



# Concurrences

ANTITRUST PUBLICATIONS & EVENTS

# Information Exchange and Related Risks

## A Jurisdictional Guide

---

Zoltán Marosi, Marcio Soares (eds.)

International Bar Association

Cartels Working Group of the Antitrust Section

---

Foreword by Anthony M. Collins

**Concurrences**

Antitrust Publications & Events



the global voice of  
the legal profession

# Information Exchange and Related Risks

*A Jurisdictional Guide*

Foreword by  
Anthony M. Collins

*Editors*  
Zoltán Marosi  
Marcio Soares

# Contributors

**Melanie Aitken**

*Bennett Jones*

**Vladislav Alifirov**

*ALRUD Law Firm*

**Nils Alvång**

*Roschier*

**Rafique Bachour**

*Freshfields*

**Nicolas Birkhäuser**

*Niederer Kraft Frey*

**Timur Bondaryev**

*Arzinger*

**Sabrina Borocci**

*Hogan Lovells*

**Nicolás Cardona Baquero**

*Brigard Urrutia*

**Elsa Chen**

*Allen & Gledhill*

**Emrys Davis**

*Bennett Jones*

**Stijn de Jong**

*Stibbe*

**Marcio Soares**

*Mattos Filho*

**Dmitry Domnin**

*ALRUD Law Firm*

**Oleksander Dyakulych**

*Arzinger*

**Roos Elemans**

*Stibbe*

**Alejandro García  
de Brigard**

*Brigard Urrutia*

**Damien Geradin**

*Tilburg University*

**Jacob Giesecke**

*Roschier*

**Gitit Levin Grinberg**

*S. Horowitz & Co.*

**Marilyn Guirguis**

*Latham & Watkins*

**Juan Cristóbal Gumucio**

*Cariola Díez Pérez-Cotapos*

**Gönenç Gürkaynak**

*ELIG Gürkaynak  
Attorneys-at-Law*

**Niina Hanninen**

*Roschier*

**Fernanda Hermosilla**

*Cariola Díez Pérez-Cotapos*

**Marie-Luise Heuer**

*Blomstein*

**Pierre Honoré**

*Bredin Prat*

**Kristian Hugmark**

*Roschier*

**Abdullah Hussain**

*DSK Legal*

**Anna Huttenlauch**

*Blomstein*

**Tsuyoshi Ikeda**

*Ikeda & Someya*

**Heather Irvine**

*Bowmans*

**Youngjin Jung**

*Kim & Chang*

**Max Klasse**

*Blomstein*

**Cristóbal Lema**

*Cariola Díez Pérez-Cotapos*

**João Marcelo Lima**

*Mattos Filho*

**Lily Loeffler**

*Gibson, Dunn & Crutcher*

**Zoltán Marosi**

*DLA Piper*

**Ellen McCrea**

*Allens*

**Carlos Mena Labarthe**

*Creel, García-Cuéllar,  
Aiza y Enríquez*

**Nazeera Mia**

*Bowmans*

**Aurora Muselli**

*Hogan Lovells*

**Carolyn Oddie**

*Allens*

**Ami Paanajärvi**

*Roschier*

**Edgar Martín Padilla**

*Creel, García-Cuéllar,  
Aiza y Enríquez*

**Anastasiia Panchak**

*Arzinger*

**Alysha Pannu**

*Bennett Jones*

**Sarah Parker**

*Gibson, Dunn & Crutcher*

**Julián Peña**

*Allende & Brea*

**Elizabeth Prewitt**

*Latham & Watkins*

**Aaditya Ranbir Sahgal**

*L&L Partners Law Offices*

**Federico Rossi**

*Allende & Brea*

**Vassily Rudomino**

*ALRUD Law Firm*

**Daren Shiau**

*Allen & Gledhill*

**Anastasia Yarygina**

*ALRUD Law Firm*

**Marta Simón**

*Cuatrecasas*

**Nidhi Singh Prakash**

*DSK Legal*

**Alessandro Stanchieri**

*Blum & Grob*

**Christof Swaak**

*Stibbe*

**Mariana Tavares**

**de Araujo**

*Levy & Salomão Advogados*

**Deirdre Taylor**

*Gibson, Dunn & Crutcher*

**Cristina Vila**

*Cuatrecasas*

**Peter Wang**

*Jones Day*

**Andrew Ward**

*Cuatrecasas*

**Yichen Wu**

*Jones Day*

**Qiang Xue**

*Jones Day*

**Aya Yasui**

*Ikeda & Someya*

**İ. Baran Can Yıldırım**

*ELIG Gürkaynak*

*Attorneys-at-Law*

**Yizhe Zhang**

*Jones Day*

# FOREWORD

ANTHONY M. COLLINS

Advocate General  
Court of Justice of the European Union

*“Information Exchange and Related Risks”* describes itself as a jurisdictional guide. Each one of its 28 chapters is dedicated to a description of the law and practice in almost all of the world’s major economic powerhouses on issues surrounding the exchange of commercially sensitive information among competitors. Each chapter contains a concise explanation of the law in the relevant jurisdiction, before proceeding to describe the enforcement policies and practice, applicable sanctions and lawful exemptions under each of the legal systems examined. Of perhaps the greatest benefit to its intended readership is that each chapter concludes with a description of the best practices with regard to information sharing under the relevant legal system. That acknowledged expert practitioners of the law in the jurisdictions under review have written each of these chapters confers an air of practical authority upon the resulting work. The authors and the publishers, Concurrences, in partnership with the International Bar Association, thus deserve our commendation and thanks for their initiative in providing some guidance in seeking to navigate a complicated area of the law that gives rise to even greater difficulties with regard to its application in practice.

A basic requirement of the system of competition the Treaty on the Functioning of the European Union (TFEU) has designed is the independence of the undertakings that participate in the internal market. Undertakings are required to determine the policy that they intend to adopt on the internal market independently of each other. They are thus enjoined from influencing their competitors’ conduct, including by way of disclosing their intended future conduct.

In its purest form, the exchange of commercially sensitive information between competing undertakings is prohibited by Article 101 of the TFEU as being incompatible with the common market by virtue of it constituting a “concerted practice” for the purposes of that provision. It is well established that a concerted practice is a form of coordination between undertakings whereby, without having reached agreement, they knowingly substitute practical cooperation between them for the risks of competition. As the chapters of this guide point out repeatedly, no cartel can function in any meaningful sense without information exchange between the participants: hence the exchange of commercially sensitive information in that context is condemned as one element of cartelised behaviour, the illegality of which is never in doubt, rather than being treated as a concerted practice.

A concerted practice must have as its object or effect the prevention, restriction or distortion of competition within the common market. The practical consequences of a finding that a practice has the prevention, restriction etc. of competition as its object, as distinct from it being deemed to have such an effect, are well known. These consequences require no

further elaboration save to observe that a finding that a practice has an anticompetitive object is of considerable evidential relief to a party or an authority that seeks to have it condemned as illegal.

