

## THE CARTEL IN THE EUROPEAN UNION AND ROMANIA – RETROSPECTIVE OF THE YEARS 2009-2013

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**Abstract:** *The cartel is considered the most harmful anti-competitive practice; therefore the competition authorities were concerned about the continuous improvement of the legislation governing this practice. In order to stimulate companies to withdraw from participating to a cartel in the European Union, the leniency policy has implemented. The present paper aims at achieving the hindsight of the years 2009-2013 regarding the evolution of cartel cases detected both at EU level and in Romania. The research methodology used is the study of literature, followed by the analysis of the legislation governing the European cartel and the analysis of all decisions issued between 2009-2013, both by the European Commission and by the Competition Council of Romania. The paper is structured in four parts. The first part presents the cartel from the theoretical and legislative point of view. The second and third parts of the paper include the analysis of cartel cases detected both at European and national level. The following aspects were taken into account when analysing the cartel cases: the date when the decision was issued by the competition authorities, the number of companies involved in the cartel, the opening date of the investigation, the method of opening the investigation, the field in which the cartel operated, the duration of the cartel as well as the amount of the fine. The final part of the paper highlights a number of conclusions. In the reviewed period 22 cartel cases were detected in the European Union and 23 cartel cases in Romania. The amount of the fines imposed at a European level is 251 times higher than the fines imposed by the Competition Council of Romania. In the European Union there were 11 long-term cartel cases, 10 medium-term cases and only one case lasted less than a year. In Romania there have been detected 4 long term cartel cases, 7 medium-term cases and 12 cases of short-term cases.*

**Keywords:** cartel; fine; duration; competition policy; European legislation

**JEL classification:** K21; L40

## **1. The Cartel - theoretical and legislative approach**

The cartel is an anti-competitive practice regulated at European level. Germany is to be found among the first European countries to adopt legislative measures against cartels. The literature defines the cartel as a tacit understanding between two or more enterprises which activate in the same field or similar fields of activity, in order to eliminate direct competition. Three main characteristics of cartels can be detected: market sharing and price fixing by cartel members in order to maximize profit; setting of production quotas among cartel members, so as the most effective companies to be discouraged to increase production; and preventing the entry on the market of new companies that could be attracted to the high prices imposed by the cartel (McGowan, 2010: 31).

In order to maintain fair competition in the market, and especially to protect consumers, in the EU there functions the competition policy that is constantly improving. The beginnings of the competition policy can be found in the Treaty establishing the European Coal and Steel Community and in the Treaty of Rome. [As far as the cartel is concerned](#), it is currently regulated by Article 101 of the Treaty on the Functioning of the European Union. The main objectives of Article 101 are single market integration and competition protection. The European Commission sees competition as a vital element in achieving the goal of integration of the single market, because it is only through the existence of a single market that the objective of economic welfare of consumers can be achieved (Bennett and Padilla, 2009: 57).

According to Article 101 of the Treaty on the Functioning of the European Union, any agreement between enterprises is prohibited covering the following issues: fixing, directly or indirectly, both the purchase price and those for sale; limiting or controlling production; sharing markets and sources of supply; discriminate between trading partners and acceptance of trading partners only if they offer certain additional services not covered by the contract (*Consolidated version of the Treaty on European Union and the Treaty on The Functioning of the European Union*, 2010: 90).

The devastating effect cartels have on competition, and especially on consumers in conjunction with the difficulty of detection and demonstration of such anti-competitive practices have caused the European Commission to establish the leniency policy in 2006. The circumstances that allow a company which was part of a cartel to benefit from immunity from fines are clearly highlighted by the Commission notice on immunity from fines and reduction of fines in cartel cases from 8.12.2006. The procedure applied throughout the investigation of a possible cartel case is strictly regulated by Regulation no. 773/2004 of the Commission for the conduct of proceedings by the Commission pursuant to Articles 81 and 82 EC.

The cartels functioning in Romanian fall under the jurisdiction of the Romanian Competition Council of Romania. In Romania cartels are regulated by Article 5 of the Competition Law no. 21/1996, republished in 2014. Romania being a EU member country has harmonized competition law with the European Union.

## **2. The cartels detected in the European Union in the period 2009 - 2013**

The analysis of cartels detected in the European Union took into account six aspects: the date when the decision was issued by the European Commission, the opening date of the investigation, the method of opening the investigation, the field in which the cartel operated, the duration of the cartel as well as the amount of the fine imposed. Regarding the duration of the cartel the following statement has to be made: we refer to a short term when the cartel was on the market less than a year; to a medium term when the cartel operated between 1 and 5 years; and to long term, when the cartel was on the market for more than five years.

During the analyzed period 2009-2013 there have been detected a number of 22 cartel cases at EU level.

