ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques

India
date of completion: 30/10/2013
### 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] | The Competition Act, 2002.  
English |
|---|---|
| B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available] | The Competition Commission of India (Lesser Penalty) Regulations, 2009.  
The Competition Commission of India (General) Regulations, 2009.  
English |
| C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available] | No guidelines have been issued so far by the Commission. |
### 2. Scope and nature of prohibition on cartels

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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</table>
| A. | **Does your law or case law define the term “cartel”**? [Please quote.]  
If not, please indicate the term you use instead. [Please quote.] |
| Yes | Section 2(c) of the Competition Act, 2002 defines cartel as follows: “cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services; |
| 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) and other types of “cartels”?** [Please describe how this differentiation is made and identify the most egregious types of conduct.] |
| Cartels are prohibited in terms of section 3 of the Competition Act, 2002.  
Section 27 (b) of the Competition Act, 2002 distinguishes between cartel and other anticompetitive agreements in terms of imposition of penalty by the Competition Commission of India.  
“[Provided that in case any agreement referred to in Section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover for each year of the continuance of such agreement, whichever is higher.]  
Under section 3(3) of the Competition Act, 2002, anticompetitive agreements included cartels indulging in price fixing, limiting or controlling markets, market sharing, bid rigging or collusive bidding.  
In case of section 3(3) alleged violations; indulging conducts of parties are presumed to be having appreciable adverse effect on competition in India, however this legal presumption is rebuttable. |
| C. | **Scope of the prohibition of hardcore cartels:** [including any exceptions, exclusions and defences e.g. for particular industries or] |
| • Efficiency enhancing joint ventures are not treated as illegal.  
• Export cartels are exempted  
• The government can exempt any class of enterprise, any practice or agreement arising out of a treaty and any enterprise performing sovereign functions [section 54] |

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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.
D. Is participation in a hardcore cartel illegal per se? [If the situation differs for civil, administrative and criminal liability, please clarify this.]

Yes. Section 3(3) [Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which –
(a) directly or indirectly determines purchase or sale prices;
(b) limits or controls production, supply, markets, technical development, investment or provision of services;
(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation – For the purposes of this sub-section, “bid rigging” means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.]

E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?

Participation in a hardcore cartel is not a criminal offence in India and can be subjected to fines only as described in 2B above.

### 3. Investigating institution(s)

#### A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]

Director General, Competition Commission of India investigates into the allegations once CCI forms prima facie opinion under section 26 (1) of the Act and directs investigations.

#### B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]

Secretary
Competition Commission of India
The Hindustan Times House
18-20, Kasturba Gandhi Marg,
New Delhi – 110 001
Tel. : + 91 – 11 – 23704651
Fax : + 91 – 11 – 23704652
Email: secy@cci.gov.in
Website: [http://www.cci.gov.in/](http://www.cci.gov.in/)
<table>
<thead>
<tr>
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<th>Language: English</th>
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</thead>
</table>
| **C. Information point for potential complainants:** | Secretary  
Competition Commission of India  
The Hindustan Times House  
18-20, Kasturba Gandhi Marg,  
New Delhi – 110 001  
Tel. : + 91 – 11 – 23704651  
Fax : + 91 – 11 – 23704652  
Email: secy@cci.gov.in  
Website: http://www.cci.gov.in/  
Language: English |
| **D. Contact point where complaints can be lodged:** | Secretary  
Competition Commission of India  
The Hindustan Times House  
18-20, Kasturba Gandhi Marg,  
New Delhi – 110 001  
Tel. : + 91 – 11 – 23704651  
Fax : + 91 – 11 – 23704652  
Email: secy@cci.gov.in  
Website: http://www.cci.gov.in/  
Language: English |
| **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 such provision has been made in the Competition Act, 2002. |

