

CHARTS SUMMARISING INFORMATION SHARING MECHANISMS

CARTEL WORKING GROUP Subgroup 2: Enforcement Techniques

> Switzerland July 2012

www.international competition network.org

| QUEST | ION | Swiss Competition Commission (COMCO) |
|--------------|--|--|
| 1 | Mechanisms for information sharing: | |
| | Details of the relevant point of contact at your agency for information requests | |
| 1.a) | Position | Deputy of the Director and Vice-director; Head of competence center communications |
| 1.b) | Branch or office | Competence center communications |
| 1.c) | e-mail address (please include a general email address for a group inbox if possible) | patrik.ducrey@weko.admin.ch; weko@weko.admin.ch |
| 4 15 | T | |
| 1.d) | Telephone number (please include a general branch or office telephone number if possible) | 0041 31 324 96 78 (Patrik Ducrey) 0041 31 322 20 40 (Secretariat) |
| 2 | What formal and informal mechanisms does your agency make available to alert | |
| - | other competition agencies to matters currently being investigated by your | |
| | agency? | |
| | (Please put a cross next to all those that apply.) | |
| 2.a) | Markets or conduct that the agency has identified as investigation priorites are listed on | |
| , | the official agency website | |
| 2.b) | Obligations under bi-lateral competition agreements to notify agencies in jurisdictions | Х |
| - / | 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 | Х |
| 2.e) | Formal/informal internal obligations | Х |
| 2.f) | Other (please specify) | |
| 2.g) | None | |
| 3 | Do you currently have any cooperation agreements relating to information sharing | Y (Switzerland has concluded only one bilateral agreement containing obligations on |
| - | (bilateral and/or multilateral) [Y/N] | information sharing : Agreement between the European Community and the Swiss |
| | | Confederation on Air Transport) |
| 4 | 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.) | |
| | · · · · · · · · · · · · · · · · · · · | |
| 4.a) | Provides for a specific section on information exchanges | Х |
| 4.b) | Provides for a general section on cooperation in enforcement | |
| 4.c) | Other (please specify) | |
| 5 | Has your agency established any other cooperation agreements? [Y/N] | N (a general cooperation agreement with the EC is currently under negotiation) |
| 6 | Has your agency tried to establish a cooperation agreement with another agency | Ν |
| | and been unsuccessful? [Y/N] | |
| 7 | Does your agency publish information about its past cartel investigations?[Y/N] If | Y |
| 7 -> | VFS where? | V. |
| 7.a) 7.b) | Website | X |
| 7.b) 7.o) | Annual reports and/or other reports | λ V (Dublication of all access in an energy in the birth is a blick in the day out of a birth birth in the birth |
| 7.c) | Other (please specify). | X (Publication of all cases in an agency journal, which is published quarterly and is also accessible through our website) |
| 8 | Which of the following types of cartel enforcement regimes does your agency | |
| | operate? (Please put a cross next to the most appropriate answer) | |
| 8.a) | Criminal | |