Following the Opinion of my esteemed colleague Julianne Kokott, in Case C-8/08 *T-Mobile Netherlands*, the Court of Justice adopted a broad definition of the concept of a concerted practice having an anticompetitive object to include practices that have the potential to produce that outcome. It is thus enough that the concerted practice is capable, having regard to the specific legal and economic context, to give rise to the prevention, restriction or distortion of competition within the common market. Whilst such a wide definition might provide an obvious boon to the activities of competition law enforcers, its impact in practice is blunted by the requirement that the capacity of a concerted practice to distort competition (and therefore that it has that object) is to be assessed having regard to the specific economic context in which it is carried on.

In that context, it may be observed that the European Commission Guidelines on the applicability of Article 101.1 of the TFEU to horizontal co-operation agreements provide considerable detail about the information exchanges that may constitute anticompetitive practices, whilst the description of the operation of Article 101.3 TFEU is replete with fully worked out examples. Whether an information exchange may, or may not, amount to a concerted practice having an anticompetitive object thus often appears to depend upon a contextual analysis not far removed from a consideration, in substance, of its actual effect upon competition. The said Guidelines expressly concede the difficulty of providing specific answers for every possible scenario, given the potentially large number of mechanisms for horizontal co-operation and the markets in which they operate. They thus conclude that each case is to be assessed by reference to its own facts, which may require a flexible application of the Guidelines.

The practice in the United States of America appears, in substance, to reflect that approach. The learned authors of the chapter on that jurisdiction conclude that most exchanges of information do not violate the applicable antitrust laws. Whilst exchanges of competitively sensitive information may violate those antitrust laws if they facilitate “collusion on matters such as price, output, or other competitively sensitive variables”, most exchanges of information are assessed by reference to a rule of reason. Even in those jurisdictions where it is observed that there is no general prohibition on the exchange, distribution or availability of certain information to competitors, the communication of information that is considered capable of distorting competition is considered as unlawful.

Notwithstanding differences in emphasis and approach, given the relatively close convergence between the law of the jurisdictions examined in the book, in particular when dealing with the exchange of what could be described as highly sensitive commercial information, there are remarkable similarities in the best practices each chapter recommends as regards the practice of information sharing. Given that in this area of the law, as in many others, the devil is in the detail, might not the preparation and publication of a manual on information exchange, grounded upon the pooled expertise of the contributors to this work, be a very useful addition to the literature on this topic?

# INTRODUCTION<sup>1</sup>

ZOLTÁN MAROSI  
DLA Piper

MARCIO SOARES  
Mattos Filho

Over the past few years, information exchange among competitors has become a hot topic in many jurisdictions and has gained greater attention on the part of various antitrust agencies throughout the globe. Companies and individuals may face potential exposure for anticompetitive information exchange, not only in their day-to-day business due to the applicable conduct and behavioral rules, but also in the context of M&A deals due to applicable gun jumping regulations. Still, even though the concerns are global, the way the issues are approached may vary from country to country, as well as the challenges that the regulators face when enforcing competition rules. Although we can see some level of convergence, companies that do business in different countries must take into account the different approaches and rules that may apply in each specific jurisdiction in order to avoid exposing themselves and their executives and employees to potential sanctions.

This book gathers different approaches to assessing the exchange of information (which may be commercially sensitive or rather general / industrial in nature) through the perspective of different jurisdictions. These jurisdictions all have their own guidelines and regulations that dictate their procedures and assessment of information exchange cases, so this publication aims to be a practical guide to understand and compare how that matter is reviewed in different countries with different legal systems.

In the opening chapter, called “Key Challenges When Approaching Information Exchange”, the author discusses why the prohibition of exchange of commercially sensitive information among competitors is central to antitrust regulations across the world, whichever the scope of the prohibition may be. How to precisely describe the definitions of what can be considered an anticompetitive exchange of information and how this struggle relates to other variables – such as who sent and who received the information, how often did the actors engage in information exchange and how old was the information that they passed on – are also discussed.

The book is divided into three main sections covering the Americas, the EMEA (Europe, the Middle East and Africa), and the Asia-Pacific region, in which each chapter was written by experienced antitrust practitioners based in each specific jurisdiction covered

---

<sup>1</sup> The coordinating editors thank João Marcelo Lima and Beatriz Vergette Correia Lahmeyer Duval, both members of the Antitrust Practice Group of Mattos Filho, for their valuable contribution in the preparation of this book.

by those different chapters. This assures that the chapters are up to date<sup>2</sup> with the selected countries' most recent best practices and enclose key insights about leading cases, laws and regulations, and enforcement trends.

The section on the Americas contains chapters about information exchange in Argentina, Brazil, Canada, Chile, Colombia, Mexico, and the United States; the EMEA section presents the paths taken both at the European Union level (as enforced by the European Commission) and different countries in that region – namely, Finland, France, Germany, Israel, Italy, The Netherlands, Russia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom (as regulated by their respective national competition authorities) – when dealing with information exchange cases; finally, the Asia-Pacific section provides the views of Australia, China, India, Japan, Singapore and South Korea.

The chapters relating to a specific country comprise an introductory section in which an overview of the set of competition rules and principles that guide information sharing in that jurisdiction is provided (for example, whether the rules only comprise national rules or whether certain supranational rules are applicable in parallel, e.g., in the case of European Union Member States). Following that section, the chapters detail the types of information sharing that could be caught under those rules, and how conduct and behavioral rules differ from gun-jumping prohibitions. It is noteworthy that, in addition to the classical instance of information exchange, there are cases or soft law instruments that deal with unilateral disclosures of information: this is the case, for example, in the European Union, Germany, Spain and Sweden.

Additionally, each jurisdiction also presents the enforcement policies and practices of its own competition authorities in charge of implementing its laws and regulations. Along with that, the relevant tests and procedures that are usually carried out by the competent authorities to investigate information exchange conducts are introduced. In virtually all European jurisdictions, for example, there is a general prohibition of anticompetitive agreements (with a regime for exemption), while relevant tests for the review of the legality of information exchange arrangements are developed by the courts (with the notable exception of the European Union, which has its own detailed notice on horizontal agreements, including information exchange). In other countries, such as in the United States and Canada, the mere exchange of information between competitors, on its own, is not necessarily prohibited, although it may be evidence of an underlying illegal agreement between competitors that violates the applicable antitrust laws.

