This questionnaire has been revised to reflect the discussion at the 23 October meeting of Working Party No. 3. Responses are requested if possible by 15 January 2001.
QUESTIONNAIRE ON CARTELS’ HARM AND MEMBERS’ SANCTIONS

Introductory Note

1. This questionnaire has been revised to reflect the discussion at the 23 October meeting of Working Party No. 3. Responses are requested if possible by 15 January 2001, so that the Secretariat can prepare a substantive status report for the February meeting and then an analytical report for discussion by delegates next spring. Inga Stefanowicz will be the Secretariat member in charge of compiling questionnaire responses. Delegates should feel free to ask questions of her or of Terry Winslow, who was the principal author of the questionnaire.

2. All specifications seek only information that can be lawfully disclosed and is reasonably accessible. However, if your agency cannot reveal a verbatim quotation of a defendant’s statement or other specific evidence, please consider whether you can convey the information in a general way. For example, can you describe a statement (e.g., “a defendant predicted X million Euros in monopoly profits”) or conduct (e.g., “the defendants fixed an even higher price in Africa, because Africans did not have access even to poor substitutes available in Europe.”) Alternatively, can you provide a newspaper article that contains facts that would help “tell the story”? In general, it is not contemplated that your agency will provide information that would require research going beyond the agency’s case files or other records. At the same time, if there are situations in which statistical or other information from other sources would add significantly to your report and is reasonably accessible, such information would be appreciated.

3. Part I.A (overall estimates of harm) and Part I.D (sanctions) seek information about each of your agency’s “cases” -- that is, each instance since January 1, 1996 in which your agency has identified and taken formal or informal action to halt or penalise a hard core cartel (“cartel”). Informal actions include situations in which your agency (or one of its subordinate units) concluded that a cartel had occurred, even if, for example, the parties received only a warning and no official action was taken. However, if parties voluntarily notify an agreement that has not been implemented and your authority merely informs them that it would be an illegal, this would not be action to halt or penalise a cartel.

4. The questionnaire seeks information on “cases” going back to January 1, 1996 because five years is a significant period that includes the first of the current series of large international cartel cases. Information relevant to the amount of harm would be valuable for 1999-1997 even if is less complete than information since January 1, 1998, and information about cases that are particularly striking examples of “bad” conduct is valuable even if the case file contains no information on the amount of harm. Nonetheless, it has been agreed that the questionnaire becomes “more voluntary” with respect to 1996-1997 cases.

5. It is important to provide information about each case in Part I.A because the data will be used to estimate total harm by (for example) taking a percentage of the overall amount of commerce (turnover). It is also important to obtain “per case” information on sanctions under Part I.E, because that would permit an assessment of how the sanctions related to the estimates of harm obtained under Part I.A. If resources are problem, however, obtaining per case estimates of commerce is more important to the study’s integrity than per case information on sanctions.

6. Parts I.B (case-specific harm) literally calls for information on a per case basis, but it seems likely that the information will be available in relatively few cases. If that is the case for your agency, Part I.B should be treated like Part I.C (examples of “good stories”); that is, as a request for dramatic examples that can make it easier to impress policymakers and the public with how “bad” cartels really are. In Part
I.B, the examples would be large price increases, long duration, etc. In Part I.C, examples might include cases of various kinds: (a) where the victims are particularly sympathetic (e.g., raising the price of health care to the elderly); (b) the cartel conduct has some outrageous aspect (e.g., to deter cheating, cartel members blew up the factory of a firm that offered secret discounts); or there is quotable evidence clearly showing cartel members’ “evil” intent (e.g., “Our competitors are our friends. Our customers are our enemy”). Part I.D also seeks information on a per-case basis, but the value of the responses is not particularly dependent on the availability of information with respect to all cases. Again, this is a specification that could be addressed selectively in order to avoid burden.

7. Part II seeks general information about your country’s laws and policies related to sanctions.

Requested Information

I. Case-specific Information

A. Data for overall monetary estimates of harm, globally and by country

8. Please identify each instance since January 1, 1996 in which your agency has identified and taken action against a “hard core cartel” (hereinafter “cartel”) as that term is defined in the 1998 Recommendation. Include formal actions that are still in progress (such as those that are still being appealed to the courts). Please provide each action’s official citation and date, where applicable, and otherwise an identifying name and date.

9. Please supply the following information with respect to each formal and informal action identified in response to specification 7. If there are too many such actions to permit providing all information with respect to each action, please (a) provide all available information with respect to the actions involving the largest amount of commerce and in which the evidence of impact is clearest; and (b) group the remaining actions (preferably by product or service, but generalising as needed) and estimate the amount of commerce affected by the cartels in each group during each year covered by this questionnaire.

   (a) Identification: For each formal action, the name of each respondent/defendant and the name of any enterprise or individual that (i) was a major figure in the cartel and (ii) could have been but was not named as a respondent/defendant (e.g., Rhone-Poulenc not being a defendant in the US vitamins case). Please provide the same information with respect to each informal action against a cartel that your agency considered as having international scope.

   (b) Product or service: The product or service that was the object of the cartel agreement. Please provide a layman’s description of the product (e.g., use, distinctive characteristics). Please indicate whether the agency determined, using its normal market definition process, that the product or service constitutes a product market. If your information indicates that the product or service corresponds reasonably closely to an industry in a national or international standard statistical series, please provide the numeric reference and identification of the industry.