| 8.c) Hybrid Hybrid 9 Docyour answers vary depending on the cartel enforcement regime in which you are cooperating/sharing information? [YN] If Y, Please provide a brief explaination. N 10.a) Does your agency have a leniency applicatify to seek leniency in other jurisdictions affected by the conduct? [YN] If Y, Please explain. Y 11.a) Does your agency have a leniency applicatify to seek leniency in other jurisdictions affected by the conduct? [YN] If Y, Please explain. Y 12.a) If N, does your agency have a marker system? [YN] Y 12.a) If N, does your agency have a marker system? [YN] Y 13.a) Does your agency have agency have a gency have a gency have a gency bare experience in requesting/sharing information with a foreign commetition authority? [YN] Y 14.a) During the last 3 years, has your agency policive? [YN]NA] Y 15.a) If N ou answired Y to Question 13 above, was your overall experience of the information Y Y 14.a) Product and market information X X 14.b) Purgency interval information X X 14.a) Product and market information X X 14.a) Product and market information X X 14.a) Conse-specific | 8.b) | Civil/administrative | Х |
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| case on behalf of foreign agency [Y/N]? If Y, which of the following is the legal basis for obtaining such evidence: 15.a) Mutual Legal Assistance Treaty (MLAT) – bilateral | | | |
| If Y, which of the following is the legal basis for obtaining such evidence: 15.a) Mutual Legal Assistance Treaty (MLAT) – bilateral 15.b) MLAT – multilateral 15.c) Cooperation Arrangement 15.c) Cooperation Arrangement 15.d) Other (please specify) 16 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? IY/NI 17 For your agency, the most useful mechanism for sharing information in relation to cartel investigation to foreign the utility of the information? IY/NI 17.a) Informal cooperation X 17.b) Formal cooperation Not applicable 17.c) Both Informal cooperation Not applicable 17.d) Neither Informal cooperation Informal cooperation | 15 | | Ν |
| 15.a) Mutual Legal Assistance Treaty (MLAT) – bilateral 15.b) MLAT – multilateral 15.c) Cooperation Arrangement 15.d) Other (please specify) 16.a) 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? IY/NI Y 17 For your agency, the most useful mechanism for sharing information in relation to acartel investigation to in relation to a cartel investigation to in relation to a cartel investigation to in relation to a cartel investigation to foreign the utility of the information? IY/NI Y 17.a) Informal cooperation has been: X 17.a) Informal cooperation X 17.b) Formal cooperation Not applicable 17.c) Both Intervention 17.d) Neither Intervention | | | |
| 15.b MLAT - multilateral Intercent of the multilateral 15.c) Cooperation Arrangement Intercent of the multilateral 15.c) Other (please specify) Intercent of the multilateral of | 15 o) | | |
| 15.c) Cooperation Arrangement Image: cooperation Arrangement 15.d) Other (please specify) Image: cooperation in relation to a cartel investigation to foreign competition agencies, have you received any feedback from that agency regarding the utility of the information? IY/NI Y 17 For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been: X 17.a) Informal cooperation X 17.b) Formal cooperation Not applicable 17.c) Both Image: cooperation 17.d) Neither Image: cooperation | | | |
| 15.d) Other (please specify) Identify a specify 16 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] Y 17 For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been: X 17.a) Informal cooperation X 17.b) Formal cooperation X 17.c) Both Identify 17.d) Neither Identify | | | |
| 16 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? IY/NI Y 17 For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been: X 17.a) Informal cooperation X 17.b) Formal cooperation Not applicable 17.c) Both Informal cooperation 17.d) Neither Informal cooperation | | | |
| competition agencies, have you received any feedback from that agency regarding 17 For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been: | | | Y |
| the utility of the information? [Y/N] 17 For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been: 17.a) Informal cooperation 17.b) Formal cooperation 17.c) Both 17.d) Neither | | | |
| 17 For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been: 17.a) Informal cooperation X 17.b) Formal cooperation Not applicable 17.c) Both Informal cooperation 17.d) Neither Informal cooperation | | | |
| cartel investigations has been: X 17.a) Informal cooperation X 17.b) Formal cooperation Not applicable 17.c) Both Informal cooperation 17.d) Neither Informal cooperation | 17 | | |
| 17.a) Informal cooperation X 17.b) Formal cooperation Not applicable 17.c) Both Informal cooperation 17.d) Neither Informal cooperation | | | |
| 17.b) Formal cooperation Not applicable 17.c) Both 17.c) 17.d) Neither 17.c) | 17.a) | | X |
| 17.c) Both 17.d) Neither | 17.b) | | Not applicable |
| | · · · · · · | | |
| | 17.d) | Neither | |
| | 17.e) | Not applicable | |