Furthermore, the chapters provide an overview of applicable sanctions for parties that are found guilty of an illegal exchange of information and whether they are liable to sanctions at both a criminal and administrative level. All European countries mention fines as possible sanctions for illegal information exchange, and the possibility to order the termination of the infringement is also present in virtually all relevant jurisdictions. Ukraine also reporting the possibility of double damages in competition cases (with other countries also generally contemplating private actions), Sweden and the UK allowing for trading prohibition of natural persons, France, Spain and the UK imposing fines on

---

<sup>2</sup> As of September 2021.



directors and legal representatives, and Spain including a ban on public contracting. Countries in other regions, such as Brazil, tend to be more aligned with the European approach, where the mere exchange of information itself may be sufficient to amount to an antitrust infringement and give rise to fines, while criminal exposure across all jurisdictions tends to arise only where the relevant exchange is considered evidence of an actual cartel infringement.

Finally, the last section provides final remarks and practical examples, such as key precedents discussed in each jurisdiction, and important dos and don'ts.

Although each authority follows, on its face, a different set of rules and tends to decide according to specific dispositions of its legal system, at least three common trends could be observed.

The first one is that most of the competition authorities approach information exchange cases using a type of rule of reason analytical framework. Therefore, the exchange of information can only be considered unlawful if it has at least the potential of resulting in negative effects on competition and/or on the consumers of the market in which they operate. Some regimes have chosen to conduct their analysis differently based on the type of competitive variable that is shared among competitors. Israel and Italy, for example, have precedents in which the exchange of information was considered unlawful, but in those cases the information shared concerned future prices and marketing strategies, which could possibly lead to the conclusion that there was coordination among competitors.

A second important trend is the effect of legal harmonization, especially in countries belonging to the same supranational organizations, such as the European Union. Certainly, Member States of the European Union apply the very same set of European antitrust rules (namely, Article 101 TFEU, the learnings of the judgments by the Court of Justice of the European Union and, indirectly, the soft law rules issued by the European Commission) when a case concerns trade between Member States. In addition, although there appear to be certain peculiar approaches to information exchanges in the national antitrust laws of the various Member States of the European Union, generally, there appears to be a very large degree of harmonization on the level of national antitrust laws as well as in terms of the way the cases are decided at a national level. As a result, companies operating throughout the European Union can generally expect that the legal structure and the method used to assess information exchange arrangements are strikingly similar in these countries.

A third noteworthy trend identified is that a substantial number of the jurisdictions surveyed – around 20 – have laws and regulations that provide safe harbors and exemptions of when the exchange of information is unlawful and prohibited under antitrust rules. Others, on the other hand, built those exemptions through established practices of their competition authority. It is also noticeable that there is a tendency of the competition authorities of making an effort to define those safe harbors in a clearer and more accurate manner, as well as other aspects of information exchange. So much so that many jurisdictions have published specific guidelines to guide the analysis of information exchange cases, such as France's "*Les échanges d'informations*" report.<sup>3</sup>

---

<sup>3</sup> French Competition Authority, 2009 Annual Report, '*Les échanges d'informations*'.

Given the many similarities and significant differences between the jurisdictions included here, this book proposes a comparative analysis and a practical approach, so that the global antitrust community can easily access information in a single place. In fact, the most valuable sections of this book are those providing suggestions and practical tips for practitioners and in-house counsel in relation to specific situations involving information exchanges. These include, inter alia, answers to the following questions in each jurisdiction:

- What is the most practical way to approach contract negotiations between competitors from the perspective of information exchange and competition law?
- How to ensure the legality of information exchange in case of mergers & acquisitions between competitors from early transaction planning through the due diligence process up until closing?
- What are the best ways to reduce competition law risks connected with the exchange of information in case of meetings between key members of the industry, e.g., in the framework of a trade association?

Contributors for each jurisdiction have addressed these questions based not only on the legal framework applicable to the issue at hand, but also based on their experience as practitioners. As readers will certainly notice, there is good level of convergence in the best practices identified and effectively used for the mitigation of antitrust risks associated with information sharing across the jurisdictions covered by this book, which suggests that companies doing business globally should be able to adopt global-ranging competition compliance strategies capable of dealing with their risks across different jurisdictions.

# TABLE OF CONTENTS

<b>Overview</b> .....	V
<b>Contributors</b> .....	VII
<b>Foreword</b> .....	IX
<b>Introduction</b> .....	XI
<i>Zoltán Marosi (DLA Piper)</i>	
<i>Marcio Soares (Mattos Filho)</i>	
<b>Table of Cases</b> .....	XV
<b>Biographies</b> .....	XXIX

<b>KEY CHALLENGES WHEN APPROACHING INFORMATION EXCHANGE</b> .....	1
<i>Damien Geradin (Tilburg University)</i>	
I. Introduction.....	3
II. The Prohibition Has a Wide Scope .....	3
III. The Contours of This Prohibition Are Hard to Define.....	4
IV. Efficiencies and Consumer Harm Generated by Information Exchange...	5
V. Future Outlook.....	8

## THE AMERICAS

<b>ARGENTINA</b> .....	11
<i>Julian Peña and Federico Rossi (Allende &amp; Brea)</i>	
I. Applicable Laws, Regulations and Principles .....	13
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	14
III. Enforcement Policies and Practice .....	15
1. Authority in Charge of Enforcement.....	15
2. Relevant Procedures .....	16
3. Relevant Tests.....	17
IV. Applicable Sanctions and Exposure .....	20
1. Administrative Sanctions.....	20
2. Criminal Sanctions .....	21
3. Private Damages.....	22
V. Safe Harbours and Exemptions.....	22
VI. Information Sharing Best Practices .....	23
<b>BRAZIL</b> .....	25
<i>Mariana Tavares de Araujo (Levy &amp; Salomão Advogados)</i>	
<i>João Marcelo Lima (Mattos Filho)</i>	
I. Applicable Laws, Regulations and Principles .....	27

## Table of Contents

II. Types of Information Sharing That May Be Caught under the Competition Rules .....	28
III. Enforcement Policies and Practice .....	30
1. Authority in Charge of Enforcement .....	30
2. Relevant Procedures .....	30
3. Relevant Tests.....	31
IV. Applicable Sanctions and Exposure .....	33
1. Administrative Sanctions.....	33
2. Criminal Sanctions .....	35
V. Safe Harbours and Exemptions.....	36
VI. Information Sharing Best Practices .....	37
<b>CANADA</b> .....	41
<i>Melanie Aitken, Emrys Davis and Alysha Pannu (Bennett Jones)</i>	
I. Applicable Laws, Regulations and Principles .....	43
II. Types of Information Sharing That May Be Caught Under the Competition Rules .....	44
1. Information Sharing as Part of a Criminal Conspiracy .....	44
2. Information Sharing as Part of a Non-Criminal Agreement.....	45
3. Information Sharing in the Context of Transactions.....	45
III. Enforcement Policies and Practice .....	46
1. Authority in Charge of Enforcement .....	46
A. Criminal Offences.....	46
B. Civil Offences .....	46
2. Relevant Procedure and Test Applied by Competition Authority .....	47
IV. Applicable Sanctions and Exposure .....	48
1. Criminal Sanctions .....	48
A. Section 45 of the Act .....	48
B. Section 47 of the Act.....	49
2. Private Damages .....	49
3. Other Exposure .....	50
A. Section 90.1 of the Act .....	50
V. Safe Harbours and Exemptions.....	50
1. Safe Harbour Applying to the Civil Review Provision .....	50
2. Exemptions .....	50
VI. Information Sharing Best Practices .....	52
<b>CHILE</b> .....	55
<i>Juan Cristóbal Gumucio, Fernanda Hermosilla and Cristóbal Lema (Cariola Díez Pérez-Cotapos)</i>	
I. Applicable Laws, Regulations and Principles.....	57
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	59
1. Collusion.....	59