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

<table>
<thead>
<tr>
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<th>Language: English</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</strong></td>
<td>Competition Commission of India (CCI)</td>
</tr>
</tbody>
</table>
| **B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]** | Competition Commission of India  
The Hindustan Times House  
18-20, Kasturba Gandhi Marg,  
New Delhi – 110 001  
Tel. : + 91 – 11 – 23704651  
Fax : + 91 – 11 – 23704652  
Email: secy@cci.gov.in  
Website: http://www.cci.gov.in/  
Language: English |

² Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)
### C. Contact point for questions and consultations:
Secretary  
Competition Commission of India  
The Hindustan Times House  
18-20, Kasturba Gandhi Marg,  
New Delhi – 110 001  
Tel. : + 91 – 11 – 23704651  
Fax : + 91 – 11 – 23704652  
Email: secy@cci.gov.in  
Website: http://www.cci.gov.in/  
Language: English

### D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.
DG office, the investigation arm of CCI, assists the Commission in conducting enquiry into any contravention of the provisions of the Act or any rules or regulation made thereunder and submits an investigation report to the Commission. On the basis of this report, CCI may decide to inquire into the allegations. If it is convinced of the violation of law, it can pass orders of 'cease and desist' and levy fines up to 3 times of profits or ten per cent of turnover for each year of the continuance of cartel, whichever is higher.

### E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?
Cartelization is not a criminal offence under the Competition Act, 2002.

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### 5. Handling complaints and initiation of proceedings

<table>
<thead>
<tr>
<th>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</th>
<th>Investigation can be initiated on the basis of complaint or suo moto (ex officio) or on a reference made by the Central Government, State Governments or statutory authorities [section 19(1)]. Leniency application can be made under section 46 of the Competition Act, 2002.</th>
</tr>
</thead>
</table>
| 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).] | Communication may be made by any means to:  
Secretary,  
Competition Commission of India  
The Hindustan Times House  
18-20, Kasturba Gandhi Marg,  
New Delhi – 110 001  
Tel. : + 91 – 11 – 23704651  
Fax : + 91 – 11 – 23704652  
Email: secy@cci.gov.in |
| C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to] | Any person, consumer or consumer association or trade association can make a complaint (information filing) [section 19(1)]. The Central Government, a state Government or a statutory authority can make a reference [section19 (1)]. Only a member of a cartel can apply for leniency. |
make a complaint limited to certain categories of complainant?

<table>
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<tr>
<th>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.]</th>
<th>CCI has to form a <em>prime facie</em> opinion that a contravention of law has occurred before directing the Director General to investigate; otherwise, it can dismiss the complaint (information) or reference by a written order. Orders of CCI are subject to judicial review as specified under the Competition Act, 2002.</th>
</tr>
</thead>
<tbody>
<tr>
<td>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</td>
<td>CCI can dismiss a complaint (information) and may pass such orders as it deems fit, including imposition of costs, if necessary.</td>
</tr>
<tr>
<td>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?</td>
<td>Yes, information filed as per the Competition Commission of India (General) Regulations, 2009 are processed as per timelines prescribed, however the Commission may extend time in suitable cases.</td>
</tr>
</tbody>
</table>

### 6. Leniency policy

| A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.] | Official name of leniency is lesser penalty. The provisions for lesser penalty are contained in section 46 of Competition Act, 2002 and The Competition Commission of India (Lesser Penalty) Regulations, 2009.  
| B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case? | The quantum of immunity available under leniency provisions in comparison to penalty prescribed under clause (b) of the section 27 of the Act. Benefit of reduction in penalty up to or equal to 100% is available to the applicant if he is the first to make a vital disclosure enabling the Commission to form a *prima facie* opinion regarding the existence of a cartel on the basis of evidence submitted.  
Reduction is as per mandates of the Competition Commission of India (Lesser Penalty) Regulations, 2009. |

