



International
Competition
Network

ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques

El Salvador
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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

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

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

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

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]	<p><i>Ley de Competencia.</i> Legislative Decree 528 of November 26th, 2004, In force since January 1st, 2006 [Competition Law]</p> <p>Amended by means of the Legislative Decree 436 of October 18th, 2007.</p> <p>In Spanish is available at: http://www.sc.gob.sv/uploads/Ley_competencia_y_reglamento_oct2015.pdf</p> <p>A "free translation" to English is available at: http://www.sc.gob.sv/english/uploads/Ley_competencia_english_2007.pdf</p>
B. Implementing regulation(s) (if any): [name and reference number, availability]	<p><i>Reglamento de la Ley de Competencia;</i> Executive Decree 126 of December 5th, 2006, enforced since December 13th, 2006. Amended by means of the Executive Decree 63 of May 29th, 2008 and the Executive Decree 169 of September 13th, 2013. [Competition Law Regulation]</p> <p>In Spanish is available at: http://www.sc.gob.sv/uploads/Ley_competencia_y_reglamento_oct2015.pdf</p>

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

(homepage address) and indication of the languages in which these materials are available]	
C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	<p>There are no interpretative guidelines.</p> <p>However, the Superintendencia de Competencia (SC) has published an illustrative Glossary for educational purposes only. It is only available in Spanish at:</p> <p>http://www.sc.gob.sv/uploads/Ley_competencia_y_reglamento_oct2015.pdf</p>
D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]	<p>www.sc.gob.sv</p> <p>Most material is only available in Spanish. However, some material might be found in English too.</p>

2. Scope and nature of prohibition on cartels

A. Does your law or case law define the term "cartel"? [Please quote.] If not, please indicate the term you use instead. [Please quote.]	<p>El Salvador's Competition Law does not define the term "Cartel". However, agreements amongst competitors constitute a violation to the Competition Law pursuant to Article 25 of the same.</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 quotas²) and other	<p>No, legislation does not distinguish exactly between "hardcore cartels" and other types of cartels. However, pursuant to Article 38 of the Competition Law the SC can impose higher fines for particularly grave practices.</p>

² 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.

types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]	
C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]	In Salvadorean Competition Law there are no exceptions, exclusions and defenses for particular industries or sectors.
D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal liability, please clarify this.]	Pursuant Article 25 of the Competition Law, anticompetitive practices among competitors are prohibited. Therefore, agreements amongst competitors are considered illegal <i>per se</i> . The relevant provision is Article 25 of the Competition Law.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	Participation in a cartel is an administrative infringement.

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]	Superintendencia de Competencia (SC)
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	<p>Superintendencia de Competencia Edificio Madre Selva, Primer Nivel Calzada El Almendro y 1era Avenida el Espino Antiguo Cuscatlán, La Libertad, El Salvador, C.A. Tel. (503) 2523 6600, Fax. (503) 2523 6625 Website: www.sc.gob.sv</p> <p>Most information is only available in Spanish. However, some material can be found in English too.</p>
C. Information point for potential complainants:	<p>Superintendencia de Competencia Tel. (503) 2523 6600, Fax. (503) 2523 6625 Monday to Friday. From 8:00 AM to 12:30 PM and from 1:30</p>

³ For the purposes of this template the notion of ‘per se’ covers both ‘per se’ and ‘by object’, as these terms are synonyms used in different jurisdictions.

	<p>PM to 5:00 PM.</p> <p>contacto@sc.gob.sv</p> <p>Illustrative guide on how to file a complaint:</p> <p>http://www.sc.gob.sv/uploads/fg_denuncia_pa.pdf</p> <p>(Spanish only)</p>
D. Contact point where complaints can be lodged:	<p>Superintendencia de Competencia Tel. (503) 2523 6600, Fax. (503) 2523 6625 Monday to Friday. From 8:00 AM to 12:30 PM and from 1:30 PM to 5:00 PM. contacto@sc.gob.sv</p> <p>Illustrative guide on how to file a complaint: http://www.sc.gob.sv/uploads/fg_denuncia_pa.pdf (Spanish only)</p>
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	<ul style="list-style-type: none"> • Among the attributions of the Superintendent⁴ is to request to any authority, local or from abroad, the necessary information to investigate possible Competition Law violations. Relevant Competition Law provision: Article 13 g). • Also, pursuant to Article 50 of the Competition Law, every governmental entity and other authorities in general as well as every individual are obliged to provide support and the necessary collaboration to the SC, providing all types of information and documentation required for the investigation of an infringement of the Competition Law. • For merger authorization procedures of economic agents included in Article 36 of the Competition Law the SC can require information, technical opinion and collaboration from supervising entities in order to resolve the merger request. Relevant Competition Law Regulation provision: Article 29. • For failure to request a merger authorization, pursuant to Article 30-A of the Competition Law Regulation, if pursuant to the attributions set forth in the Competiton Law, it is determined that one or more economic agents failed to file a merger or acquisition request having the obligation to do so, the sanction of Article 38 of the Competition Law shall be imposed to those, prior the respective procedure, notwithstanding the