   (c) Geographic area: The region covered by the cartel agreement. Please indicate whether the agency determined, using its normal market definition process, that the geographic area constitutes a geographic market. If there was evidence that the cartel covered a region larger than the country, indicate the area other countries believed to have been affected.
(d) **Duration**: Approximate beginning and ending dates of the cartel, and an indication of whether the cartel’s end was due to “natural causes” or to “outside intervention” such as learning of the competition authority’s investigation.

(e) **Monetary amount of commerce**: Total monetary value of all sales of the product or service in the geographic area during the cartel (i) on an annual basis and (ii) for the entire period of the cartel. Please provide the same information for all sales by cartel members. For bid-rigging, the magnitude of the contract(s) affected. Specify the level of distribution for which this was determined.

(f) **Competitive pricing**: If there were significant sales of the product or service in the geographic area by firms that were not part of the cartel, is there any reason to believe that those sales were made at significantly less than the cartel price? If so, please estimate the percentage of commerce sold at significantly less than the cartel price.

**B. Case-specific evidence of harm -- support for overall monetary estimates, plus selected examples of clearest and/or most substantial harm, and evidence relating to other measures of harm**

10. For each formal and informal action identified in response to specification 7, please supply (i) all quotations (preferably) or descriptions of cartel members’ oral or written statements concerning the topics listed below, (ii) an indication of the most reliable evidence on those topics, and (iii) all applicable agency findings.

   (a) **Statements** concerning the cartel’s actual or intended effects.

   (b) **Estimates** of effects on price, output, total surplus, or dead-weight losses, including those made by or for the agency in connection with calculating sanctions.

   (c) **Changes in price or output** when the cartel was formed or when it ceased.

   (d) **Other effects** of the cartel -- on quality, entry, innovation, or efficiency; on important business practices; or on prices or output of complementary products.

   (e) **Changes in firm profits** when the cartel was formed or when it ceased.

   (f) **Excess profits** during the cartel.

**C. Dramatic evidence of harmful intent and conduct**

11. From the formal and informal actions identified in response to specification 7, please describe or quote what you consider the most dramatic evidence in the following categories, together with all applicable agency findings:

   (a) **Colourful statements** by cartel members revealing their intent, their lack of justification, their awareness of the illegality of their conduct, etc.

   (b) **Outrageous conduct** by cartel members. (See paragraph 5, above.)
D. Evidence of collusion

12. With respect to each formal and informal action identified in response to specification 7, please state whether your agency relied upon direct written or testimonial evidence of collusion or upon indirect evidence such as industry characteristics or practices. For each case in which indirect evidence was relied upon to a substantial degree, please identify which of the industry characteristics or practices identified below were used, and also describe any other type of economic evidence upon which your agency relied.

(a) Characteristics and practices that might have made the sector prone to collusion: concentration (of sellers and buyers), inelastic demand (at the competitive price), entry constraints or delays, product homogeneity, similarity of marketing strategies, high ratio of fixed to variable costs, static or declining demand.

(b) Characteristics and practices that may have indicated likely collusion: stable market shares, price discrimination, information exchanges, regional price variations, identical bids, changes in output-price-capacity on formation of the cartel, industry-wide resale price maintenance, declining market shares of top firms, basing point pricing, patterns of price changes and profits among industry members.

E. Sanctions

13. Please supply the following information with respect to each formal and informal action identified in response to specification 7. If there are too many such actions to permit providing all information with respect to each action, please (a) provide all available information with respect to the actions involving the largest amount of commerce and in which the evidence of impact is clearest; and (b) provide the requested information for each group created in response to specification 7, stating the range of the financial sanctions in each group.

(a) History of prior hard-core cartel cases in this product or service and geographic area, or by the cartels’ members in other products, services, or geographic areas.

(b) Competition law fines or other financial sanctions such as surcharges or disgorgement that were sought or ordered by your competition authority against enterprises in the cartel; give total and amounts assessed against each participating firm. If the amount sought or ordered was not imposed because of review by a court or other body, please also state the amount that was eventually imposed.

(c) Competition law sanctions that were imposed against individuals, including fines, imprisonment, or other orders or constraints.

(d) Rationale for the level of competition law sanction imposed in the case, such as the proportion that financial sanctions represented of relevant turnover or of other base measure, such as estimated gain from the violation or loss to the victims.

(e) Damages or restitution that the cartels paid to victims, in total and/or by each participant. Do not include damages awarded through judgement or settlement of private lawsuits.

(f) Non-payment -- estimated amount of financial sanctions or damage awards against (a) firms and (b) individual that were not paid.

(g) Other competition law orders that were imposed, such as injunctions against further violation or orders to correct conditions.
(h) Other competition law remedies that were imposed, such as warnings.

(i) Remedies imposed against the same conduct for violating other laws (e.g., procurement fraud).

II. General and Information on Sanctions

14. Please indicate the applicable standard of proof and the available sanctions for competition enforcement in your country, responding separately for each different type of enforcement (administrative, civil, or criminal) is used in your country.

15. Please supply or describe any general template, schedule, or set of principles used in your country for calculating fines and other sanctions for (a) economic law violations or crimes in general, (b) competition law violations, and (c) procurement fraud, tax fraud, securities fraud, and other comparable offences. Provide also the maximum penalties with respect to the above.

16. Please describe how (a) interest is calculated and (b) inflation is accounted for in calculating and collecting financial sanctions and the amount of any other payment a cartel member may be required to make (e.g., fines, damages, restitution, disgorgement, or excess profit surcharges).