Table 1 examines the cartel cases that were detected by the Commission in 2009. It can be seen that the average period of investigations in 2009 was of 4 year. The largest fine was imposed to the cartel operating in the field of gas supply, worth about 1,100 million euro, the total amount of the fines imposed in 2009 reaching EUR 1.346.972.000. Of the 5 cases of cartel it was only one cartel investigation that was opened by ex officio, the rest being based on immunity request filed by one of the companies involved in the cartel.

**Table 1:** Cartel cases detected in the European Union in 2009.

Date of decision issuance	Number of companies involved	Method / Date of opening of the investigation	Field	Cartel duration	Fine amount euro
28.01.2009	6	immunity request/ 2007	marine pipelines	long	101,960,000
08.07.2009	2	ex-officio / 2006	gas supply	long	1,106,000,000
22.07.2009	9	immunity request / 01.2007	chemicals / steel and gas industry	medium	61,120,000
07.10.2009	7	immunity request / 2003	transformers	medium	64,674,000
11.11.2009	11	immunity request / 02.2003	heat stabilizers	long	13,218,000

Source: carried out by the authors on the basis of the decisions of the European Commission, available on-line: <http://ec.europa.eu/competition/elojade/isef/index.cfm>

2010 was the year of the analyzed period with most cartel cases detected in the European Union, 6 in number. As it can be seen in Table 2, cartels lasted for medium and large term, the fines totaled 2,674,480,919 euro. The average duration of ongoing investigations in 2010 was of 6 years. The fields in which cartels operated were diverse, the largest cartel fine having been applied to the aeronautical domain nearly 800 million. All cases analyzed were based on the inquiry request for immunity lodged by one of the companies involved in the cartel.

**Table 2:** Cartel cases detected in the European Union in 2010

Date of decision issuance	Number of companies involved	Method / Date of opening of the investigation	Field	Cartel duration	Fine amount euro
19.05.2010	11	immunity request/ / 29.08.2002	computer components	medium	331,273,800
30.06.2010	17	immunity request / 18.06.2002	prestressing steel	long	269,870,750
20.07.2010	2	immunity request / 28.11. 2003	alimentary phosphates	long	59,850,000
23.07.2010	17	immunity request / 15.07.2004	bathroom accessories	long	565,116,369
09.11.2010	11	immunity request / 2006	aeronautics	long	799,445,000
08.12.2010	6	immunity request / 2006	electronics (LCD)	medium	648,925,000

Source: carried out by the authors on the basis of the decisions of the European Commission, available on-line: <http://ec.europa.eu/competition/elojade/isef/index.cfm>

In Table 3 it can be seen that in 2011 the European Union have detected four small and medium term cases of cartel. In the analyzed year the Commission imposed fines amounting to 603,025,900 euro, the average time of investigation was of 3 years. All investigations were based on the immunity request, and in all cases the companies that requested for immunity were exempted from paying fines.

**Table 3:** Cartel cases detected in the European Union in 2011

Date of decision issuance	Number of companies involved	Method / Date of opening of the investigation	Field	Cartel duration	Fine amount euro
13.04.2011	3	immunity request / 2008	washing powder	medium	312,200,000
12.10.2011	2	immunity request / 08.04.2005	fruit (bananas)	short	8,919,000
19.10.2011	4	immunity request / 03.2009	glass for cathode ray tubes	medium	128,736,000
07.12.2011	5	immunity request / 2009	electronic components (refrigeration compressors)	medium	161,198,000

Source: carried out by the authors on the basis of decisions of the European Commission, available on-line: <http://ec.europa.eu/competition/elojade/isef/index.cfm>

Comparing 2012 with 2011 we can see that the number of cartel cases detected at EU level was maintained. By analyzing Table 4 it is obvious that the largest cartel fine was paid to the electronic components cartel that lasted for 10 years. The fines for the year 2012 totaled EUR 1,739,052,000, and the average time of investigation went on for 5 years.

**Table 4:** Cartel cases detected in the European Union in 2012

Date of decision issuance	Number of companies involved	Method / Date of opening of the investigation	Field	Cartel duration	Fine amount euro
28.03.2012	9	immunity request / 12.06.2007	mechanical components	long	85,876,000
28.02.2012	14	immunity request / 2007	aeronautics	medium	169,000,000
27.06.2012	3	immunity request / December 2008	products for water management	medium	13,661,000
05.12.2012	7	immunity request / 2007	electronic components (monitor tubes)	long	1,470,515,000

Source: carried out by the authors on the basis of decisions of the European Commission, available on-line: <http://ec.europa.eu/competition/elojade/isef/index.cfm>

The last year examined is the year with the fewest cartel cases detected by the Commission, three in number. In the analyzed period the highest fine was paid in 2013, the fine amount reaching 1,712,468.000 euro, which represents over 90% of all fines levied in the year in question (1,882,975,000 euro).