⁴ SC: For more information about what to understand by “Superintendent” please check Competition Law articles 6 and 7. A free translation in English of said Law is available at http://www.sc.gob.sv/english/uploads/Ley_competencia_english_2007.pdf [this is information is valid for the day this Template was filled-out]

	<p>pertinent judicial actions that might take place, for which the relevant will be certified to the District Attorney's Office.</p> <ul style="list-style-type: none"> When the circumstances make it necessary, if fines have not been paid, pursuant to Article 74 of the Competition Law Regulation the Superintendent will request the General Attorney of the Republic that the indebted amount be made effective via execution. For that purpose, the certification of the final resolution will have executive force. For searches and raids, when deemed necessary, the SC can be aided by the public force in accordance with Article 44 of the Competition Law.
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4. Decision-making institution(s)⁵ [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	Superintendencia de Competencia (Board of Directors)
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	<p>Superintendencia de Competencia Edificio Madre Selva, Primer Nivel Calzada El Almendro y 1era Avenida el Espino Antiguo Cuscatlán, La Libertad, El Salvador, C.A. Tel. (503) 2523 6600, Fax. (503) 2523 6625 Monday to Friday. From 8:00 AM to 12:30 PM and from 1:30 PM to 5:00 PM. contacto@sc.gob.sv Website: www.sc.gob.sv</p> <p>Most information is only available in Spanish. However, some material can be found in English too.</p>
C. Contact point for questions and consultations:	<p>Superintendencia de Competencia Edificio Madre Selva, Primer Nivel Calzada El Almendro y 1era Avenida el Espino Antiguo Cuscatlán, La Libertad, El Salvador, C.A. Tel. (503) 2523 6600, Fax. (503) 2523 6625 Monday to Friday. From 8:00 AM to 12:30 PM and from 1:30 PM to 5:00 PM.</p>

⁵ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	<p>contacto@sc.gob.sv</p> <p>Website: www.sc.gob.sv</p>
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	<p>In El Salvador, the investigating agency for all competition matters, including cartels, is the SC. The procedure occurs in accordance with the relevant provisions of the Competition Law and its Regulation.</p> <p>A cartel proceeding, as well as any other investigation for an alleged breach of the Competition Law, can start either by a complaint or <i>ex-officio</i>.</p> <p>Once a Formal Investigation is opened the SC may require information relevant to the case and the requested agents are compeled by law to provide it.</p> <p>The alleged infringer shall be notified regarding the resolution ordering the investigation, in keeping with the formalities set forth in Art. 220 (3)of the Code of Civil Proceedings (Código de Procedimientos Civiles). Upon notification, the alleged infringer shall be given a copy of the minutes recorded and of any prior action, if any. In the case of a requested investigation, a copy of the complaint shall also be submitted.</p> <p>The alleged infringer shall have a period of thirty days from the day of receiving the abovementioned notification to provide any allegation, document and data deemed necessary and shall propose the evidence to be of use and shall indicate the facts to be proven.</p> <p>Precluding the allegation period, the process shall be opened for evidence. The evidence shall be assessed based on the rules of due judgment.</p> <p>All the investigation is conducted by a team of the Investigations Office in accordance with the relevant provisions of the Competition Law and its Regulation.</p> <p>At the end of the formal investigation, the file is sent to the Board of Directors of SC for their Decission.</p> <p>The Decission is taken by the Board of Directors of SC in a final written resolution which also contains the pertinent reasoning.</p> <p>The Board of Directors of SC has the attribution to impose sanctions pursuant to the Competition Law for violations thereof.</p> <p>The Decission admits review recourse in front of the SC's Board of Directors within five days after the notification of the Decission has been made.</p>
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	<p>In El Salvador cartel cases are administrative offenses only. Therefore, the SC handles all competition cases including agreements among competitors in administrative proceedings, and there is no criminal prosecution.</p>

