

# **THE ANALYSE OF THE REGULATIONS AT THE EUROPEAN LEVEL REGARDING CARTELS. CASE SUDY: CARTEL BETWEEN THE COMPANIES CHIQUITA AND PACIFIC**

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*The present paper tries to make an analyse of the policy in the field of competition, at the level of the European Union, more exactly the policy applied on cartels. It is important to know the regulations regarding cartels, especially the way in which procedures are done in the case of a cartel. Cartels have a negative impact on competition and consumers, and that's why it is extremely important that they are discovered on time and after that, by using correction measures to try to recuperate the created damage.*

*The used research method is the analyze of the legislation in force regarding cartels and the study of the existing literature in this field, and in order to give an example of the procedures in the case of a cartel, we analyzed the cartel between two companies Chiquita and Pacific. It is extremely important for these regulations to be known, and in order to discourage such practices, the European Committee has thought of a series of advantages for the companies that give information and evidence regarding the existence of a cartel. Among these advantages we could mention immunity to fine, that permits the company to be absolved of all its fines.*

*The paper presents schematically the legislation that forbids anti-competitive practices, at the level of the European Union, and after that the applied procedure when a law violation is discovered. The modality in which the procedures are applied, in the case of suspecting a cartel, have been presented step by step, and after that, the case study does not exist only to give an example of procedures, but also to present the applied methods, in the case of success in proving the existence of a cartel.*

*The importance of competition policy at a European level cannot be denied because of the fact that only by implementing of a proper policy in this field, an economy can develop further.*

*Keywords: cartels, competition policy, European legislation, fine, immunity from fines*

*JEL: F51, K21, L13, L66*

## **1. Regulations regarding cartels**

At the level of the European Union the policy regarding competition between cartels is regulated by Article 101 of the *European Union's Functioning Treaty*, that has replaced Article 81 from the European Community Treaty. The European Law System forbids any agreement between companies that can affect trade between the European Union's member countries. Article 101 from the *European Union's Functioning Treaty* refers to the prohibition of some aspects, such as: direct or indirect settle of purchase or sale prices, markets' sharing, output control or trade control, and unequal conditions for commercial partners that provide similar services (European Committee).

The policy applied to cartels is based on economic principles, exactly like the legislation that regulates the policy regarding competition.

Because there is a difficulty in proving the existence of a cartel, by the fact that this is a secret agreement between two or more companies, at the level of the European Union there is a possibility that a company to benefit from fine immunity when it gives information about the cartel it is included in.

The fine immunity is given to companies based on some strictly regulated conditions. This immunity must be perceived as a reward given to companies that provide useful information to the Committee during the investigation. A company can get immunity, if it voluntarily offers the Committee useful information regarding the existence of an agreement between companies, and this information can be the starting point of the investigation. Immunity cannot be granted if the request for clemency comes after the beginning moment of the investigation or if the Committee has information regarding the alleged agreement.

If the conditions for fine immunity granting are not met anymore, the companies can benefit of a reduction in the amount of the fines. In order to benefit of a reduction in the amount of the fines, the companies have to give the Committee information that bring an extra value during the investigation. In a cartel, if more companies wish to benefit of such a reduction, they have to obey the following rules: the first company that brings significant information will benefit of a fine reduction, reduction that can be up to 50%, the second company that brings significant information will benefit of a reduction between 20% and 30%, and the companies that bring information after, will benefit of a reduction of maximum 20% from the given fine.

## **2. How to conduct the proceedings in the case of a cartel**

To start an investigation in the case of a cartel can be done if there are some complaints made by: companies, physical or juridical persons, member states of the European Union or European Committee can dispose to start an investigation, based on information gathered during the years. Before the investigation begins, there is an initial evaluation, which has as a goal, the analyse if the information of the European Committee is enough, or there is a need of gathering more data. When the investigation is started, the companies and their field of activity is established. The decision to start the investigation is made public only after informing the company in writing as well as orally. The notification of the company is done in the language of the country where the company has its headquarters, but it can be done in any other language officially acknowledged in the European Union.

After the beginning of the investigation the European Committee has the right to ask for any kind of information that is considered to be necessary of the solving of the case. This information will not be asked only from the companies implied in the investigation, but also from other companies that can provide useful information in the case. The Court of Justice of the European Union recognizes the right of a company not to contribute at its own incrimination. Thus, when a company invokes this right, more exactly its refuse to give information that could incriminate it, the company has to notify this to the General Direction for Competition. The dead line for information request is clearly settled and it permits to answer in due time. The companies can ask for the information given to be strictly confidential. During the investigation, the General Direction for Competition can ask from the parties involved, but also to others, to take part at different meetings that have want to clarify some aspects. During these meetings, the persons involved in the investigation give declarations.

