	<b>Does your agency have a leniency policy? [Y/N]</b>	Y
10.a)	Does your agency encourage leniency applicants to seek leniency in other jurisdictions affected by the conduct? [Y/N] If Y, please explain.	Y. This is informal only. Seeking leniency in other jurisdictions is not a requirement of our leniency process.
<b>11</b>	<b>Does your agency have a marker system? [Y/N]</b>	Y
<b>12</b>	<b>Are applicants required to provide a waiver? [Y/N]</b>	N
12.a)	If N, does your agency seek waivers (either general or specific) from leniency applicants to allow nominated agencies to share information contained in leniency applications? [Y/N]	Y
<b>13</b>	<b>Does your agency have experience in requesting/sharing information with a foreign competition authority? [Y/N]</b>	Y
13.a)	If you answered Y to Question 13 above, was your overall experience of the information sharing mechanisms available to your agency positive? [Y/N/NA]	Y
<b>14</b>	<b>During the last 3 years, has your agency provided information to or requested information from another agency in relation to a cartel case using an <u>informal</u> cooperation mechanism? [Y/N]</b>	Y
	<b>If Y, the type of information requested and/or shared was:</b>	
14.a)	Product and market information	x
14.b)	Agency internal information	x
14.c)	Confidential information	
14.d)	Case-specific information	x
<b>15</b>	<b>Does your agency have formal powers to obtain evidence in relation to a cartel case on behalf of foreign agency [Y/N]?</b>	N
	<b>If Y, which of the following is the legal basis for obtaining such evidence:</b>	
15.a)	Mutual Legal Assistance Treaty (MLAT) – bilateral	
15.b)	MLAT – multilateral	
15.c)	Cooperation Arrangement	
15.d)	Other (please specify)	

<b>16</b>	<b>If you have provided information in relation to a cartel investigation to foreign competition agencies, have you received any feedback from that agency regarding the utility of the information? [Y/N]</b>	Y
<b>17</b>	<b>For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been:</b>	
17.a)	Informal cooperation	
17.b)	Formal cooperation	
17.c)	Both	x
17.d)	Neither	
17.e)	Not applicable	
<b>18</b>	<b>Has your agency taken any steps to improve or increase the sharing of information in relation to cartel investigations with other agencies in the last 3 years? [Y/N]</b>	Y
<b>19</b>	<b>Terms and conditions under which information is provided to foreign competition authorities</b>	
<b>19.a)</b>	<b>Publicly available information:</b>	
19.a)(i)	Upon formal request	x
19.a)(ii)	Upon informal request	x
19.a)(iii)	Available through the competition agency website and/or other publications	x
19.a)(iv)	Other (Please specify.)	
<b>19.b)</b>	<b>Agency internal information:</b>	
19.b)(i)	Upon formal request	x
19.b)(ii)	Upon informal request	x
19.b)(iii)	Upon grant of judicial or administrative authorisation (different from the competition agency) (Please specify.)	
19.b)(iv)	Under an international agency-to-agency cooperation agreement (see references to the agreement, where available)	
19.b)(v)	Other (Please specify)	

<b>19.c)</b>	<b>Information covered by professional secrecy:</b>	
19.c)(i)	Under no conditions	
19.c)(ii)	If confidentiality waiver is granted by the parties under investigation	x
19.c)(iii)	If waiver is granted by the party, the agency will evaluate the risks and benefits of sharing the information	
19.c)(iv)	If a judicial or administrative authorization is granted	
19.c)(v)	Under an international agency-to-agency cooperation agreement. (See references to the agreement when available)	
19.c)(vi)	Other (please specify)	
<b>19.d)</b>	<b>Confidential information can be shared:</b>	
19.d)(i)	Under no conditions	
19.d)(ii)	If confidentiality waiver is granted by the parties under investigation	x
19.d)(iii)	If waiver is granted by the party, the agency will evaluate the risks and benefits of sharing the information	
19.d)(iv)	If a judicial or administrative authorization is granted	
19.d)(v)	Under an international agency-to-agency cooperation agreement. (See references to the agreement when available)	
19.d)(vi)	Only at certain stages of the investigation process (pre-investigation, during investigation, after completion of investigation, when no investigation is conducted, during litigation, other (please specify)).	
19.d)(vii)	Other (please specify)	
<b>20</b>	<b>Investigation stage at which publically available information can be shared</b>	
20.a)	Pre-investigation	x
20.b)	Investigation	x
20.c)	When the investigation is completed	x
20.d)	When no investigation is conducted	x
20.e)	During litigation	x

