

Investigation of Cartel Cases in the EU and Romania in the Period 2004-2013

FORA ANDREEA-FLORINA

University of Oradea, Faculty of Economic Sciences, Romania, Oradea

Email: andreea.fora@gmail.com

Tel: +40729110709

MEȘ TER LIANA-EUGENIA

University of Oradea, Faculty of Economic Sciences, Romania, Oradea

Email: lmester@uoradea.ro

Tel: +40259408799

BUGNAR NICOLETA GEORGETA

University of Oradea, Faculty of Economic Sciences, Romania, Oradea

Email: nbugnar@uoradea.ro

Tel: +40259408799

Abstract

A cartel is an anti-competitive practice very difficult to identify and subsequently to demonstrate. Currently the effort of the European Commission regarding the identification and punishment of the anti-competitive practices is considerable. When joining the EU Romania adopted the EU competition law. We note the efforts made by the competition authorities to harmonize this legislation with the European one. The Competition Council is responsible with the implementation of the competition policy in Romania. The subject of this paper refers to the assessment of the results regarding cartels achieved by the European Commission and the Competition Council in Romania.

Key Words: Cartel, Investigation, Fine, Duration, Competition Policy.

Introduction

The cartel is considered the most harmful anti-competitive practice. Given this, the competition authorities attach particular importance to identify and sanction such conduct. The literature high lights the characteristics of the cartel by defining it as follows: the existence of a secret agreement concluded between two or more companies, which usually belong to the same economic sector; to promote common economic interests by controlling competition between those companies (Harding & Joshua, 2010).

Research Methodology and Analysis

In the present study we aimed to analyse the way in which cartel cases detected in the European Union and Romania, in the period 2004-2013 were investigated. The objective of this paper is to highlight a number of issues stemming from a comparative analysis of the way in which the cartel cases were handled at EU level as compared to those identified by the Competition Council in Romania over those 10 years.

The research methodology relies on the one hand on the selection of the decisions issued by the European Commission for violation of Art. 101 TFEU in the period 2004 - 2013, and on the other hand the selection of the decisions issued in the same period, by the Competition Council in Romania for breach of art. 5 of the Competition Law no. 21/1996.

With regard to cartels analysis identified both in the EU and in Romania the following issues were considered: the issuing date of the decision of the European Commission or the Competition Council in Romania; the number of enterprises involved in the cartel; the opening date of the investigation; the manner of opening the investigation; the domain in which the cartel operated; the duration of the cartel; and the fines imposed.

As far as the duration of the cartel is concerned, it must be mentioned that we speak of a short period- when the cartel existed on the market less than a year; a medium period - when the cartel operated between 1 and 5 years; and a long period - when the cartel existed on the market for over 5 years.

Results and Discussion

Over the 10 years analysed 86 cartel cases were identified and penalized. It is imperative to make the following clarification: when we talk about cartel cases identified by the European Commission in the European Union we strictly refer to the cases investigated by the Commission. This does not mean that in the EU there were only those cartels. The European Commission's powers are only those cases which affect the internal market, the others being of the competence of the national competition authorities in each EU Member State.

The evolution of the cartel cases identified in the EU and in Romania, as well as the amount of sanctions were summarized in Table 1.

Table 1: Cartel cases identified in the EU and in Romania and the sanctions in the period 2004-2013