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	<ul style="list-style-type: none">• Complaint• <i>Ex officio</i>
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).]	<p>Complaints must be in written form and has to contain in a clear and detailed way the facts and the legal provision that is infringed, as well as presumption and elements that can identify the assumed anti-competitive practice. In cartel cases Article 25 of the Competition Law is the one that has to be invoked.</p> <p>The written complain must contain the following:</p> <ol style="list-style-type: none">a) Name, denomination or corporate name of the complainant;b) Name of the legal representative and documents which accredit representative's legal capacity, domicile of service of notices or notifications and persons authorized for such effects;c) Name, denomination or corporate name, and if known, the domicile of the alleged infringer;d) Description of the facts that constitute hypothetical situation contemplated in the previous article, and legal provisions to base of the complaint;e) Elements which allow the definition of the relevant market and determine the dominant position of the alleged infringer in a given market and, in case of knowing it, identification of the related economic agents in the relevant market;f) Elements of why the existence of some practices is considered, as contemplated in Art. 25 of the Competition Law;g) Relation of the documents accompanying the complaint and the elements of conviction offered, and related precisely to the alleged facts. <p>The complainant may provide any data that may allow the identification of other economic agents that may be affected by the anti-competitive practice or economic concentration without authorization; also, the complainant may provide any element considered important or indicate the place or archive where they are, in case of not having them.</p> <p>The original of the complaint and the annexed documents, must be filed with as many copies as interested parties are involved in the procedure, and an additional set of copies.</p> <p>Relevant provision is Article 62 of the Competition Law Regulation.</p>

<p>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</p>	<p>Pursuant to Article 42 of the Competition Law, regarding any anti-competitive practice stated in the same, any person might file a written complaint at the SC against an alleged infringer, indicating the description of the alleged practice and all the facts that build the alleged anti-competitive practice being claimed.</p>
<p>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.]</p>	<p>All the complaints filed at the SC are reviewed to determine if those meet all the necessary requirements. If the complaint does not meet all the requirements but those are rectifiable the complainant is warned to rectify them within five business days under the warning of it being declared inadmissible.</p> <p>Complaints that meet all the requirements are revised in a preliminary investigation where it is determined if there is enough circumstantial evidence that an anti-competitive practice exists or not. If the outcome of the analysis is that there is circumstantial evidence that an anti-competitive practice exists, the complaint is admitted into a sanctionatory procedure. If this is not the case, the case in question is overruled pursuant to Article 47 of the Competition Law if the situation invoked does not constitute an infringement to the abovementioned Law.</p>
<p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p>	<p>All the decisions taken in the course of the complaint proceeding are stated in an explained and justified resolution. The resolutions are made public and notified to the parties involved in the case.</p>
<p>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?</p>	<p>For the preliminary investigation there is no time limit, but by law, the case has to be resolved within a period of 12 months counted from the day the complaint is filed or the <i>ex- officio</i> case is opened.</p>

6. Leniency policy⁶

<p>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</p>	<p>With the 2007 Competition Law amendments, there is the possibility not to apply the aggravation of the sanction if an economic agent collaborates in the investigation of an agreement amongst competitors. Relevant provision is laid down in Article 39 of the Competition Law but the abovementioned prerogative does not have an official name.</p>
<p>B. Does your jurisdiction offer full leniency as well as partial</p>	<p>No. Under the Competition Law only partial leniency is offered, and specifically what could be granted is that when determining</p>

⁶ 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.