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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.
<table>
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<tr>
<th>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</th>
<th>Determination is subject to the Competition Commission of India (Lesser Penalty) Regulations, 2009.</th>
</tr>
</thead>
<tbody>
<tr>
<td>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?</td>
<td>As per the Competition Commission of India (Lesser Penalty) Regulations, 2009.</td>
</tr>
<tr>
<td>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?</td>
<td></td>
</tr>
<tr>
<td>E. Who can be a beneficiary of the leniency program (individual / businesses)?</td>
<td>The beneficiary can be a producer, seller, distributor, trader or service provider who is member of a cartel.</td>
</tr>
<tr>
<td>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.]:</td>
<td>The conditions are making full and true disclosure, which is vital for decision making. CCI can impose conditions in its order for lower penalty [section 46].</td>
</tr>
</tbody>
</table>
| G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]: | The reduction in monetary penalty will depend upon following situations:-  
- the stage at which the applicant comes forward with the disclosure  
- the evidence already in possession of the Commission  
- the quality of the information provided by the applicant  
- the entire facts and circumstances of the case |
| 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.]

Conditions can be imposed on the beneficiary by CCI. In the absence of any explicit condition mentioned in law, it can be presumed that obligation to fully cooperate can be imposed.

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<tbody>
<tr>
<td>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.]</td>
<td>The applicant can make application as per the contents specified in the Schedule either orally or through e-mail or fax to the designated authority.</td>
</tr>
<tr>
<td>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)]?</td>
<td>No</td>
</tr>
<tr>
<td>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?</td>
<td>The Commission shall mark the priority status of the applicant and the designated authority shall convey the same to the applicant but, mere acknowledgement shall not entitle the applicant for grant of lesser penalty. The date and time of receipt of the application by the Commission shall be the date and time as recorded by the designated authority.</td>
</tr>
<tr>
<td>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?</td>
<td>The legal basis is in section 46 of Competition Act, 2002, and The Competition Commission of India (Lesser Penalty) Regulations, 2009.</td>
</tr>
<tr>
<td>M. Does your legislation have a marker system? If yes, please describe it.</td>
<td>No</td>
</tr>
<tr>
<td>N. Does the system provide for any extra credit⁴ for disclosing</td>
<td>No</td>
</tr>
</tbody>
</table>

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
additional violations? [e.g. a hardcore cartel in another market]

| O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate. | Under the Competition Commission of India (Lesser Penalty) Regulations, 2009, it has been specifically mentioned that the identity of the applicant as well as information obtained from it shall be treated as confidential and it shall not be disclosed except under the three situations stated below:-
- when the disclosure is required by law; or
- when the applicant has agreed to such disclosure in writing; or
- when there has been a public disclosure by the applicant.

Such an arrangement of maintaining confidentiality would encourage submission of vital information with the Commission. |

| P. Is there a possibility of appealing an agency’s decision rejecting a leniency application? | Yes, appeal lies to the Competition Appellate Tribunal. |

| Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]: | Secretary, Competition Commission of India The Hindustan Times House 18-20, Kasturba Gandhi Marg, New Delhi – 110 001 Tel. : + 91 – 11 – 23704651 Fax : + 91 – 11 – 23704652 Email: secy@cci.gov.in |

| 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? | Lesser penalty imposed under the leniency provision can be revoked if the beneficiary has not complied with the conditions on which it was imposed, or the beneficiary has given false evidence or the disclosure is not vital. |

| S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants? | There is no bar in law. |

information about participation in another cartel distinct from the one which is the subject of its first leniency application.
## 7. Investigative powers of the enforcing institution(s)\(^5\)

<table>
<thead>
<tr>
<th>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids(^6), electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</th>
<th>Both CCI and the DG are vested with powers of civil court in respect of summoning and enforcing attendance, discovery and production of documents, receiving evidence on affidavits and requisitioning public records [section 36(2)]. The DG can search any premises after obtaining a court warrant [section 41(3)].</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</td>
<td>Yes after obtaining a court warrant.</td>
</tr>
<tr>
<td>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</td>
<td>As per section 41 of the Act.</td>
</tr>
<tr>
<td>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</td>
<td>-</td>
</tr>
</tbody>
</table>