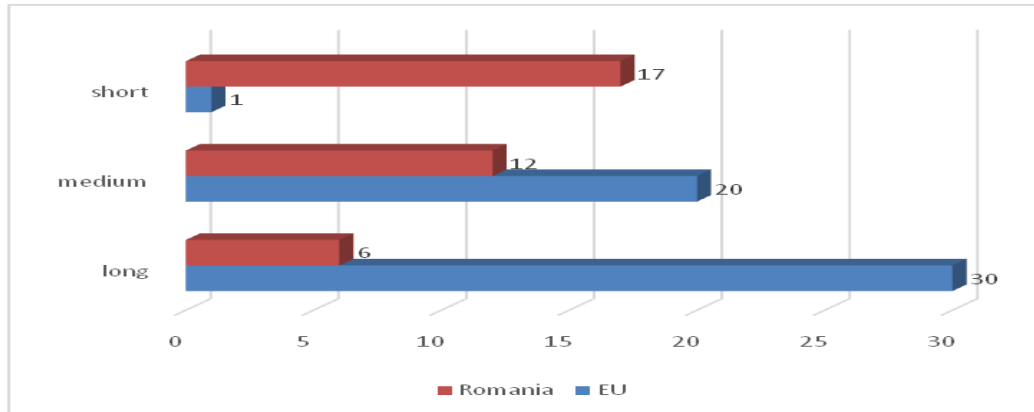
Year	EU		Romania	
	Number of cartel cases identified	Fines imposed (euro)	Number of cartel cases identified	Fines imposed (euro*)
2004	3	126,370,000	3	2,236,149
2005	5	683,029,000	4	33,753,807
2006	6	1,843,217,500	1	2,288,341
2007	8	3,313,427,700	0	0
2008	7	2,236,563,900	3	24,346,254
2009	5	1,346,972,000	4	1,846,330
2010	6	2,674,480,919	6	3,614,900
2011	4	603,025,900	8	18,017,743
2012	4	1,739,052,000	4	6,532,464
2013	3	1,882,975,000	2	2,929,000

* based on the annual average quotation rate of the to the National Bank of Romania

Source: carried out by the authors on the basis of the *Commission Decisions relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (2004-2013 and the Competition Council Decisions having as object the alleged infringement of the provisions of article 5 (1) of the Competition Law no. 21/1996, republished (2004-2013).*

Another element that was the subject of our analysis was the length of breach of art. 101 TFEU respectively art. 5 of the Competition Law no. 21/1996, republished in 2014.

Chart 1: Analysis of cartel cases identified at European and national level by the cartel duration in the period 2004-2013

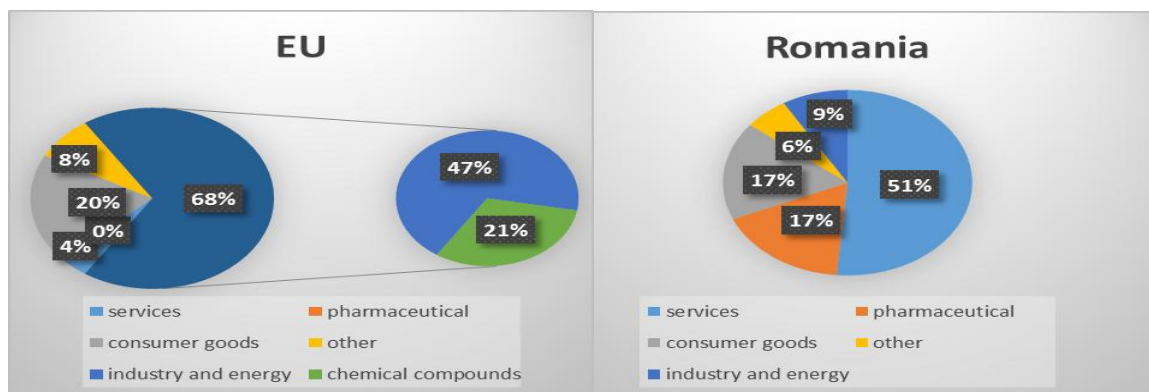


Source: carried out by the authors on the basis of the *Commission Decisions relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (2004-2013)* and the *Competition Council Decisions having as object the alleged infringement of the provisions of article 5 (1) of the Competition Law no. 21/1996, republished (2004-2013)*.

As shown in Chart 1, from 2004 to 2013 there were 36 long term cartels, 32 medium term cartels and 18 short term ones. They were distributed as follows: at the European level there were 30 cartels that lasted longer than five years, 20 medium term ones and only one case of short duration; and at the national level there were identified 6 long-term cartels, 12 medium term and 17 short term cartels that lasted less than a year.

Related to this situation, a possible explanation could be that the European businesses have a great financial power, and the companies involved in cartel cases come from different countries. Given these two aspects it is difficult to hunt in its infancy such a break of the competition norms. Therefore at EU level long and medium term cartels prevailed. Whereas in Romania short term cartels, of less than a year and medium term ones that lasted from 1 to 5 years prevailed.