Table of Contents

A. The TDLC’s Position .....	60
B. The Supreme Court’s Position .....	61
2. Gun-Jumping and Access to Information.....	63
3. Other Competition Law Areas of Relevance for Information Exchanges.....	63
A. Exchange of Information in the Context of Cooperation and Similar Agreements .....	63
B. Flow of Information as a Risk Arising from Mergers and Minority Shareholdings in Competitors, and its Remedies.....	65
C. Publication of Commercial Information as a Measure Imposed by Competition Authorities and Some Potential Efficiencies....	67
III. Enforcement Policies and Practice .....	69
1. Authority in Charge of Enforcement.....	69
A. Fiscalía Nacional Económica .....	69
B. Tribunal de Defensa de la Libre Competencia.....	70
2. Relevant Tests.....	71
A. Cartels .....	71
B. Exchanges of Information Among Competitors as Stand-alone Infringement.....	71
IV. Applicable Sanctions and Exposure .....	72
1. Administrative Sanctions.....	72
2. Criminal Sanctions .....	73
V. Safe Harbours and Exemptions.....	73
VI. Information Sharing Best Practices .....	74
1. Cooperation Agreements Involving Competitors and Trade Associations .....	76
2. M&A Negotiations and Transactions, and Due Diligence Process.....	76
<b>COLOMBIA</b> .....	79
<i>Nicolás Cardona Baquero and Alejandro García de Brigard (Brigard Urrutia)</i>	
I. Applicable Laws, Regulations and Principles .....	81
1. Antitrust Law in Colombia .....	81
2. SIC Guidelines.....	81
3. Principles and General Rules.....	82
II. Types of Information Sharing that May Be Caught Under Competition Rules.....	82
1. Types of Exchange of Information – Direct or Indirect.....	84
2. Types of Exchange of Information – Hub-and-Spoke Schemes.....	85
3. Types of Exchange of Information – Trade Associations .....	85
III. Enforcement Policies and Practice .....	85
1. Authority in Charge of Enforcement .....	85
2. Relevant Procedures .....	85
3. Relevant Tests.....	86
A. Market Structure .....	86

Table of Contents

B. Nature of the Affected Products.....	87
C. Characteristics and Nature of the Exchange of Information .....	87
IV. Applicable Sanctions and Exposure .....	88
1. Administrative Sanctions.....	88
A. Fines Imposed on Companies .....	88
B. Fines Imposed on Individuals.....	89
C. Statute of Limitation in Relation to the SIC Power to Impose Fines .....	89
V. Safe Harbours and Exemptions.....	89
VI. Information Sharing Best Practices .....	90
<b>MEXICO</b> .....	93
<i>Edgar Martín Padilla and Carlos Mena Labarthe</i> <i>(Creel, García-Cuéllar, Aiza y Enríquez)</i>	
I. Applicable Laws, Regulations and Principles.....	95
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	97
III. Enforcement Policies and Practice .....	99
1. Relevant Procedures .....	99
2. Relevant Tests.....	101
IV. Applicable Sanctions and Exposure .....	103
1. Absolute Monopolistic Practice .....	104
A. For Legal Entities .....	104
B. For Individuals .....	104
2. Abuse of Dominance or Relative Monopolistic Practice.....	105
A. For Legal Entities .....	105
B. For Individuals .....	105
3. Barriers to Competition or Free Access to the Markets .....	105
V. Safe Harbours and Exemptions.....	105
VI. Information Sharing Best Practices .....	106
<b>UNITED STATES</b> .....	109
<i>Marilyn Guirguis and Elizabeth Prewitt (Latham &amp; Watkins)</i>	
I. Applicable Laws, Regulations, and Principles.....	111
1. Basic US Statutory Framework and Penalties.....	111
A. State Antitrust Laws .....	111
B. Federal Government and Regulatory Guidelines.....	112
2. Principles.....	112
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	113
1. What Constitutes Competitively Sensitive Information.....	114
2. Price Signaling.....	115
III. Enforcement Policies and Practice .....	116
1. Authority in Charge of Enforcement.....	116

Table of Contents

2. Relevant Procedures .....	116
3. Relevant Tests.....	117
4. Factors the Agencies Consider.....	117
A. Nature of the Exchange.....	117
B. Potential Anticompetitive Harms .....	118
C. Potential Procompetitive Benefits.....	118
5. Guidance for Special Types of Information Exchanges .....	118
A. Human Resources, Salaries, and Benefits.....	118
B. Health Care .....	119
C. Cybersecurity.....	119
D. Prior Agency Review of Information Sharing and Collaboration Activities.....	119
IV. Safe Harbours and Exemptions.....	120
1. Applicable Relief or Remedies .....	121
V. Information Sharing Best Practices .....	122

**EUROPE, THE MIDDLE EAST & AFRICA**

<b>EUROPEAN UNION</b> .....	127
<i>Rafique Bachour (Freshfields)</i>	
I. Applicable Laws, Regulations and Principles .....	129
1. EU Competition Law .....	129
2. Horizontal Guidelines.....	129
3. Principles.....	129
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	130
III. Enforcement Policies and Practice .....	131
1. Authority in Charge of Enforcement.....	131
2. Relevant Procedures .....	132
3. Relevant Tests.....	132
A. Characteristics of the Information Exchange.....	133
B. Market Characteristics .....	134
IV. Applicable Sanctions and Exposure .....	134
1. Administrative Sanctions.....	134
A. Fines .....	134
B. Power to Require Companies to Cease the Infringing Conduct....	135
2. Private Damages .....	135
V. Safe Harbours and Exemptions.....	136
1. Exemption Under Article 101(3) TFEU.....	136
2. Block Exemptions.....	137
3. De Minimis Exemption .....	137
VI. Information Sharing Best Practices .....	138
1. General Interactions Between Competitors .....	138
2. Cooperation Between Competitors .....	138