leniency (i.e. reduction in the sanction / fine), depending on the case?	the amount of the fine that will be included in the SC's Board of Directors final decision, this Board shall not apply to the petitioner the criterion set forth in Art. 38 (2) of the Competition Law.
C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?	Who is eligible for the abovementioned leniency is the first one to come provided that it fulfils the requirements of Article 39 of the Competition Law.
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? 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>No, eligibility criteria is set forth in Article 39 of the Competition Law, and basically relates to the applicant to:</p> <ul style="list-style-type: none"> a) be the first amongst the economic agents involved in the conduct, and provide sufficient conviction elements in its possession and those of which it may obtain and, that according to the SC's judgment, allow to confirm the existence of the practice and the participation of the rest of economic agents; b) fully and continually cooperate with the SC in the course of the investigation; c) execute all the necessary actions to determine its participation in the practice that constitutes a Competition Law infringement.
E. Who can be a beneficiary of the leniency program (individual / businesses)?	It applies to any economic agents.
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.]	There is no full leniency.
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?]	<p>Conditions for leniency are provided in Article 39 of the Competition Law and basically relates to the applicant to:</p> <ul style="list-style-type: none"> a) be the first amongst the economic agents involved in the conduct, and provide sufficient conviction elements in its possession and those of which it may obtain and, that according to the SC's judgment, allow to confirm the existence of the practice and the participation of the rest of economic agents; b) fully and continually cooperate with the SC in the course of the investigation; c) execute all the necessary actions to determine its participation in the practice that constitutes a Competition Law infringement. <p>And any other obligation set forth in Article 39 of the Competition Law.</p>

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.]	<p>Mainly, to fully and continually cooperate with the SC in the investigation and to execute all the necessary actions to determine its participation in the practice that constitutes a Competition Law infringement.</p> <p>And any other obligation set forth in Article 39 of the Competition Law.</p>
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.]	<p>There is no detailed procedure yet. Moreover, so far the SC has never received any leniency application.</p>
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?)]	<p>The SC has not yet received a leniency application.</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?	N/A
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?	Leniency provision is laid down in the Competition Law is Article 39.
M. Do you have a marker system? If yes, please describe it.	No.
N. Does the system provide for any extra credit⁷ for disclosing additional violations? [e.g. a hardcore cartel in another market]	No.
O. Is the agency required to keep the identity of the	Yes, during the procedure, the SC shall keep confidential the identity of the economic agent who pretends to benefit from

⁷ 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.

beneficiary confidential? If yes, please elaborate.	Article 39 of the Competition Law. Relevant provision: the abovementioned article.
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	N/A
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:	Superintendencia de Competencia Edificio Madre Selva, Primer Nivel Calzada El Almendro y 1era Avenida el Espino Antiguo Cuscatlán, La Libertad, El Salvador, C.A. Tel. (503) 2523 6600, Fax. (503) 2523 6625 Monday to Friday. From 8:00 AM to 12:30 PM and from 1:30 PM to 5:00 PM. Website: www.sc.gob.sv
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?	N/A
S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?	N/A
T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.	The Competition Law has no specific rules to protect leniency material from disclosure. However, the Competition Law does provide rules for the protection of all confidential information.

7. Settlement

A. Does your competition regime allow settlement? If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).	No.
B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?	N/A

C. What is the reward of the settlement for the parties?	N/A
D. May a reduction for settling be cumulated with a leniency reward?	N/A
E. List the criteria (if there is any) determining the cases which are suitable for settlement.	N/A
F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].	N/A
F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].	N/A
G. Does a settlement necessitate that the parties acknowledge their liability for the violation?	N/A
H. Is there a possibility for settled parties to appeal a settlement decision at court?	N/A

8. Commitment

A. Does your competition regime allow the possibility of commitment? If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].	No. However, pursuant to Article 39 of the Competition Law, during the investigation phase of the procedure for anti-competitive practices different from those described in Art. 25 of the Competition Law, that is agreements among competitors, the alleged offender may provide sufficient guarantees that it will suspend or modify the alleged anti-competitive practice.
B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]? Are there commitments which are excluded from the	N/A

commitment possibility?	
C. List the criteria (if there are any) determining the cases which are suitable for commitment.	N/A
D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]	N/A
E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]	N/A
I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?	N/A
J. Describe how your authority monitors the parties' compliance to the commitments.	N/A
K. Is there a possibility for parties to appeal a commitment decision at court?	N/A

9. Investigative powers of the enforcing institution(s)⁸

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids ⁹ , electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>The SC is an independent administrative institution, which has freedom to perform its attributions and duties pursuant to the Competition Law in order to promote, protect and guarantee the competition in favour of the economic efficiency and consumer welfare.</p> <p>The SC has among its powers: request compulsory information from any economic agent, perform dawn raids and searches in the economic agents premises, call witness and agents linked to a case, perform preliminary investigations for alleged Competition Law violations, among other powers pursuant to the abovementioned Law.</p> <p>However, it is necessary to keep in mind that the SC is an</p>
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⁸ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