## 8. Procedural rights of businesses / individuals

| A. Key rights of defence in cartel cases: [e. g.: right of access to documents in the possession of the | All procedures have to comply with principles of natural justice prevalent under common law [section 36(1)]. A complainant or defendant may either appear in person or authorize a chartered accountant or company secretary or cost |

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\(^5\) “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.
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 legal provisions.]

| 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. 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.] |

Confidentiality of business secrets is required to be maintained under specific provision in the Competition Act 2002 [section 57]. There is no distinction made on the basis of how the information is received by CCI.

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<tr>
<th>9. Limitation periods and deadlines</th>
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<tbody>
<tr>
<td>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?</td>
</tr>
<tr>
<td>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</td>
</tr>
<tr>
<td>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or appeal?</td>
</tr>
</tbody>
</table>
### 10. Types of decisions

**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. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]

1. Cease and desist
2. Monetary Penalty as per section 27 of the Act.
3. Modification of agreements
4. Payment of costs and compliance with any conditions imposed
5. Pass such other order as the Commission may deem fit in the given case.

**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).

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**C.** Can interim measures\(^7\) be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both\(^8\)) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?

The power to grant interim relief vests with the decision-making institution, i.e. the Commission. Such orders can be made if a contravention is likely to be continued or is likely to be made during pendency of the proceedings. [section 33]

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

| A. Grounds for the imposition of procedural sanctions / fines: | 1. Failure to comply with directions of CCI or DG under section 36(5) section or 41(2).  
2. Furnishing wrong/incorrect information |
| --- | --- |
| B. Type and nature of the sanction (civil, administrative, criminal, combined): | Civil  
However wilful disobedience to orders under sections 27, 28, 31, 32, 33, 42A, and 43A, may entail imprisonment for a period which may extend to three years. |
| C. On whom can procedural sanctions be imposed? | On the person or enterprise who does not comply or furnish wrong/incorrect information. In case of company, the person in charge of the business can also be fined. |
| D. Criteria for determining the sanction / fine: | Mentioned expressly in the Law [section 42, 43, 44, 45, 48] |
| E. Are there maximum and / or minimum sanctions / fines? | As per the Competition Act, 2002, depends of acts, omissions and violations of law. |

12. Sanctions on the merits of the case

| A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): | Civil  
Penalty can be imposed on businesses.  
The Commission may impose a penalty upon each producer, seller, distributor, trader or service provider included in that cartel [section 27(b) Proviso].  
In case of contravention by companies, any director, manager, secretary or other officer with whose consent or connivance the act took place, can be proceeded against [section 48]. |
<table>
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<tbody>
<tr>
<td>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained]</td>
<td>Nothing specific has been provided in law.</td>
</tr>
</tbody>
</table>

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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.
from the violation]

<table>
<thead>
<tr>
<th>C. Are there maximum and/or minimum sanctions/fines?</th>
<th>As per section 27 of the Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td>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]</td>
<td>None</td>
</tr>
<tr>
<td>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?</td>
<td>It will be necessary to apply for suspension.</td>
</tr>
</tbody>
</table>

13. Possibilities of appeal

| 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? | Yes. An appellate body called the Competition Appellate Tribunal was set up in May 2009 to hear and dispose of appeals against the orders made by the Commission. Final appeal lies to the Supreme Court against the order of the Competition Appellate Tribunal. The Appellate Tribunal shall be guided by the principles of natural justice and subject to the other provisions of the Act and of any rules made by the Central Government. Appeal can be made, only on questions of law, fact or mixed question of law and fact. Court is likely to entertain appeals on ground of violation of natural justice. |
| B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative] | Competition Appellate Tribunal The Supreme Court of India, |