



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

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

Korea

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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

1. Information on the law relating to cartels

A. Law(s) covering cartels:

Monopoly Regulation and Fair Trade Act ("the Act"), article 19(1)

English version of the Act can be found at the following English homepage:

http://ftc.go.kr/eng/laws/statutes_list.php

Korean version of the Act can be found at the following Korean homepage:

http://www.ftc.go.kr/new_content/info/info_021m.php

Article 19 Prohibition of Improper Concerted Acts

(1) No enterpriser shall agree with other enterprisers by contract, agreement, resolution, or any other means to jointly engage in an act, or let others do this kind of activities, falling under any of the following subparagraphs, that unfairly restricts competition (hereafter referred to as "improper concerted acts")

1. An act fixing, maintaining, or changing prices;
2. An act determining terms and conditions for transactions of goods or services, or payment of prices thereof;
3. An act restricting production, delivery, transportation, or transaction of goods or services;
4. An act limiting the territory of trade or customers;
5. An act preventing or restricting the establishment or extension

	<p>of facilities or the installation of equipment necessary for the production of goods or the rendering of services;</p> <p>6. An act restricting the types or specifications of goods or services in producing or transacting goods or services;</p> <p>7. An act of jointly carrying out and managing the main parts of a business, or establishing a company, etc. to jointly carry out and manage the main parts of a business; or</p> <p>8. Any practice that substantially lessens competition in a particular business area by means, other than those under Subparagraph 1 to 7, of interfering with or restricting the activities or contents of business.</p>
<p>B. Implementing regulation(s) (if any):</p>	<p>Enforcement Decree of the Monopoly Regulation and Fair Trade Act ("the Decree")</p> <p>English version of the Act can be found at the following english homepage: http://ftc.go.kr/eng/laws/statutes_list.php</p> <p>Korean version of the Act can be found at the following korean homepage: http://www.ftc.go.kr/new_content/info/info_021m.php</p>
<p>C. Interpretative guideline(s) (if any):</p>	<p>Following Interpretative guidances can be found in only Korean language at the following website: http://www.ftc.go.kr/new_content/info/info_021m.php</p> <ul style="list-style-type: none"> - Screening Guideline on Concerted Acts - Application Guideline for Application of Authorization on Concerted Acts and Competition Restrictive Behaviours (Not available in English for now) - Notification on Implementation of Leniency Program - Screening Guideline on Concerted Acts Intervened by Administrative Guidance - Regulation on Commission Operation and Case Proceeding Procedure - Notice on Calculation of Surcharges <p>Following Interpretative guidance can be found in english and Korean language at the following websites:</p> <p><English version> http://ftc.go.kr/eng/laws/NotiGuide_list.php</p> <p><Korean version> http://www.ftc.go.kr/new_content/info/info_021m.php</p> <ul style="list-style-type: none"> - Notification on Implementation of Leniency Program
<p>D. Other relevant materials (if any):</p>	<p>Not applicable</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>Article 19(1) of the Act defines as "improper concerted acts" agreement with other enterprisers by contract, agreement, resolution, or any other means to jointly engage in an act, or let others do this kind of activities, falling under any of the subparagraphs 1 through 8, that unfairly restricts competition</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>The Act makes no distinction between hardcore and other cartel activity. However, "Screening Guideline on Concerted Acts" specifies hardcore cartel as entailing competition restrictive effect only, and softcore cartel as entailing efficiency increasing effect as well as competition restrictive effect.</p>
<p>C. Scope of the prohibition of hardcore cartels:</p>	<p>The Act prohibits all behaviours in subparagraph 1 through 8 of 19(1) without differentiation between hardcore and other cartel activity.</p> <p>But there are cases, where "exemption rules" can be applied (Article 58 through 60 of the Act)</p> <ul style="list-style-type: none"> - Article 58 Legitimate Actions Taken Pursuant to Acts and Subordinate Statutes <p>This Act shall not apply to the acts of an enterprise or enterprises' organization conducted in accordance with any Act or any decree to such an Act.</p> <ul style="list-style-type: none"> - Article 59 Exercise of Right to Intangible Property <p>The provisions of this Act shall not apply to any act which is deemed to be an exercise of rights under the Copyright Act, the Patent Act, the Utility Models Act, the Design Act, or the Trademark Act.</p> <ul style="list-style-type: none"> - Article 60 Act of Specified Associations <p>The provisions of this Act shall not apply to any acts of an association (including a federation of associations) established in accordance with the following requirements; provided that this shall not apply to unfair business practices or price hikes by unfairly restricting competition:</p> <ol style="list-style-type: none"> 1. It shall be aimed at mutual aid among small-scale enterprises or consumers; 2. It shall be established voluntarily, and its members may enter and withdraw voluntarily; 3. Each member shall have an equal voting right; and 4. Where profits are distributed to members, the limits thereof shall be determined by the Articles of Incorporation.
<p>D. Is participation in a</p>	<p>Because the Act makes no distinction between hardcore and other</p>

¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

hardcore cartel illegal per se?	cartel activity, hardcore cartel is not per se illegal and should be screened to examine whether it is illegal or not. However it is true that hardcore cartel is apt to be easily decided as illegal.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	Against hardcore cartel activity, administrative corrective measures and administrative fine can be imposed. Also criminal fine and imprisonment can be imposed when the Korea Fair Trade Commission (KFTC) sends the case to the Public Prosecutor's Office (PPO). Cartelists also have responsibility to make civil reparation for consumers.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	Korea Fair Trade Commission, Cartel Investigation Bureau
B. Contact details of the agency:	#1 Joongang-dong, Gwacheon-si, Gyeonggi-do Republic of Korea Tel: +82.2.2110.4901 Fax: +82.2.503.2314 pjaegull@ftc.go.kr http://www.ftc.go.kr/eng/
C. Information point for potential complainants:	Same as B above.
D. Contact point where complaints can be lodged:	Same as B above.
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	No.

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

A. Name of the agency making decisions in cartel cases:	N/A: Same as investigating authority.
B. Contact details of the agency:	
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, leniency application, ex officio recognition through newspaper article, information production from other government agencies, etc.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	A specific notification form is on the KFTC website to incite to provide basic information to examine the value of case. http://www.ftc.go.kr/eng/violations/unfair_input.php However, the KFTC accepts all complaints regardless of whether they are notified using the form or not.
C. Legal requirements for lodging a complaint against a cartel:	None. Article 49(2) of the Act says; Any person who deems that a violation of the provisions of this Act has occurred may report it to the Fair Trade Commission.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it	All notifications are required to be examined and take appropriate action except cases decided as "case which needs not to take investigation procedure" by "Regulation on Commission Operation and Case Proceeding Procedure"

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

have discretion in this respect?	including; - When cartel doer is not enterpriser - When 5 years have passed after cartel activity ended, etc.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	When the KFTC decides a complaint as case which needs not to take investigation procedure, it could notify to complainer within 15 days of the decision.
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?	No.

6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	Reduction and Exemption of Corrective Measures and Fine on Leniency Applicant
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Yes. Article 35 of the Decree.
C. Who is eligible for full leniency?	<p>The first one to come forward and provide evidence needed to prove improper concerted act.</p> <p>There is a possibility for full leniency to applicant of amnesty plus. (paragraph 5 of 35(1) of the Decree)</p> <p>- If a company subject to surcharges or corrective measures for an improper concerted act satisfies the conditions under items of subparagraphs 1 or 3 for another improper concerted act the person is involved with besides the improper concerted act, the company may be subject to reduction of or exemption from surcharges and reduction of corrective measures again for the improper concerted act.</p> <p>The second to come forward could be eligible for 30% reduction of surcharge. (paragraph 2 and 4 of 35(1) of the Decree).</p>

³ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

<p>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?</p> <p>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?</p>	<p>Yes. One of the requirements of the leniency policy is that leniency applicant should make leniency application or cooperate at the time KFTC had no information about the illegal activity or insufficient evidence to prove improper concerted act. Article 35(1) of the Decree.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Only businesses.</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>The first one to come forward independently providing the evidence necessary for proving improper concerted act, and meet following requirements.</p> <ul style="list-style-type: none"> - Reporting is made when the Fair Trade Commission either has no knowledge of the improper concerted act or lacks evidence necessary for proving the improper concerted act; - Cooperation has been provided until the completion of the investigation, such as stating all the facts regarding the improper concerted act and submitting related data; - The improper concerted act is ceased.
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>The second one to come forward independently providing the evidence necessary for proving improper concerted act, and meet following requirements.</p> <ul style="list-style-type: none"> - Cooperation has been provided until the completion of the investigation, such as stating all the facts regarding the improper concerted act and submitting related data; - The improper concerted act is ceased.
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>Beneficiaries of conditional leniency must fully state the facts regarding the improper concerted act and provide with all evidence that comes into their possession or is available to them with regard to the suspected infringement.</p>
<p>I. Are there formal requirements to make a leniency application?</p>	<p>Companies that wish to apply for mitigation of or exemption from corrective measures or surcharges in accordance with Article 22-2 of the Act and Article 35 of the Decree should submit an application for leniency to the Commission with the following items included. The application may be sent via email or fax as well.</p> <p>1. Name of confessor, etc. Name, address, business registration No. (or resident registration No.), and contact</p>

	<p>information of representative of the company in question. Address, affiliation, and contact information of the person who submits the application</p> <ol style="list-style-type: none"> 2. Summary of the improper concerted act where the confessor, etc is involved 3. Evidence and a list of evidence necessary for proving the improper concerted act 4. Confessor's statement to provide cooperation until the completion of investigation into the improper concerted act 5. Confirmation that confessor, etc ended its involvement in the improper concerted act <p>When it requires a significant amount of time for applicants stated in the previous Article to collect evidence or when they have special reasons for which they cannot submit evidence along with the application, they are allowed to submit an application without some of the items listed in Subparagraphs 1~5 of the previous Article. However, even in this case, items listed in Article 7, Subparagraphs 1 and 2 should be included.</p> <p>In case that there is difficulty to submit application for leniency in writing, companies can make application orally.</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>When the Secretary General who receives the report of the previous Article judges that the submitted application or evidence meets the requirements for eligibility for leniency under Article 35 of the Decree, he or she shall, within 15 days from the date of the receipt of the application, prepare a document confirming that the applicant satisfies the requirements for confessors stipulated in Article 35, Paragraph (1), Subparagraphs 1~5 of the Decree, sign and seal the confirmation note and deliver it to the applicant.</p> <p>In case that there needs to be more time to evaluate the submitted application, KFTC can prolong delivering confirmation note in the extent of less than 60 days.</p> <p>The confirmation of status of informants stipulated in Article 11 could be cancelled in the following cases:</p> <ol style="list-style-type: none"> 1. When Article 35, Paragraph (1), Subparagraph 1-c, 2-b, 3-c, and 4-b of the Decree are not satisfied. 2. When there is falsification in the submitted application or evidential materials. 3. When the improper concerted act is not ceased until the Commission makes a final judgment
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>See 6.J above.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who</p>	<p>Authorization of status of conditional leniency is provided by an official administrative measure. Secretary General of the KFTC has the authority to decide whether to provide conditional leniency or not.</p>

within the agency decides about leniency applications?	
M. Does your legislation have a marker system? If yes, please describe it.	Yes. When it requires a significant amount of time for applicants to collect evidence or when they have special reasons for which they cannot submit evidence along with the application, they are allowed to submit an application without some of the items. See 6.I above.
N. Does the system provide for any extra credit⁴ for disclosing additional violations? [e.g. a hardcore cartel in another market]	Yes. KFTC's leniency program allows a company that is disclosing a second cartel to receive substantial additional reduction in the calculation of the surcharge for its participation in the first offense.
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	Yes. No public official involved in investigation can, without prior consent of an informant or a person cooperating in investigation, disclose or provide to other persons matters regarding report or information providing, such as details of reports or identity of informants or persons cooperating in investigation. 35(2) of the Decree.
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	<p>Yes.</p> <p>Any party who is dissatisfied with measures taken by the Fair Trade Commission pursuant to this Act may file an appeal stating the reasons thereof with the Fair Trade Commission within thirty days from the receipt of notification of said measure. 53 of the Act.</p> <p>Where a person desires to file a lawsuit against any measure taken by the Fair Trade Commission under this Act, he shall do so within thirty days of the date of the receipt of a notice of the disposition in question or a written decision of the Fair Trade Commission against the appeal. 54 of the Act.</p>
Q. Contact point where a leniency application can be lodged:	<p>Korea Fair Trade Commission, Cartel Policy Team</p> <p>Gwacheon Government Complex, Building #5, 524</p> <p>#1 Gwacheon-si, Joongang-dong, Gyeonggi-do</p> <p>leniency@ftc.go.kr</p> <p>Fax: +82.2.503.2314</p>
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?	<p>Yes. See 6.J above.</p> <p>For an appeal, see 6.P above.</p>

⁴ 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.