## Table of Contents

3. M&A Transactions .....	138
4. Trade Associations .....	139
<b>FINLAND</b> .....	141
<i>Niina Hänninen and Ami Paanajärvi (Roschier)</i>	
I. Applicable Laws, Regulations and Principles .....	143
1. EU and Finnish Competition Law .....	143
2. Principles Guiding the Competitive Assessment of Information Exchange in Finland .....	143
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	145
1. Information Sharing as a Part of a Cartel .....	145
2. Information Sharing as a Part of a Horizontal Cooperation Agreement .....	145
3. Stand-alone Information Exchange .....	145
4. Unilateral Information Exchange .....	145
5. Information Sharing in the Context of Mergers and Acquisitions .....	146
III. Enforcement Policies and Practice .....	146
1. Authority in Charge of Enforcement .....	146
2. Relevant Procedures .....	147
3. Relevant Tests .....	148
A. Restriction by Object .....	149
B. Restriction by Effect .....	149
C. Market Structure and Characteristics of the Information Exchange .....	150
IV. Applicable Sanctions and Exposure .....	151
1. Administrative Sanctions .....	151
A. Case Law .....	152
2. Information Sharing as a Part of a Cartel .....	152
3. Stand-alone Information Exchange .....	153
4. Power to Require Companies to Cease Infringing Conduct .....	154
5. Private damages .....	155
V. Safe Harbours and Exemptions .....	155
1. Individual and Group Exemptions .....	155
2. De Minimis Exemption .....	156
VI. Information Sharing Best Practices .....	156
1. Negotiations and Information Sharing with Competitors .....	156
2. M&A Transactions .....	157
<b>FRANCE</b> .....	159
<i>Pierre Honoré (Bredin Prat)</i>	
I. Applicable Laws, Regulations and Principles .....	161
1. Anticompetitive Information Sharing .....	161
2. Gun Jumping .....	161



Table of Contents

II. Types of Information Sharing That May Be Caught under the Competition Rules .....	162
1. Anticompetitive Information Sharing .....	162
2. Gun Jumping.....	162
III. Enforcement Policies and Practice .....	163
1. Authority in Charge of Enforcement.....	163
2. Relevant Procedure.....	163
3. Relevant Tests.....	164
A. Anticompetitive Information Sharing.....	164
B. By Object Infringements.....	164
C. By Effect Infringements .....	164
D. Analytical Framework .....	164
E. EU Cases .....	166
F. French Cases.....	168
G. Pre-merger Information Sharing.....	169
IV. Applicable Sanctions and Exposure .....	170
1. Anti-competitive Information Sharing.....	170
2. Gun Jumping.....	171
V. Safe Harbours and Exemptions.....	171
1. Information Exchanges Falling Outside the Scope of Articles 101(1) TFEU and L. 420-1 FCC.....	171
2. Exemptions .....	172
A. Block Exemptions.....	172
B. Individual Exemption.....	172
3. Legitimate Exchanges of Information Between the Parties to a Reportable Concentration.....	173
VI. Information Sharing Best Practices .....	173
1. Limiting the Risk of Anti-competitive Information Sharing Between Competitors.....	173
2. Limiting the Risk of Gun Jumping in M&A Transactions.....	174
<b>GERMANY</b> .....	175
<i>Marie-Luise Heuer, Anna Huttenlauch and Max Klasse (Blomstein)</i>	
I. Applicable Laws, Regulations and Principles .....	177
1. EU and German Competition Law .....	177
2. Principles.....	177
3. Horizontal Guidelines.....	178
II. Types of Information-Sharing That May Be Caught under the Competition Rules .....	179
III. Enforcement Policies and Practice .....	181
1. Authority in Charge of Enforcement.....	181
2. Relevant Procedure.....	181
3. Relevant Test .....	181
A. Characteristics of the Information Exchange.....	182

Table of Contents

B. Market Characteristics .....	183
IV. Applicable Sanctions and Exposure .....	184
1. Sanctions Available to the FCO .....	184
A. Fines .....	184
B. Power to Require Companies to Cease the Infringing Conduct.....	184
C. Private Damages .....	185
V. Safe Harbours and Exemptions.....	185
1. Block Exemptions, Section 2(2) ARC.....	185
2. Exemption under Section 2(1) ARC.....	185
3. De Minimis Exemption .....	186
VI. Information Sharing Best Practices .....	187
1. General Interactions Between Competitors .....	187
2. Cooperation Between Competitors .....	187
3. M&A Transactions .....	188
4. Market Information Systems.....	188
5. Trade Associations .....	189
<b>ISRAEL</b> .....	191
<i>Gitit Levin Grinberg (S. Horowitz &amp; Co.)</i>	
I. Applicable Laws, Regulations and Principles .....	193
1. The Economic Competition Law .....	193
A. Public Statement Issued by the Director General of the ICA .....	194
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	194
III. Enforcement Policies and Practice .....	196
IV. Applicable Sanctions and Exposure .....	198
1. Administrative and Criminal Sanctions .....	198
V. Safe Harbours and Exemptions.....	199
VI. Information Sharing Best Practices .....	201
<b>ITALY</b> .....	205
<i>Sabrina Borocci and Aurora Muselli (Hogan Lovells)</i>	
I. Applicable Laws, Regulations and Principles .....	207
1. EU and Italian Applicable Laws and Regulations .....	207
2. Principles.....	208
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	209
III. Enforcement Policies and Practice .....	211
1. Authority in Charge of Enforcement .....	211
2. Relevant Procedures .....	212
3. Relevant Tests.....	213
A. The Economic Conditions of the Relevant Markets .....	214
B. Characteristics of the Information Exchange.....	214

Table of Contents

IV. Applicable Sanctions and Exposure .....	216
1. Administrative Sanctions.....	216
A. Recent Decision-Making Practice .....	217
2. Other Risks .....	218
V. Safe Harbours and Exemptions.....	218
1. Exemption under Article 101(3) TFEU and the National Equivalent .....	218
2. General Block Exemption and De Minimis Exemption .....	219
VI. Information Sharing Best Practices .....	220
1. Negotiations Between Competitors.....	220
2. Trade Associations .....	220
3. M&A Transactions .....	221
<b>THE NETHERLANDS</b> .....	223
<i>Stijn de Jong, Roos Elemans and Christof Swaak (Stibbe)</i>	
I. Applicable Laws, Regulations and Principles .....	225
1. EU and Dutch Competition Law .....	225
2. ACM and Horizontal Guidelines .....	225
3. Principles.....	226
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	226
III. Enforcement Policies and Practice .....	228
1. Authority in Charge of Enforcement.....	228
2. Relevant Procedures .....	229
3. Relevant Tests.....	229
A. Characteristics of the Information Exchange.....	230
B. Market Structure .....	231
IV. Applicable Sanctions and Exposure .....	232
1. Administrative Sanctions.....	232
A. Power to Require Companies to Cease Infringing Conduct .....	232
2. Civil Damages .....	233
V. Safe Harbours and Exemptions.....	233
1. Exemption under Article 6(3) Mw .....	233
2. General Block Exemptions.....	234
3. De Minimis Exemption .....	235
VI. Information Sharing Best Practices .....	236
1. Negotiations and Cooperation between Competitors .....	236
2. M&A Transactions .....	236
3. Trade Associations .....	237
<b>RUSSIA</b> .....	239
<i>Vladislav Alifirov, Dmitry Domnin, Vassily Rudomino and Anastasia Yarygina     (ALRUD Law Firm)</i>	
I. Applicable Laws, Regulations and Principles .....	241