<b>21</b>	<b>Are the following types of information generally treated by the jurisdiction as: (i) publically available; (ii) agency internal information; (iii) information covered by professional secrecy; (iv) privileged information; or (v) confidential? (Please select the most appropriate answer)</b>	
21.a)	Factual information (e.g. evidence obtained by the national competition authority in the course of investigation)	confidential
21.b)	Information provided voluntarily to foreign competition authority by a party under investigation and/or a leniency applicant	confidential
21.c)	Methodology of anti-cartel investigations (without indication of particular parties involved) – i.e. foreign “know-how” of the cartel investigations	agency internal information
21.d)	Results of market studies conducted by the foreign competition authority into markets where cartel violations are suspected	NA
21.e)	Legal information	privileged information
21.f)	Information on sanctions	If court ordered penalty this is publically available. Other sanctions, eg administrative settlement, may be confidential.
21.g)	Information on timing of the case	agency internal information
21.h)	Other (please specify)	
<b>22</b>	<b>In the absence of an information sharing agreement or formal information sharing powers, your agency is likely to respond to an information sharing request in the following manner: (Please put a cross next to your choice of answer.)</b>	
22.a)	Will not share information except that which is open to the public	
22.b)	May share information provided that certain conditions are met	x

<b>23</b>	<b>If you put a cross next to Question 22.b) above, which of the following conditions (if any) must a foreign agency requesting information meet before your agency will share confidential or agency internal information? (Please put a cross next to all that apply.)</b>	
23.a)	Keep the information provided confidential	
23.b)	Keep the information provided confidential unless subject to a court order	x
23.c)	Use best endeavours to keep the information confidential	
23.d)	Use this information only for the originally intended purpose	x
23.e)	Other (please specify)	
<b>24</b>	<b>If another agency provides your agency with information on a confidential basis, will it be treated as confidential, subject to the relevant laws of the recipient agency's jurisdiction (such as freedom of information laws)? [Y/N]</b>	Y
<b>25</b>	<b>Is there any law or situation that may require information received from another agency to be divulged? [Y/N] If Y, please specify.</b>	Y. We may be required to release information under the Official Information Act or by court order.
<b>26</b>	<b>If your agency maintains the relevant statistics, please assess what is the average time required for the agency to:</b>	NA
26.a)	Assess the possibility of responding to the information request	NA
26.b)	Respond to the information request	
	NOTE: If your agency does not record the timing required to process information requests from foreign agencies, please indicate NA for in response to Questions 24. a) and 24. b).	



<b>27</b>	<b>Nature of information requested</b> <b>Please rank in order of importance to your agency (rank 1 being the highest and 8 the lowest) the following types of information about current/completed cartel investigations that may be requested from foreign agencies. (We note that the order of these items may change on a case by case basis. If this is the case for your agency, please indicate this. If you believe that different types of the information below may have equal importance for your agency please assign them the same rank.)</b>	
27.a)	Factual information, e.g. evidence obtained by the national competition authority in the course of investigation	1
27.b)	Information provided voluntarily by a party under investigation/leniency applicant to foreign competition authority	2
27.c)	Methodology of anti-cartel investigations (without indication of particular parties involved) – foreign “know-how” in relation to cartel investigations.	3
27.d)	Results of a foreign authority’s market studies into markets potentially affected by cartelisation	4
27.e)	General legal information	7
27.f)	General information on sanctions	6
27.g)	Information on timing of the case	5
27.h)	Other (please specify)	
<b>28</b>	<b>On average, how many times per year does your agency: (please provide NA answer if you have difficulties with assessing frequency of sharing/receiving information from foreign agencies as described below):</b>	
28.a)	Request confidential information in relation to cartel investigations?	2 or 3
28.b)	Provide confidential information in relation to cartel investigations?	1 or 2
28.c)	Request publically available information or internal agency information?	2 or 3

28.d)	Provide publically available information or internal agency information?	3 or 4
29	<b>Does your agency have formal information sharing powers? [Y/N]</b>	N
30	<b>Are you aware of any imminent legislation or policy changes regarding information sharing in your jurisdiction? [Y/N] If Y, please provide a very brief description or a link to further information if possible.</b>	Y. The International Cooperation and Fees Bill is currently before the New Zealand parliament. The aim of the Bill is to facilitate increased cooperation between the Commission and equivalent overseas regulators, particularly the ACCC.
31	<b>Competition agencies often exchange information through regional competition networks such as the European Competition Network (ECN).</b>	
31.a)	Is your agency part of a regional competition network? [Y/N] If Y, please list.	Y. The Asia-Pacific Sharing Arrangement (APSA) between the NZ Commerce Commission, the ACCC and the Competition Commission of Singapore.
31.b)	Are there types of information that your agency can share with other members of the regional competition network, which would not be able to be shared in the absence of the network? [Y/N] If Y, please provide a brief description.	
31.c)	Are there types of information that your agency can share in the absence of the network? [Y/N] If Y, please list.	