During the stage of investigation, there can be inspections done at the headquarters of the companies. During the investigations, the European Committee can exchange information with the national authorities of competition.

Also there are meetings organised in order to analyse the current situations, meetings that have the role of maintaining the transparency between the general Directions for Competition and the involved parties. During these meetings, the involved parties are given the chance to clearly present their point of view. They are presided by the leaders of the General Direction for Competition and take place immediately after the beginning of the investigation when the investigation has reached an advanced level.

After the investigation, the following decisions can be taken: forbidding one or more problems identified at the beginning of the investigation, on the reason that they are contrary to Article 101

from the *European Union's Functioning Treaty*, or the finishing of the investigation on the reason that the accusations are not founded. Before taking a final decision, in the case of not finishing the investigation, the involved parties have the right to be heard. After the hearings, the Committee will say its objections and the intention of giving or not giving a fine will be mentioned. This stage of the investigation can end with the decision of closing the case, if the communicated objections are considered to be unfounded, or a decision can be adopted as a consequence of breaking the competition norms.

Voluntarily, the companies can propose the Committee some commitments that can answer to problems identified in the field of competition. Before these commitments are obligatory, a decision is taken regarding some market test to see if the measures applied are efficient. The committee can consider that besides these commitments the introduction of some corrective measures and fines are proper. The fine for each company can reach up to 10% from the turnover of the company, depending on the seriousness of the facts. The decisions are adopted by the Committee, the implied parties are informed, and after a short period of time, the decisions are published. The abstract of the decision is published in the Official Journal of the European Union.

### **3. Case Study: the Cartel between Chiquita Company and Pacific Company**

The cartel between Chiquita Company and Pacific Company has been called *Exotic Fruits*, having the number 39.482. the companies that have been investigated were, on one hand: Chiquita Brands International, Inc. From the U.S.A., *Chiquita Banana Company BV* from Belgium, Holland and Luxemburg and *Chiquita Italia SpA* from Italy, and these companies being collectively called Chiqhita,; and on the other hand, the companies: *FSL Holdings NV* and *Leon Van Parys NV* from Belgium and *Pacific Fruit Company Italy SpA* from Italy, these companies being collectively called *Pacific* (European Committee). These two companies have been subject to one investigation, also for violeting Article 101 from the *European Union's Functioning Treaty*, and with the Committee's decision in 2008, the existence of a cartel between the two companies has been proven, establishing the price for bananas on the North European market.

In this case, the subject of the research has been the price establishing for ripe and unripe bananas on the South European market. In 2007, the Committee has got a series of documents that have been gathered by the Italian police, when making an inspection at the headquarters of the Pacific company, After that, some other inspections have been done at the headquarters of other significant importers of bananas from Spain and Italy. In December 2009, the Committee has communicated the objections to this case. After this communication, all the involved companies have presented, in writing, their point of view, regarding the objections made against them.

In June 2010 the hearings took place, where all the involved parties were present. We have to mention the fact that, Chiquita Company, in 2005, submitted an application for fine immunity. Of course, this application was approved on the condition that the company gave all the necessary information during the investigation. The application was submitted in order to be given a fine immunity in the case of the cartel regarding the price establishing of the bananas on the North European market. This application was also acknowledged in the present case, the only imposed condition being to cooperate exactly like in the first case. Thus, after the investigation, it was clear that during eight months, July 2004-April 2005, the two companies, Chiquita and Pacific coordinated their strategy regarding the price for selling ripe and unripe bananas on the Portugal, Italian, and Greek markets. During this period, the two companies exchanged information regarding the future price strategies, applied on the three markets.

The cartel could be proved on the basis of the documents found at the headquarters of Pacific Company, after the unannounced inspection and of the information brought by Chiquita

Company. These two companies are among the largest providers of bananas on the European market.

The decision adopted by the committee, on the 12 October 2011 could be summarized as follows: a secret agreement between the two companies could be proved, agreement regarding the price establishing for bananas, for a period of eight months and 12 days; the significant market was Greece, Portugal and Italian; and as corrective measures regarding the above mentioned violation, there were some fines given. The amount of the fine was established according to the sales done in Portugal, Italy, and Greece, during eight months. Thus, as a consequence of the final decision, the Pacific Company was given a fine of 8.919.000 Euro, and Chiquita Company has benefited of the clemency policy, thus being exempt from the payment of any fine.

#### 4. Conclusions

The importance of a policy in the field of competition, at a European level, cannot be neglected, because only by implementing of an adequate policy in this field, an economy can develop.

At a European level, the policy in the field of competition is focused on: cartels, abuse of dominant position, economical concentrations and state aid. Regarding cartels, the regulations and proceedings are clearly established. The particularity in the case of a cartel is that it is rather difficult to be identified, being by definition a secret agreement between two or more companies and that aims the coordination of the market prices, thus influencing both competition and consumers.