**Table 5: Cartel cases detected in the European Union in 2013**

Date of decision issuance	Number of companies involved	Method / Date of opening of the investigation	Field	Cartel duration	Fine amount euro
10.06.2013	5	immunity request / February. 2010	vehicles (electric parts )	long	141,791,000
27.11.2013	4	immunity request / 2007	food (shrimp)	long	28,716,000
04.12.2013	8	immunity request / 2008	financial services	medium	1,712,468,000

Source: carried out by the authors on the basis of decisions of the European Commission, available on-line: <http://ec.europa.eu/competition/elojade/isef/index.cfm>

### 3. The cartels detected in Romania in the period 2009 - 2013

The analysis of cartels detected in Romania, in the period 2009-2013 used the same criteria as the ones used in identifying the cartels in Europe, and during the analyzed period the Competition Council detected 23 cartel cases.

Looking at 2009 we can see that 4 cartels were detected in Romania, all of a short duration, is less than one year. All investigations were opened ex officio by the Competition Council and the fines granted amounted to a total of 1.84633 million euro. The average duration of development of investigation in 2009 was about 2 years.

**Table 6: Cartel cases detected in Romania in 2009**

Date of decision issuance	Number of companies involved	Method / Date of opening of the investigation	Field	Cartel duration	Fine amount lei/euro*
23.06.2009	32	ex officio / 20.04.2008	auto enrollment services	short	1,524,555 lei
					359,794 €
07.12.2009	17	ex officio / 23.05.2007	agriculture (cereals)	short	8,185 lei
					1,932 €
07.12.2009	31	ex officio / 23.05.2007	bread manufacture	short	5,666,627 lei
					1,337,320 €
07.12.2009	17	ex officio / 23.05.2007	bread manufacture	short	624,086 lei
					147,284 €

Source: carried out by the authors on the basis of the decisions issued by the Competition Council decisions available online: <http://www.consiliulconcurentei.ro/ro/documente-oficiale/concurenta/decizii.html>

\*according to the annual rate of the National Bank of Romania in 2009 (1 € = 4.2373 lei)

**Table 7: Cartel cases detected in Romania in 2010**

Date of decision issuance	Number of companies involved	Method / Date of opening of the investigation	Field	Cartel duration	Fine amount lei/euro*
17.06.2010	5	ex officio / 18.02.2009	auto services	short	1,094,366 lei
					259,951 €
07.09.2010	14	ex officio / 03.12.2007	financial services	short	5,214,491 lei

					1,238,626 €
02.11.2010	42	ex officio / 25.02.2009	accounting services	long	4,056,264 lei
					963,506 €
18.11.2010	7	ex officio / 15.06.2009	tourism	short	4,202,303 lei
					998,195 €
29.12.2010	11	ex officio / 27.08.2008	transport services (taxi)	medium	348,710 lei
					82,831 €
29.12.2010	10	ex officio / 15.04.2008	transport services (taxi)	short	302,235 lei
					71,791 €

Source: carried out by the authors on the basis of the decisions issued by the Competition Council decisions available online: <http://www.consiliulconcurrentei.ro/ro/documente-oficiale/concurenta/decizii.html>

\*according to the average annual rate of the National Bank of Romania in 2010 (1 € = 4.2099 lei)

In 2010, six cartel cases were detected. The largest fine was received by the cartel operating in the financial services 1,238,626 euro. The amount of the fines imposed by the Competition Council in 2010 was of 3.6149 million euro. All investigations were opened ex officio and the average period of ongoing investigations was about 1 year and 6 months. In Table 7 it can be observed that the duration of cartels differ from case to case, i.e. small, medium and long.

Looking at Table 8 it can be noticed that in 2011 there were the most cases of cartel detected of the whole period under review, 8 in number. All cases had a medium and long term of anti-competitive infringement. In 2011 the fines imposed were worth 18,017,743 euro, the highest amount, seen in the whole analyzed period. It is to be noted that the highest fine was imposed on the cartel operating in the pharmaceutical domain, a cartel made of 11 members. The average duration of the investigation in 2011 was of 2 years.