Table of Contents

II. Types of Information Sharing That May Be Caught under the Competition Rules .....	241
1. Information Exchange within Cartel Agreements .....	241
2. Information Exchange within Horizontal Cooperation Agreements ....	242
3. Information Exchange in the Context of M&A Transactions .....	242
4. Information Exchange as a Part of Vertical or Other Agreements....	243
5. Information Exchange within Coordination of Economic Activity (Including with the Use of Price-monitoring Software)....	243
6. Information Exchange within Concerted Actions (through “Signalling”) .....	244
7. Unilateral Information Exchange .....	245
III. Enforcement Policies and Practice .....	245
1. Authority in Charge of Enforcement .....	245
2. Relevant Procedures .....	246
3. Relevant Tests.....	247
A. Contents of the Information .....	247
B. Level of Detail .....	247
C. Age .....	247
D. Availability.....	248
IV. Applicable Sanctions and Exposure .....	248
1. Administrative Sanctions.....	248
A. Anti-monopoly Remedies .....	249
2. Criminal Sanctions .....	249
3. Private Damages .....	249
A. Other Sanctions and Negative Consequences.....	249
V. Safe Harbours and Exemptions.....	250
1. Intra-group Exemption .....	250
2. Exemptions Connected with Efficiency Gains .....	250
3. “Safe Harbour” and De Minimis Exemption .....	251
4. Voluntarily Prior Clearance of the Agreement with FAS Russia .....	251
5. IP Immunities .....	252
VI. Information Sharing Best Practices .....	252
1. Negotiations and Cooperation between Competitors .....	253
2. M&A Transactions .....	253
3. Trade Associations .....	253
<b>SOUTH AFRICA .....</b>	<b>255</b>
<i>Heather Irvine and Nazeera Mia (Bowmans)</i>	
I. Applicable Laws, Regulations and Principles .....	257
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	258
III. Enforcement Policies and Practice .....	259
1. Authority in Charge of Enforcement .....	259
2. Relevant Procedures .....	260

Table of Contents

3. Relevant Tests.....	261
A. Platforms for the Exchange of Information.....	262
B. Types of Information Shared.....	265
C. Market Characteristics .....	266
IV. Applicable Sanctions and Exposure .....	266
1. Fines.....	266
2. Criminal Sanctions .....	267
3. Private Damages.....	267
A. Class Action.....	267
V. Safe Harbours and Exemptions.....	268
VI. Information Sharing Best Practices .....	268
1. Generic Best Practices when Interacting with Competitors .....	268
2. Negotiations and Cooperation between Competitors in Relation to M&A Transactions.....	269
3. Trade Associations .....	269
<b>SPAIN</b> .....	271
<i>Marta Simón, Cristina Vila and Andrew Ward (Cuatrecasas)</i>	
I. Applicable Laws, Regulations and Principles.....	273
1. Applicable Law.....	273
2. Guidelines .....	273
3. Case Law .....	274
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	274
1. Exchanges of Price Lists.....	275
2. Exchanges of Non-price Information.....	275
3. Exchanges of Employee Data .....	276
4. Exchanges of Purchase Price Information.....	277
5. Hub-and-Spoke Cases.....	277
6. Signalling.....	278
III. Enforcement Policies and Practice .....	279
1. Authority in Charge of Enforcement.....	279
2. Relevant Procedures .....	280
IV. Applicable Sanctions and Exposure .....	282
1. Administrative Sanctions.....	282
A. Administrative Fines on Directors and Legal Representatives.....	282
2. Bans on Public Contracting .....	283
3. Private Damages.....	283
V. Safe Harbours and Exemptions.....	284
1. Article 1(3) LDC and Article 101(3) TFEU .....	284
2. Article 4 LDC: Conduct Resulting from the Application of a Law.....	284
3. Article 5 LDC/De Minimis: Conduct of Minor Importance.....	285
VI. Information Sharing Best Practices .....	285

## Table of Contents

<b>SWEDEN</b> .....	287
<i>Nils Alvång, Jacob Giesecke and Kristian Hugmark (Roschier)</i>	
I. Applicable Laws, Regulations and Principles.....	289
1. Swedish and EU Competition Law.....	289
2. Principles Guiding the Competitive Assessment of Information Exchange in Sweden.....	289
II. Types of Information Sharing That May Be Caught under the Competition Rules.....	290
1. Information Sharing as a Part of a Cartel.....	290
2. Information Sharing as a Part of a Horizontal Cooperation Agreement...	290
3. Information Sharing in the Context of M&A.....	290
4. Stand-alone Information Exchange.....	291
5. Signalling and Hub-and-Spoke Arrangements.....	291
III. Enforcement Policies and Practice.....	291
1. Authority in Charge of Enforcement.....	291
2. Relevant Procedures.....	292
3. Relevant Tests.....	293
A. Characteristics of the Information Exchange.....	294
B. Market Structure.....	296
IV. Applicable Sanctions and Exposure.....	297
1. Administrative Sanctions.....	298
A. Power to Cease Prohibited Conduct.....	298
B. Trading Prohibition.....	298
2. Private Damages.....	299
V. Safe Harbours and Exemptions.....	299
1. General Block Exemptions.....	299
2. De Minimis Exemption.....	299
VI. Information Sharing Best Practices.....	300
1. Negotiations and Information Sharing with Competitors.....	300
2. M&A Transactions.....	300
<b>SWITZERLAND</b> .....	301
<i>Nicolas Birkhäuser (Niederer Kraft Frey)</i>	
<i>Alessandro Stanchieri (Blum &amp; Grob)</i>	
I. Applicable Laws, Regulations and Principles.....	303
1. Unlawful Behaviour According to the Cartel Act.....	303
A. Scope of Application of the Cartel Act.....	303
B. Prohibited Types of Competition Agreements.....	304
II. Types of Information Exchange That May Be Caught under the Competition Rules.....	305
1. Concerted Practice.....	306
2. Collusive Outcome.....	306
A. Increase of Transparency.....	306
B. Market Characteristics.....	307
C. Type of Information.....	308