During the years, the European Committee has been confronted with different kinds of cartels that activated in different sectors. All these cartels have been punished by applying corrective measures. The extent of these measures was established according to the damage and according to the period of the cartel's existence.

In the table below (Table no.1) we can observe the amount of the fines applied to cartels in the European Union, between 2006-2012. Analysing this table, we notice the fact that in 2007, the fines had the highest value, a total of approximately 3.338 millions of Euro, and the smallest value was recorded in 2011, totalling 614 millions of Euro. We cannot take into consideration 2012 because only three months were taken into consideration.

**Table no.1 Fines applied to cartels between 2006-2012**

Year	Amount in €
2006	1.846.385.500
2007	3.338.427.700
2008	2.263.279.900
2009	1.540.651.400
2010	2.868.676.432
2011	614.053.000
2012*	255.258.000
<b>Total</b>	<b>12.726.731.932</b>

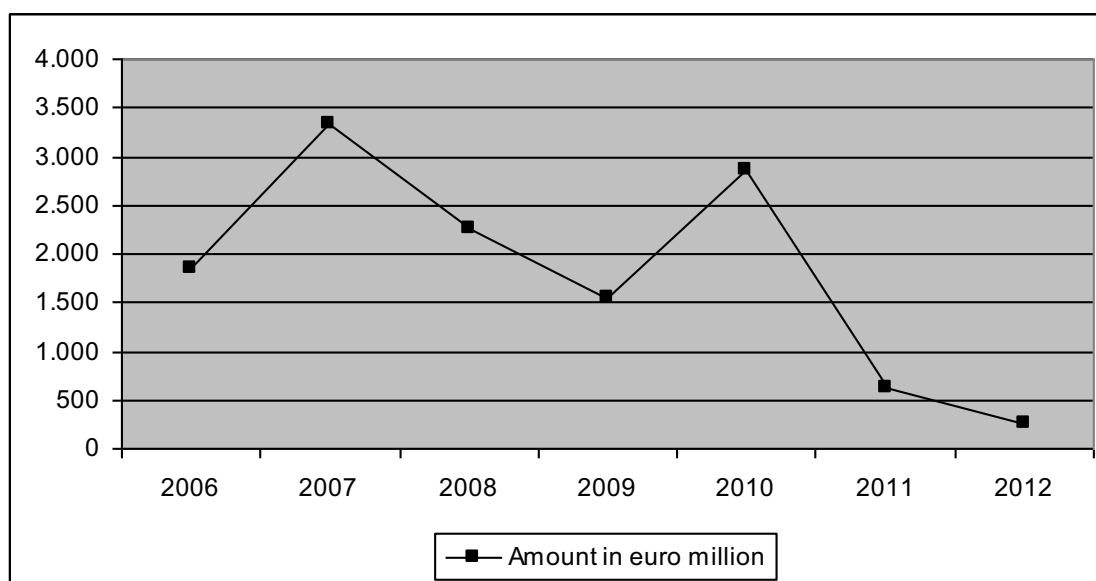
**Source:** adapted on information found at <http://ec.europa.eu/competition/cartels/statistics/statistics.pdf>

\* March 2012

According to the statistics, beginning with 2006 up to present, during these seven years, on the European level, there were fines given valuing approximately 12.727 millions of Euro, because of Article 101 violation, from the *European Union's Functioning Treaty* (once Article 81 in the *Treaty of the European Community*).

In order to emphasize more clearly the evolution of the fines applied to cartels in the European Union, in the period 2006-March 2012, we can analyse the chart below (Chart no.1). We can

notice the fact that during seven years, the maximum points were reached in 2007 and in 2010. The period between 2007-2009 registering a decrease of the fines applied to cartels.



**Chart no.1. The evolution of the fines' value, applied to cartels between 2006-2012**

**Source:** made by the author based on data from <http://ec.europa.eu/competition/cartels/statistics/statistics.pdf>

\* March 2012

In order to see also an evolution of the cartel cases, acknowledged by the European Committee, the table below can be analysed (Table no.2). During the analysed period, we notice that, in 2007 there were discovered and punished, most cases of cartel, that is 8, and in 2011, the fewest cases, that is 4. Until March, the current year, two cases of cartel were acknowledged.

**Table no.2 The number of cartel cases acknowledged by the European Committee, during 2006-2012**

Year	No. cases
2006	7
2007	8
2008	7
2009	6
2010	7
2011	4
2012*	2
<b>Total</b>	<b>41</b>

**Source:** adapted based on the data from <http://ec.europa.eu/competition/cartels/statistics/statistics.pdf>

\*March 2012

Thus, in order to diminish the cases of cartel registered at a European level, it is extremely important that the legislation in the field of competition should be strictly applied.

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