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

	<p>aministrative body, and this impacts its powers. For example, it cannot perform the dawn raids without the authorization of a judge. However, this does not mean that the economic agent in whose premises the dawn raid will be carried out needs to be notified in advance. It just implies that the SC needs to have a prior authorization from a judge to perform the dawn raid.</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>Pursuant to Article 44 of the Competition Law, in performing his/her duty, the Superintendent may request relevant reports or documents to carry out the investigation, and also summon any person related to the case under investigation. The Superintendent may carry out the necessary investigations for the proper enforcement of the Competition Law.</p> <p>During inspections he may examine, order attested copies or take out extracts of the books, documents and even accounting data, and retain them for a term no longer than ten days, if necessary. Additionally, experts in the subject matter under investigation can accompany him/her during these inspections.</p> <p>In case of searches or dawn raids, in the prior request to the judge, the Superintendent shall incorporate among others the following elements:</p> <ul style="list-style-type: none"> a) The conduct investigated in the procedure relating to which the requested activity would be executed; b) Indication of the persons who will participate in the search or raid; c) Address of the premise or premises where the activity will be executed; d) Date and time during which the activity will be executed; e) The evidence that is pretended to be obtained by means of the activity; f) The relation of the evidence to be obtained in connection with the conduct investigated in the procedure; g) The reasons that justify that the search or raid is the necessary and suitable means in order to obtain the evidence. <p>The judge shall resolve the request and notify the Superintendent if the search or raid order is granted within twenty four hours, from the time the request is filed.</p> <p>The search or raid can be executed by the Superintendent and/or by the persons authorized for such effects, who may be aided by the public force. And the activity shall commence during business hours.</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 warrant needed)?	<p>This question has not occurred yet in the practice of SC.</p>
D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe	<p>There has been only one raid since the SC has that power (after the 2007 amendments to the Competition Law). The request for the judge authorization was well grounded so that it was granted to the SC. However, the final decision of the case by the Board of Directors was challenged in 2012 before the</p>

<p>them.</p>	<p>Administrative Courtroom of the Supreme Court of Justice and it ruled that it was an unlawful judicial authorization for one of the economic agents. The SC filed a Constitutional (in Spanish: <i>Amparo</i>) recourse for that ruling before the Constitutional Courtroom and this <i>Amparo</i> was ruled in favour of the SC. Therefore, the Contentious Administrative Chamber must rule again.</p>
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10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</p>	<p>El Salvador's legal system applies the principle of due process. All allegations or evidence presented to the SC must be put in written form. The testimonial proof can be accepted but the declaration must have been done in the presence of all the involved parties.</p> <p>The parties have the right of access to documentation, not classified as confidential, in possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to cases in writing, right to confront companies or individuals that make allegations against defendants, right to legal representation before enforcing authorities, among others.</p>
<p>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.</p>	<p>There is no different treatment depending if the information was requested compulsory or not.</p> <p>Legal provisions related to confidentiality are:</p> <ul style="list-style-type: none"> • It is a duty of Superintendent, pursuant to Art. 13 f) of the Competition Law, to protect the confidentiality of business, commercial and official information kept in the file of the SC. • Pursuant to Article 18 of the Competition Law, it is prohibited for officials, employees, delegates, experts, agents, or persons who provide their services to the SC, to reveal any information obtained in their line of duty or to profit from this information for their own benefit or the benefit of third parties, notwithstanding the criminal liability established. Therefore, contracts entered into to provide services include a confidentiality clause and the penalties for non-compliance of the same. • Pursuant to Article 49 of the Competition Law Regulation, the SC may, <i>ex officio</i> or by requirement, declare confidential any document which meets any of the following requirements: <ul style="list-style-type: none"> a) It is secret, as body or configuration and precise conjugation of its components, not generally known nor easily accessible to people who normally use that type of information; b) It has a commercial value because of its secrecy; and, c) It has been subject of reasonable measures to keep it secret

by who legitimately controls it.