Table of Contents

III. Enforcement Policies and Practice .....	309
1. Authority in Charge of Enforcement.....	309
2. Relevant Procedures .....	309
IV. Applicable Sanctions and Exposure .....	311
1. Criteria and Procedure for Sanction Calculation.....	311
2. Immunity/Leniency.....	312
V. Safe Harbours and Exemptions.....	313
1. No General Safe Harbours in Switzerland .....	313
2. Exemptions Related to the Properties of the Information Exchange....	314
3. Exemptions Related to Implementation and Exertion.....	315
4. Information Exchange in Connection to M&A Transactions .....	315
VI. Information Sharing Best Practices .....	316
<b>TURKEY</b> .....	319
<i>Gönenc Gürkaynak and İ. Baran Can Yıldırım</i>	
<i>(ELIG Gürkaynak Attorneys-at-Law)</i>	
I. Applicable Laws, Regulations and Principles .....	321
1. Main Legislation in Turkey .....	321
2. Secondary Legislation .....	321
3. Case Law .....	322
II. Types of Information Exchange That May Be Caught under the Competition Rules .....	322
III. Enforcement Policies and Practice .....	324
1. The Authority in Charge of Enforcement .....	324
2. Assessment of Information Exchange .....	325
3. Procedural Steps: Pre-investigation, Investigation, Authority’s Inspection Powers, Commitment and Settlement Procedures, and Appeal Process .....	326
IV. Applicable Sanctions .....	328
V. Safe Harbours and Exemptions.....	329
VI. Information Sharing Best Practices .....	331
<b>UKRAINE</b> .....	339
<i>Timur Bondaryev, Oleksander Dyakulych and Anastasiia Panchak (Arzinger)</i>	
I. Applicable Laws, Regulations and Principles .....	341
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	341
III. Enforcement Policies and Practice .....	342
1. Authority in Charge of Enforcement .....	342
2. Relevant Procedures .....	342
3. Relevant Tests.....	343
IV. Applicable Sanctions and Exposure .....	345
V. Safe Harbours and Exemptions.....	345
VI. Information Sharing Best Practices .....	346

<b>UNITED KINGDOM</b> .....	347
<i>Lily Loeffler, Sarah Parker and Deirdre Taylor (Gibson, Dunn &amp; Crutcher)</i>	
I. Applicable Laws, Regulations and Principles.....	349
1. UK Competition Laws .....	349
2. Key Principles.....	349
3. Brexit.....	350
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	351
1. Different Types of Information Exchanges .....	351
A. Information Exchange as Part of a Cartel .....	351
B. Information Exchange as Part of a Horizontal Cooperation Agreement .....	351
C. Information Exchange in the Context of M&A transactions .....	352
D. “Stand-alone” Information Exchange.....	352
E. Direct vs Indirect.....	352
F. Information Exchange via a Common Customer or Supplier .....	353
G. Trade Associations.....	354
H. Commercial Information Tools .....	354
2. Unilateral Information Exchange .....	354
3. Facilitation / Liability for Non-competitors .....	355
III. Enforcement Policies and Practice .....	356
1. Authority in Charge of Enforcement.....	356
2. Relevant Procedures .....	356
A. General .....	356
B. Commitments .....	358
C. Settlement.....	359
D. Rights of Appeal.....	359
3. Relevant Tests.....	360
A. Anticompetitive Object.....	360
B. Anticompetitive Effects .....	361
IV. Applicable Sanctions and Exposure .....	362
1. Sanctions Applicable by the CMA .....	362
2. Fines .....	362
3. Immunity from Fines (Small Agreements).....	363
4. Leniency.....	363
5. Cartel Offence.....	364
6. Director Disqualification .....	364
7. Civil Proceedings.....	365
V. Safe Harbours and Exemptions.....	365
1. Individual Exemption .....	365
2. Block Exemptions.....	366
A. European Commission Block Exemptions.....	366
B. Domestic Block Exemptions .....	366



Table of Contents

C. De Minimis Exemption.....	367
D. Exclusions .....	367
3. Formal Temporary Exclusions in the Context of COVID-19 .....	368
VI. Information Sharing Best Practices .....	368
1. Competition Compliance Regimes.....	368
2. M&A Processes .....	369
3. Attending Trade Associations and Meetings with Competitors.....	370
4. Market Research Organisations, Commercial Information Tools and Industry Surveys.....	371
<b>ASIA &amp; THE PACIFIC</b>	
<b>AUSTRALIA</b> .....	375
<i>Ellen McCrea and Carolyn Oddie (Allens)</i>	
I. Applicable Laws, Regulations and Principles .....	377
II. Types of Information Sharing That May Be Caught under the Competition Laws.....	378
1. Information Exchanged in the Context of a Merger or Acquisition .....	378
2. Joint Ventures and Other Horizontal Cooperation Agreements.....	378
3. Price Signalling and Unilateral Information Exchange.....	379
4. Information Exchange Amounting to a Cartel or an Attempt to Engage in a Cartel.....	379
III. Enforcement Policies and Practice .....	380
1. Australian Competition and Consumer Commission .....	380
2. Policies and Guidelines .....	381
IV. Applicable Sanctions and Exposure .....	382
1. Pecuniary Penalties.....	382
2. Criminal Sanctions .....	382
V. Safe Harbours and Exemptions.....	383
1. Legislative Exemptions .....	383
2. Authorisation from the Regulator .....	384
VI. Information Sharing Best Practices .....	385
1. General Guidelines .....	385
2. Joint Ventures and Other Competitor Collaborations .....	386
3. Industry Associations .....	386
4. Information Sharing Risks Associated with Mergers and Acquisitions and Gun Jumping.....	386
5. Types of Conduct to Avoid .....	386
<b>CHINA</b> .....	389
<i>Peter Wang, Yichen Wu, Qiang Xue and Yizhe Zhang (Jones Day)</i>	
I. Types of Information Sharing That May Be Caught under the Competition Rules .....	391
1. Information Exchanges in the Context of Monopoly Agreements.....	392

## Table of Contents

2. Price Information .....	392
3. Production and Sales Information.....	393
4. Customers and Suppliers Information .....	393
5. Bidding Information and Future Business Behaviours Information.....	394
6. Information Exchange in the Context of Decisions of Industry Associations .....	394
7. Information Exchanges in the Context of Concerted Practice .....	396
8. Final Remarks.....	397
<b>INDIA</b> .....	399
<i>Abdullah Hussain and Nidhi Singh Prakash (DSK Legal)</i>	
<i>Aaditya Ranbir Sahgal (L&amp;L Partners Law Offices)</i>	
I. Applicable Laws, Regulations and Principles .....	401
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	402
1. Information Regarding Production and Sales Data.....	403
2. Information Regarding Pricing and Costs .....	404
3. Information Exchanges vis-à-vis Combinations / M&A Transactions .....	405
III. Enforcement Policies and Practice .....	406
1. Authorities in Charge of Enforcement and Relevant Procedures.....	406
2. Relevant Tests.....	408
IV. Applicable Sanctions and Exposure .....	408
1. Sanctions on Enterprises .....	408
2. Sanctions on Individuals .....	410
V. Safe Harbours and Exemptions.....	410
1. Joint Venture Agreements .....	410
2. Export Agreements .....	411
3. Sectoral Exemptions .....	411
VI. Information Sharing Best Practices .....	412
1. Competition Compliance Programme .....	412
A. Dos .....	413
B. Don'ts .....	413
2. Trade Associations .....	413
3. M&A Transactions .....	414
<b>JAPAN</b> .....	415
<i>Tsuyoshi Ikeda and Aya Yasui (Ikeda &amp; Someya)</i>	
I. Applicable Laws, Regulations and Principles .....	417
1. Antimonopoly Act of Japan.....	417
2. Regulations .....	418
A. The Case against X Trade Association of Distributors of Petroleum Products (JFTC Recommendation Decision No. 9 of 1979).....	418