| 18 | Has your agency taken any steps to improve or increase the sharing of | ly l |
|-----------------|--|------|
| 10 | information in relation to cartel investigations with other agencies in the last 3 | |
| | vears? [Y/N] | |
| 19 | Terms and conditions under which information is provided to foreign competition | |
| | authorities | |
| 19.a) | Publically available information: | |
| 19.a)(i) | Upon formal request | X |
| | Upon informal request | X |
| | Available through the competition agency website and/or other publications | X |
| 19.a)(iv) | Other (Please specify.) | |
| 19.b) | Agency internal information: | |
| | Upon formal request | |
| | Upon informal request | X |
| 19.b)(iii) | Upon grant of judicial or administrative authorisation (different from the competition | |
| (0))()) | agency) (Please specify.) | |
| 19.b)(iv) | Under an international agency-to-agency cooperation agreement (see references to the | |
| 10 b)() | agreement, where available) | |
| 19.b)(v) | Other (Please specify) | |
| 19.c) | Information covered by professional secrecy: | |
| 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 | |
| 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 | |
| 19.c)(vi) | Other (please specify) | |
| 19.d) | Confidential information can be shared: | |
| 19.d)(i) | Under no conditions | |
| | 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 | |
| | 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, | |
| 19.d)(vii) | Other (please specify) | |
| 20 | Investigation stage at which publically available information can be shared | |
| 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 |

| 24 | Are the following times of information generally treated by the industry of | |
|--------------------|--|--|
| 21 | 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) | |
| 21.a) | Factual information (e.g. evidence obtained by the national competition authority in the | V |
| , | course of investigation) | |
| 21.b) | Information provided voluntarily to foreign competition authority by a party under | ii |
| | investigation and/or a leniency applicant | |
| 21.c) | Methodology of anti-cartel investigations (without indication of particular parties involved) | |
| | – i.e. foreign "know-how" of the cartel investigations | |
| 21.d) | Results of market studies conducted by the foreign competition authority into markets | ii |
| | where cartel violations are suspected | |
| 21.e) | Legal information | |
| 21.f) | Information on sanctions | |
| 21.g) | Information on timing of the case | 11 |
| 21.h) | Other (please specify) | |
| 22 | 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.) | |
| 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 |
| 23 | 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.) | |
| 23.a) | Keep the information provided confidential | X |
| 23.b) | Keep the information provided confidential unless subject to a court order | |
| 23.c) | Use best endeavours to keep the information confidential | Y. |
| 23.d) 23.e) | Use this information only for the originally intended purpose | X if we is granted by the partice under investigation |
| 23.e) 24 | Other (please specify) | if waiver is granted by the parties under investigation |
| 24 | If another agency provides your agency with information on a confidential basis, | Y |
| | will it be treated as confidential, subject to the relevant laws of the recipient | |
| 25 | agency's iurisdiction (such as freedom of information laws)? [Y/N] Is there any law or situation that may require information received from another | N |
| 20 | agency to be divulged? [Y/N] If Y, please specify. | |
| 26 | If your agency maintains the relevant statistics, please assess what is the average | |
| 20 | time required for the agency to: | |
| 26.a) | Assess the possibility of responding to the information request | NA |
| 26.b) | Respond to the information request | NA |
| _0.0) | 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). | |
| 27 | Nature of information requested | |
| - · | | |