<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>No.</p>
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7. Investigative powers of the enforcing institution(s)⁵

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>Following measures are possible (50 of the Act);</p> <ul style="list-style-type: none"> - Summon the parties concerned, interested parties, or witnesses to a hearing and elicit their testimony; - Designate and engage expert witnesses; and - Issue an order to an enterprise, an enterprises' organization or, an officer or employee thereof to report on the business situation or to present other necessary information or materials, or to report on the detention of presented materials or information. - have a public official enter the office or business place of an enterprise or an enterprises' organization in order to examine the business and management situation, records, documents, electronic materials, voice-recording materials, video materials, etc., and hear statements from the parties concerned, interested parties and witnesses. - Any public official who conducts an examination may order an enterprise, enterprises' organization, or officer or employee thereof to present materials or things necessary for such examination, or detain presented materials or things.
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>It is only possible to enter the office or business place of an enterprise or an enterprises' organization in order to examine the business and management situation, records, documents, electronic materials, voice-recording materials, video materials, and such other materials or things.</p> <p>Accordingly private locations cannot be searched by the authority of KFTC.</p>
<p>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court</p>	<p>No specific regulation regarding this point is in the Act.</p>

⁵ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁶ “Searches/raids” means all types of search, raid or inspection measures.

warrant needed)?	
D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.	No.

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<p>One of the parties may apply for the discharge of Commission members, where it appears to him to be impossible that deliberations or resolutions may be fairly made. An application for the discharge of members shall be evaluated by the chairman without any resolutions from the Plenary Session. See 44(2) of the Act.</p> <p>The Fair Trade Commission shall, before issuing corrective measures or levying surcharges in response to violations of this Act, provide the parties concerned and interested parties with the opportunity to state their opinions. 52(1) of the Act.</p> <p>The parties concerned and interested parties may attend a hearing of the Fair Trade Commission to state their opinions or present relevant materials. 52(2) of the Act.</p> <p>Any party or interested person may ask the Fair Trade Commission for access to or the ability to make copies of the data relating to measures taken under this Act. The Fair Trade Commission shall comply with such a request if it deems it necessary for the public interest or consent is granted by the person providing such data. 52-2 of the Act.</p> <p>Any party who is dissatisfied with measures taken by the Fair Trade Commission pursuant to this Act may file an appeal stating the reasons thereof with the Fair Trade Commission within thirty days from the receipt of notification of said measure. 53 of the Act.</p> <p>Where an appeal under Article 53 (1) (Appeal) has been made by a person against whom corrective measures have been ordered by this Act, or where the Fair Trade Commission deems necessary to prevent irrevocable damage or harm caused by the enforcement of such orders or the continuance of procedures, the Fair Trade Commission may, at the request of one of the parties or ex officio, decide to suspend enforcement of such orders or a continuance of procedures. 53-2 of the Act.</p> <p>Where a person desires to file a lawsuit against any measure taken by the Fair Trade Commission under this Act, he shall do so within thirty days of the date of the receipt of a notice of the disposition in question or a written decision of the Fair Trade Commission against the appeal. 54 of the Act.</p>
<p>B. Protection awarded to</p>	<p>No commissioner or public official who performs or has</p>

<p>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?</p>	<p>performed his duties under this Act shall divulge any secrets of an enterprise or an enterprises' organization that he learned in the course of carrying out his duties, or use it for a purpose other than to enforce this Act. Article 62 of the Act.</p>
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9. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</p>	<p>If five years have passed since an act of violating the provisions of this Act was committed, the Fair Trade Commission shall not make orders for corrective measures or impose surcharges as prescribed by this Act against such an offense; provided that in case where a corrective measure or the imposition of surcharge is cancelled by a judgment of court, and where a new disposition is made under the relevant reasons for judgment, this shall not apply. 49(4) of the Act.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>See 9.A above. Even though KFTC initiates investigation, the limitation period 9.A above will not be suspended.</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</p>	<p>See 8.A above. 30 days for an administrative appeal or a lawsuit.</p>