Table of Contents

B. The Case against Y and Other Vinyl Tile Manufacturers (JFTC Recommendation Decision No. 8 of 1979).....	419
C. The Case against Z and Other Manufacturers and Distributors of Paint Emulsions (JFTC Recommendation Decision No. 5 of 1988).....	419
D. Principles.....	419
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	420
1. Suspension for Hard Disc Drive Case (Ordered on 9 February 2018).....	420
2. Automatic Postal Sorting Equipment Case (Ordered on 27 June 2003) .....	421
3. Liquid Crystal Panel for Nintendo DS Case (Ordered on 18 December 2008).....	421
4. Oji Cornstarch Case (Ordered on 11 July 2013) .....	422
5. Information Exchange of Cost Analysis (The JFTC’s Consultation Case No. 4 of 2012) .....	422
6. Information Exchange of Logistic and Distribution Operation (The JFTC’s Consultation Case No. 8 of 2017) .....	422
7. Information Delivery of Quotation for Government Bond Transaction (The JFTC’s Consultation Case in 2002).....	422
III. Enforcement Policies and Practice .....	423
1. Overview.....	423
2. Relevant Procedures .....	423
A. Initiation of Investigation .....	423
B. Investigation Procedure.....	424
C. Order by the JFTC, Rescission Claim against the Order.....	424
IV. Applicable Sanctions and Exposure .....	424
V. Safe Harbours and Exemptions.....	425
1. Overview.....	425
A. Examples of the JFTC’s Business Association Guidelines.....	425
VI. Information Sharing Best Practices .....	426
1. Practice in Daily Activities .....	426
2. Negotiation with Competitors, Attendance at Business Association Meetings.....	427
3. Alliance, M&A Transactions .....	427
<b>SINGAPORE</b> .....	429
<i>Elsa Chen and Daren Shiau (Allen &amp; Gledhill)</i>	
I. Applicable Laws, Regulations and Principles.....	431
1. Overview of the Competition Law Regime in Singapore .....	431
2. Relevant Singapore Competition Law Guidelines .....	431
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	432
1. Overview on Prohibited Types of Information Sharing .....	432
2. Exchange of Price and Non-price Information .....	435

III. Enforcement Policies and Practice .....	436
1. Investigations into Potential Infringements of the Section 34 Prohibition.....	436
2. Dawn Raids.....	437
3. Fast-track Procedure .....	438
4. Issuance of Directions to Address Infringements of the Section 34 Prohibition .....	438
IV. Applicable Sanctions and Exposure .....	439
1. Penalties .....	439
2. Leniency Programme.....	440
3. Total Immunity from Financial Penalties or up to 100% Reduction .....	440
4. Immunity or Leniency Application Procedures.....	441
5. Leniency Plus System .....	441
V. Safe Harbours and Exemptions.....	442
1. Exemptions to the Section 34 Prohibition.....	442
2. Guidance on Business Collaborations .....	442
VI. Information Sharing Best Practices .....	443
<b>SOUTH KOREA</b> .....	445
<i>Youngjin Jung (Kim &amp; Chang)</i>	
I. Applicable Laws, Regulations and Principles .....	447
1. MRFTL, Enforcement Decree to the MRFTL, and Guidelines on Unfair Collaborative Conduct.....	447
2. Principles.....	448
II. Types of Information Sharing That May Be Caught under the Competition Rules .....	450
III. Enforcement Policies and Practice .....	451
1. Authority in Charge of Enforcement .....	451
2. Relevant Procedures .....	452
3. Relevant Tests.....	452
IV. Applicable Sanctions and Exposure .....	454
V. Safe Harbours and Exemptions.....	455
VI. Information Sharing Best Practices .....	455
1. Negotiations and Cooperation between Competitors, Including M&A Transactions.....	455
2. Trade Associations .....	457

# Information Exchange and Related Risks

## A Jurisdictional Guide

Zoltán Marosi, Marcio Soares (eds.)

Foreword by Anthony M. Collins

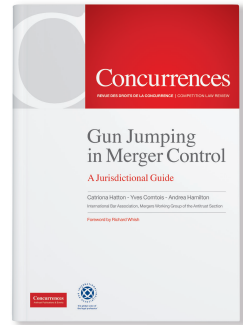
The prohibition on exchanging commercially sensitive information among competitors is one of the most fundamental antitrust rules. Companies and individuals may face potential exposure for anticompetitive information exchange, not only in their day-to-day business due to the applicable conduct and behavioral rules, but also in the context of M&A deals due to applicable gun jumping regulations. The Cartels Working Group of Antitrust Section of the International Bar Association has formulated a comparative guide across 28 jurisdictions, encompassing all global regions, to provide a compendium of best practices and key insights about leading cases, laws and regulations, as well as enforcement trends. Contributed by distinguished practitioners, each chapter provides an overview of the national competition rules and principles that guide information sharing in that jurisdiction, followed by the types of information sharing that may be caught, the enforcement policies and practices of the competition authority and applicable sanctions for parties that are found guilty of an illegal exchange of information. The book also provides a high level overview by the editors outlining trends observed across jurisdictions, to provide insight to the international business community, their advisors as well as to competition authorities.

**The jurisdictions covered include Argentina, Australia, Brazil, Canada, Chile, China, Colombia, European Union, Finland, France, Germany, India, Israel, Italy, Japan, Mexico, Russia, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, The Netherlands, Turkey, Ukraine, United Kingdom, United States.**

*Zoltán Marosi is Co-Head of competition at DLA Piper Budapest. Zoltán acts as the newsletter officer of the Antitrust Section of the International Bar Association (IBA) and is a member of its Unilateral Conduct Working Group.*

*Marcio Soares is a Partner within the antitrust practice at Mattos Filho in Brazil. He acts as co-chair of the Cartels Working Group of the Antitrust Section of the International Bar Association (IBA), and is a member of the Board of the Brazilian Institute of Studies on Competition, Consumer Affairs and International Trade (IBRAC).*

ALSO IN THIS SERIES:



ISBN 979-10-94201-27-5



€235 - £200 - \$230