In any case, the previous criteria must be weighted related to the information contained in the following documents:

- i) Merchantile contracts;
- ii) Economic and financial situation of the enterprise;
- iii) Commercial and investment strategies;
- iv) Fiscal and/or banking reports;
- v) Productive and secret procedures of the industry, especially industrial procedures and formulas related to the manufacture of products;
- vi) Invoices;
- vii) Financial statements and reports;
- viii) Sale reports and financial evidence;
- ix) Customers and suppliers lists;
- x) Installed capacity;
- xi) Costs and innovation policies; and,
- xii) Details on the composition and property of corporate capital of merchantile corporations.

The information declared as confidential must be preserved in a separate file and only Directors, the Superintendent and officials and employees assigned to the procedure may have access to it.

- Pursuant to Article 50 of the Competition Law Regulation, the interested party may request in any state of the procedure the confidentiality classification of information, having to do it through a writ where it is specified clearly that the documents require such classification and the reasons for the same.

The petition shall be resolved by the Superintendent admitting or rejecting the confidential treatment of information, through motivated resolution, indicating the reasons for adopting such decision.

However, in accordance with Article 51 of the same Regulation, the information may also be declared confidential *ex officio* by the Superintendent at any stage of the procedure through a motivated resolution, indicating the reasons for such decision.

- In accordance with Article 52 of the Competition Law Regulation, in order to decide about the confidential character of the business, commercial, or official information, the Superintendent shall hear the intervening parties within a period of five days, to express their arguments and file, if necessary, the pertinent evidence to justify the confidential nature or not of such information.
- Art. 53 of the Competition Law Regulation: after declaring the confidentiality, the information shall be kept in a separate file by the custodian of the corresponding case, who shall seal it to identify it as confidential. This information shall continue to be part of the main file, indicating the extracted documentation

	<p>and the number of pages corresponding, with a writ signed and sealed by the Superintendent.</p> <ul style="list-style-type: none"> • Art. 54 of the Competition Law Regulation: The officials, employees, delegates, or any other person authorized by the Superintendent who have access to information classified as confidential are obligated to collaborate in the compliance of the provisions referred to the confidentiality.
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11. Limitation periods and deadlines

A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?	Pursuant to Article 25 of the Competition Law once the file is integrated, the Superintendent shall conclude his/her investigations and send it to the Board of Directors of the SC to issue a final resolution in a period no longer than twelve months from the date the investigation started or the complaint was filed. This term may be extended by means of a justified resolution of the Board, up to a term not exceeding twelve months and only once provided that the circumstances so merit.
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?	Pursuant to Article 45 of the Competition Law, once the case file is integrated, it shall be sent to the Board of Directors of the SC, that shall issue a final resolution in a period no longer than twelve months from the date the investigation started or the complaint was filed. This term may be extended by means of a justified resolution of the same Board, up to a term not exceeding twelve months, and only once if the circumstances so merit.
C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)	<p>The act that definitely resolves the procedure shall admit a review recourse, properly submitted and in due time, in which the illegalities of the process may be alleged. This review recourse shall be submitted in writing before the Board of Directors of the SC in a term of five working days, counted from the day following the day of notification. If the review recourse is not filed in due time and form, it shall be declared inadmissible by means of a reasoned resolution, against which there will be no recourse.</p> <p>If no review recourse is submitted during this term, the resolution by which the action was ruled shall remain unchanged.</p> <p>The review recourse is optional for purposes of the contentious administrative action.</p> <p>The Judicial Power, through the Contentious Administrative Courtroom (Sala de lo Contencioso Administrativo), may revise the decision via the contentious administrative recourse, which is a form of control of the legality of the ruling (while the case is being studied and revised here, the mentioned courtroom can suspend the effects of the ruling), which has to be filed within 60 days after the ruling has been notified.</p>

12. Types of decisions

<p>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<p>If the Board Of Directors of SC decides that a cartel has been committed the decision can include the order to bring the infringement to an end and the imposition of a fine.</p>
<p>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</p>	<p>N/A</p>
<p>C. Can interim measures¹⁰ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹¹.) 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>According to Article 13 s) of the Competition Law, the Superintendent can issue the necessary precautionary remedies to ensure the effectiveness of the final resolution, by means of a justified resolution. Those can be issued at any moment during the investigation phase of the sanctionatory procedure, and may consist of temporary suspension of activities, subdue certain products or services to particular conditions, amongst others. The precautionary remedies will be maintained as long as the causes that originated them persist.</p>

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p>A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence,</p>	<ul style="list-style-type: none"> • When an economic agent who deliberately or negligently fail to supply the information requested by the SC, or if they collaborate, provide incomplete or inaccurate information. • Non-compliance with a precautionary remedy order pursuant to the Competition Law.
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¹⁰ 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].