**Table 8:** Cartel cases detected in Romania in 2011

Date of decision issuance	Number of companies involved	Method / Date of opening of the investigation	Field	Cartel duration	Fine amount lei/euro*
31.05.2011	3	ex officio / 29.09.2009	fruit	medium	16,698,530 lei
					3,940,284 €
30.09.2011	3	ex officio / 15.10.2009	clothing	long	1,273,501 lei
					300,503 €
28.10.2011	4	ex officio / 07.09.2009	pharmaceutics	long	4,374,834.111 lei
					445,502 €
28.10.2011	2	ex officio / 07.09.2009	pharmaceutics	medium	1,877,992.405 lei
					443,142 €
18.11.2011	5	ex officio / 10.03.2010	transport services (taxi)	medium	21,525 lei
					5,079 €
27.12.2011	11	ex officio / 07.09.2009	pharmaceutics	medium	51,522,130 lei
					12,157,467 €
27.12.2011	21	ex officio / 02.12.2009	cosmetics	long	2,112,588 lei
					498,499 €
27.12.2011	8	ex officio / 27.08.2008	transport services (taxi)	medium	963,134 lei
					227,267 €

Source: carried out by the authors on the basis of the decisions issued by the Competition Council decisions available online: <http://www.consiliulconcurentei.ro/ro/documente-oficiale/concurenta/decizii.html>

\*according to the average annual rate of the National Bank of Romania in 2011 (1€= 4.2379 lei)

In 2012 the Competition Council detected three cartel cases. All three investigations were opened ex officio and the average time of ongoing investigation was of 1 year. Also, the cartel duration was less than one year and the fines reached a total of 6,399,365 euro.

**Table 9:** Cartel cases detected in Romania in 2012

Date of decision issuance	Number of companies involved	Method / Date of opening of the investigation	Field	Cartel duration	Fine amount lei/euro*
14.11.2012	2	ex officio / 29.09.2011	natural gas transport	short	13,620,003 lei
					3,056,554 €
14.11.2012	2	ex officio / 01.11.2011	natural gas transport	short	11,844,862 lei
					2,667,159 €
13.12.2012	5	ex officio / 06.03.2011	road marking	short	3,010,705.61 lei
					675,652 €

Source: carried out by the authors on the basis of the decisions issued by the Competition Council decisions available online:

<http://www.consiliulconcurentei.ro/ro/documente-oficiale/concurenta/decizii.html>

\*according to the annual rate of the National Bank of Romania in 2012 (1€= 4.4560 lei)

The last analyzed year reflects the fact that in Romania there were detected 2 cases of cartel a short term one and a medium term one. In Table 10 it can be seen that in one case the investigation was initiated following a complaint lodged by a company operating in the same field. The total amount of fines imposed in 2013 was of 2.929 million euro.

**Table 10:** Cartel cases detected in Romania in 2013

Date of decision issuance	Number of companies involved	Method / Date of opening of the investigation	Field	Cartel duration	Fine amount lei/euro*
29.11.2013	4	ex officio / 27.10.2009	armament	short	12,487,017 lei
					2,825,756 €
23.12.2013	5	complaint / 23.10.2010	dental products	medium	456,237 lei
					103,244 €

Source: carried out by the authors on the basis of the decisions issued by the Competition Council decisions available online: <http://www.consiliulconcurentei.ro/ro/documente-oficiale/concurenta/decizii.html>

\*according to the annual rate of the National Bank of Romania in 2013 (1€= 4.4190 lei)

#### 4. Conclusions

Taking into account the analysis performed in the second and third part of the paper, we can draw a series of conclusions. There were 22 cartel cases detected in the EU respectively, in Romania, there were 23 cases, during the period 2009-2013. In the cartels cases analyzed by the European Commission, of the 22 investigations opened only one was ex officio, the rest being open on the request for immunity lodged by the companies involved in these cartels.

In Romania the situation is reversed, one investigation was initiated following a complaint, the rest being automatically opened by the Competition Council. It can be seen that the leniency policy is fully used in the EU, while in Romania in the period under review no company received immunity from fines.

Regarding the average time of ongoing investigations for the years under review, in the European Union we speak about an average of 4.6 years, while in Romania the average is 1.5 years.

In the European Union there have been detected 11 cases of long term cartels, 10 medium term cases and only one case that lasted less than a year. In Romania there have been detected 4 long term cartel cases, 7 cases of medium term cartels and 12 short term cases.

The fields of activity both in cartel cases detected in Romania and in the EU are diverse, the largest fines being applied in the pharmaceutical field in Romania, respectively in financial services in the European Union. With regard to the fines imposed in the period 2009 - 2013, in the European Union there been have imposed fines in the amount of 8,246,505,819 euro, while in Romania the fines totalled 32,807,338 euro that is 251 times less than in the European Union. This proportion is logical bearing in mind that fines are calculated based on the turnover of the companies involved in the cartel, and the duration of the cartel.

The importance of competition policy and the role of the competition authorities that watch over the maintenance of fair competition, and also on the consumer welfare have to be emphasized. In this case it is to be noticed that there is concern and activities of competition authorities, both at European and national level regarding the cartel, one of the most harmful anti-competitive practices.

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