10. Types of decisions

<p>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</p>	<p>Where an enterprise commits any activity violating the provisions of Article 19, Paragraph 1, the KFTC may order the enterprise to discontinue the act, publicly announce the fact of receiving corrective order, or take other corrective measures. 21 of the Act.</p> <p>The KFTC may impose, upon those conducting any behavior violating the provision of Article 19, Paragraph 1, a surcharge not exceeding an amount equivalent to 10 percent of the enterprise's average turnover during the previous three years. In the case of an absence of turnover, a surcharge may be</p>
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	<p>imposed up to but not exceeding two billion won. 22 of the Act.</p> <p>When the KFTC sends a case to the Public Prosecutor's Office, court may impose imprisonment for not more than three years or a fine up to but not exceeding two hundred million won. 66 of the Act.</p>
<p>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</p>	<p>Same as 10.A above.</p>
<p>C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>No.</p>

11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

<p>A. Grounds for the imposition of procedural sanctions / fines:</p>	<p>An enterprise or enterprises' organization shall be punished by a fine for negligence not exceeding 100 million won in the case falling under subparagraphs 1 through 6 and 8, and not exceeding 200 million won in the case falling under subparagraph 7, and the officers, employees and other interested parties of an enterprise or enterprises' organization shall be punished by a fine for negligence not exceeding 10 million won in the case falling under subparagraphs 1 through 6 and 8, and not exceeding 50 million won in the case falling under subparagraph 7: 69-2 of the Act.</p>
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⁷ 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].

⁸ Only for agencies which answered "yes" to question 2.C. above

⁹ In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

	<p>Subparagraph 6. A person who has failed to make a report or present necessary materials or things, or made a false report or who presents false materials or things;</p> <p>Subparagraph 7. A person who has refused, interfered with or evaded the investigation.</p>
B. Type and nature of the sanction (civil, administrative, criminal, combined):	Administrative fine.
C. On whom can procedural sanctions be imposed?	On enterprise or enterprises' organization; officers, employees and other interested parties of an enterprise or enterprises' organization.
D. Criteria for determining the sanction / fine:	No specified regulation in the Act. KFTC considers nature and degree of related behaviours.
E. Are there maximum and / or minimum sanctions / fines?	See 11.A above.

12. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed?</p>	<p>Administrative sanctions (corrective measures, surcharge) and criminal sanctions (incarceration, fine) are all possible.</p> <p>Administrative sanctions can be imposed on businesses or associations of companies, not on individuals.</p> <p>However, criminal sanctions can be imposed on individuals also.</p>
B. Criteria for determining the sanction / fine:	<p>Within the extent of 10% of average turnover of previous 3 years, following factors are considered.</p> <ul style="list-style-type: none"> - nature and degree of the unlawful practice; - duration and frequency of the unlawful practice; and - benefit accrued by the unlawful practice.
C. Are there maximum and / or minimum sanctions / fines?	See 12.B above.
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]	"Notice on Calculation of Surcharges" (Not available in English for now)

<p>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	<p>There are two kinds of sanction against cartel behaviours; 'Corrective Measure Order' and 'Surcharge.' Of these, application for suspension is possible only on Corrective Measure Order.</p> <p>Where an appeal under Article 53 (1) (Appeal) has been made by a person against whom corrective measures have been ordered by this Act, or where the Fair Trade Commission deems necessary to prevent irrevocable damage or harm caused by the enforcement of such orders or the continuance of procedures, the KFTC may, at the request of one of the parties or ex officio, decide to suspend enforcement of such orders or a continuance of procedures. 53-2 of the Act.</p> <p>But courts can order suspension on surcharge also.</p>
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13. Possibilities of appeal

<p>A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>Yes. See 8.A above. There is no specific restriction for administrative appeal or raising lawsuit.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</p>	<p>Seoul High Court. 55 of the Act.</p>