¹¹ Only for agencies which answered “yes” to question 2.B. above

challenging the validity of documents authorizing investigative measures, etc.]:	
B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):	Offense is administrative. Therefore, sanction is also administrative (fine).
C. On whom can procedural sanctions be imposed?	The sanction can be imposed on any economic agent whether natural or legal person to whom the information was required.
D. Criteria for determining the sanction / fine:	Days delayed to provide information from the deadline given by the competition authority to do so.
E. Are there maximum and / or minimum sanctions / fines?	<p>By Law (Article 39 of the Competition Law), the fine amount can be up to ten minimum urban monthly wages in the industrial sector¹² for every day of delay, to the individuals, companies, or institutions who deliberately or negligently fail to supply the requested information, or if collaborating, provide incomplete or inaccurate information.</p> <p>There is no maximum total amount because it is calculated according to the days that have passed.</p> <p>The same fine may be imposed to those who do not comply with a precautionary remedy ordered pursuant to the Competition Law.</p>

14. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]	<p>The SC is an administrative institution. Therefore, the sanctions it imposes can only be administrative.</p> <p>Sanctions can be imposed on an economic agent. Economic agent, for the Competition Law purposes shall be understood in accordance with Article 2 of the same.</p>
B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation,	Pursuant to Article 37 of the Competition Law, to impose a sanction, the Superintendence shall weigh the severity of the infringement, the damage caused, the effect on third parties,

¹² SC: Equivalent to USD\$2,466.00, from January 1st, 2015. [this is information is valid for the day this Template was filled-out]

benefit gained from the violation]	the duration of the anti-competitive practice, the size of the market, and recidivism.
C. Are there maximum and / or minimum sanctions / fines?	The maximum fine that can be imposed up to 5000 minimum industrial urban wages ¹³ . However, when the committed practice is particularly grave, the SC may impose, instead of the beforementioned fine, a fine up to six percent of the total annual sales obtained by the infringer, or up to six percent of the value of its assets during the previous fiscal year, or a fine equivalent to a minimum of twice and up to a maximum of ten times the estimated profits resulting from the anti-competitive practices, whichever is higher.
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]	N/A
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?	If a decision is appealed before the Supreme Court of Justice Administrative Courtroom, said body can decide to suspend the payment of the fine as a precautionary measure until the final ruling is made. However, the suspension is not automatic and needs to be evaluated in each case by the Supreme Court.

15. Possibilities of appeal

A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	<p>The Competition Law provides all economic agents the possibility to file a review recourse before its Board of Directors of SC pursuant to Article 38 of the Competition Law.</p> <p>The act that definitely resolves the procedure shall admit a review recourse, properly submitted and in due time, in which the illegalities of the process may be alleged.</p> <p>This review recourse shall be submitted in writing in a term of five working days, counted from the day following the day of notification of the SC's Board of Directors decision. If no review recourse is submitted during this term, the resolution by which the action was ruled shall remain unchanged. If the review recourse is not filed in due time and form, it shall be declared inadmissible by means of a reasoned resolution, against which there is no recourse.</p> <p>Finally, if any economic agent considers the Decision has</p>
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¹³ SC: Equivalent to USD\$1,233,000.00, from January 1st, 2015. [this is information is valid for the day this Template was filled-out]

	illegalities, it can file the respective appeal before the Supreme Court of Justice's Contentious Administrative or Constitutional Courtroom, depending on the nature of the alleged illegality.
B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]	<ul style="list-style-type: none"> • Review recourse [of administrative nature]: Board of Directors of SC • Contentious Administrative: Contentious Administrative Courtroom of the Supreme Court of Justice. • Constitutional: Constitutional Courtroom of the Supreme Court of Justice.

SC final note: It is worth mentioning that a great variety of circumstances, acts and/or considerations can occur and those might not necessarily be considered in these responses. Consequently, this template is illustrative and for its nature it should not be considered as binding for any act of this institution, staff and authorities including investigations and Resolutions or Decisions issued and/or to be issued. Finally, nothing in this document should be understood as prejudging the analysis the SC and/or its staff and authorities could perform in specific cases or as an institutional statement. [SC, November 23rd, 2015]