| | 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) | |
| 27.a) | Factual information, e.g. evidence obtained by the national competition authority in the | 7 |
| | course of investigation | |
| 27.b) | Information provided voluntarily by a party under investigation/leniency applicant to | 7 |
| | foreign competition authority | |
| 27.c) | Methodology of anti-cartel investigations (without indication of particular parties involved) | 5 |
| D | - foreign "know-how" in relation to cartel investigations. | |
| 27.d) | Results of a foreign authority's market studies into markets potentially affected by | 6 |
| 07.) | cartelisation | - |
| 27.e) | General legal information | 5 |
| 27.f) | General information on sanctions | 5 |
| 27.g) | Information on timing of the case | 6 |
| 27.h) | Other (please specify) | |
| 28 | On average, how many times per year does your agency: (please provide NA | |
| | answer if you have difficulties with assessing frequency of sharing/receiving | |
| 00 -> | information from foreign agencies as described below): | N1A |
| 28.a) | Request confidential information in relation to cartel investigations? | NA |
| | | |
| 28.b) | Provide confidential information in relation to cartel investigations? | NA |
| 28.b) 28.c) | Request publically available information or internal agency information? | NA |
| 28.b) 28.c) 28.d) | Request publically available information or internal agency information? Provide publically available information or internal agency information? | NA NA |
| 28.b) 28.c) | Request publically available information or internal agency information? Provide publically available information or internal agency information? Does your agency have formal information sharing powers? [Y/N] | NA NA N |
| 28.b) 28.c) 28.d) | Request publically available information or internal agency information? Provide publically available information or internal agency information? Does your agency have formal information sharing powers? [Y/N] Are you aware of any imminent legislation or policy changes regarding | NA NA |
| 28.b) 28.c) 28.d) 29 | Request publically available information or internal agency information? Provide publically available information or internal agency information? Does your agency have formal information sharing powers? [Y/N] 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 | NA NA N |
| 28.b) 28.c) 28.d) | Request publically available information or internal agency information? Provide publically available information or internal agency information? Does your agency have formal information sharing powers? [Y/N] 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 desciption or a link to further information if possible. | NA NA N |
| 28.b) 28.c) 28.d) 29 30 | Request publically available information or internal agency information? Provide publically available information or internal agency information? Does your agency have formal information sharing powers? [Y/N] 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 desciption or a link to further information if possible. Competition agencies often exchange information through regional competition | NA NA N |
| 28.b) 28.c) 28.d) 29 30 31 | Request publically available information or internal agency information? Provide publically available information or internal agency information? Does your agency have formal information sharing powers? [Y/N] 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 desciption or a link to further information if possible. Competition agencies often exchange information through regional competition networks such as the European Competition Network (ECN). | NA NA N Y (a general cooperation agreement with the EC is currently under negotiation) |
| 28.b) 28.c) 28.d) 29 30 | Request publically available information or internal agency information? Provide publically available information or internal agency information? Does your agency have formal information sharing powers? [Y/N] 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 desciption or a link to further information if possible. Competition agencies often exchange information through regional competition networks such as the European Competition Network (ECN). Is your agency part of a regional competition network? [Y/N] If Y, please list. | NA NA N |
| 28.b) 28.c) 28.d) 29 30 31 | Request publically available information or internal agency information? Provide publically available information or internal agency information? Does your agency have formal information sharing powers? [Y/N] 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 desciption or a link to further information if possible. Competition agencies often exchange information through regional competition networks such as the European Competition Network (ECN). Is your agency part of a regional competition network? [Y/N] If Y, please list. Are there types of information that your agency can share with other members of the | NA NA N Y (a general cooperation agreement with the EC is currently under negotiation) N |
| 28.b) 28.c) 28.d) 29 30 31 31.a) | Request publically available information or internal agency information? Provide publically available information or internal agency information? Does your agency have formal information sharing powers? [Y/N] 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 desciption or a link to further information if possible. Competition agencies often exchange information through regional competition networks such as the European Competition Network (ECN). Is your agency part of a regional competition network? [Y/N] If Y, please list. 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 | NA NA N Y (a general cooperation agreement with the EC is currently under negotiation) N |
| 28.b) 28.c) 28.d) 29 30 31 | Request publically available information or internal agency information? Provide publically available information or internal agency information? Does your agency have formal information sharing powers? [Y/N] 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 desciption or a link to further information if possible. Competition agencies often exchange information through regional competition networks such as the European Competition Network (ECN). Is your agency part of a regional competition network? [Y/N] If Y, please list. 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 desciption. | NA NA N Y (a general cooperation agreement with the EC is currently under negotiation) N |
| 28.b) 28.c) 28.d) 29 30 31 31.a) | Request publically available information or internal agency information? Provide publically available information or internal agency information? Does your agency have formal information sharing powers? [Y/N] 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 desciption or a link to further information if possible. Competition agencies often exchange information through regional competition networks such as the European Competition Network (ECN). Is your agency part of a regional competition network? [Y/N] If Y, please list. 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 | NA NA N Y (a general cooperation agreement with the EC is currently under negotiation) N |