Chart 2: The percentage of cartel cases identified at European and national level based on the domain in which the cartel acted in the period 2004-2013



Source: carried out by the authors on the basis of the *Commission Decisions relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (2004-2013)* and the *Competition Council Decisions having as object the alleged infringement of the provisions of article 5 (1) of the Competition Law no. 21/1996, republished (2004-2013)*.

In Chart 2 we showed the number of cartel cases identified at European and national level according to the domain in which the cartel acted in the period 2004-2013.

At European level we see the following situation: 68% of the cartels were established in industry and energy, 20% represented cartels in the consumer goods field, the services had 4% and there were 8% in other areas. We must specify that over those 10 years at European level there have not been identified cartels in the pharmaceutical area. A very important aspect is that 21% of all cartels came from the chemical compounds used in industry, this sub-category being part of the industry and energy domains.

In Romania the situation is totally different. Cartels in the field of services prevail with 51%, followed by those in the consumer goods and pharmaceutical domains equally with 17%. The cartels in industry and energy hold the second lowest rate of 9% and 6% represents the cartels in other areas.

Unlike the EU, in Romania, a significant percentage of cartels belongs to the pharmaceutical area, six such cases being identified and sanctioned in the analysed period.

The results of this case study can be summarized as follows:

- Based on the number of cartel cases there are 51 cases identified at European level and 35 at the national level;
- After the number of companies involved in a cartel at European level it ranged between 2 and 17 companies, and at the national level between 2 and 42 companies;
- According to the manner of opening the investigation at European level there was a prevailing 76% of cartel cases in which the investigation was initiated following a request for immunity whereas nationally there were 89% of cases in which the investigation was opened ex officio by the Competition Council;
- Based on the period of the conduct of investigations at European level we have an average of 4.8 years and we have a national one of 2.2 years;
- According to the duration of the cartel, at the European level 59% long-term cartels prevailed, while at the national level a predominant percentage of 49% were short-term cartels;
- Considering the domain at the European level there was a prevailing 68% of industry and energy cartels and nationally cartels in the services sector prevailed with 51%;
- Based on the sanctions imposed, at the European level the imposed fines amounted 16,449,113,919 euro, while nationally they only totalled 95,564,988 euro.

Conclusion

The study conducted has revealed that the EU leniency policy is fully used, while in Romania, in the analysed period one company only benefited from fines immunity. We should ask where the enterprise scepticism results from in Romania when it comes to appealing to the leniency policy. Seen from the outside by lay, the leniency policy could be considered unfair. A company that violates the law, being part of a cartel can escape unpunished. Things, however, should be viewed from the benefits obtained, both by consumers and by competing companies, when a cartel is destroyed. The objective of the competition authorities to maintain a fair competitive environment and to protect consumer interests is above penalties.

It seems that finally these issues begin to be realized in our country too. We can state this because since the beginning of 2015 we find on the website of the Competition Council in Romania a section entitled Informers Platform. This tool has been designed to identify cartel cases as quickly as possible, while ensuring the anonymity of those who report the competition. With regard to the average period for conducting investigations, it was found that for the analysed period, the average period for the European Union for ongoing investigations is double compared to that of Romania. The explanation is quite logical. There are big companies in the EU, and if we also take into account the size of the market it is clear that

competition authorities should make a greater effort in order to establish the breach of competition law. This entails a longer period of ongoing investigations. In the case of the cartels identified on the Romanian market, they were usually small, so the Competition Council succeeded to prove a violation of legal provisions in a much shorter period of time. We consider that a more professional approach is needed through sector investigations of the market so that the Competition Council knows the market well and can act as quickly as possible in important economic areas.

In the analysed period, long-term cartels of over five years functioned on the European market, primarily because of the size of this market, and secondly because of the large businesses that operated on the market. The areas of activity both in cartel cases identified in Romania and in the European Union are diverse, the largest fines being applied in the cement field in Romania, respectively in financial services in the European Union. We should note the following aspect: the highest fine imposed in a cartel case by the European Commission, in the analysed period is 18 times higher than the total fines imposed by the Competition Council in Romania for the cartels identified over the analysed 10 years. The ratio of fines imposed at European and national level is logical considering the fact that fines are calculated based on the turnover of the companies involved in the cartel and the duration of the cartel. Yet we cannot ignore that the low level of fines in Romania is the outcome of the investigation of cartels in related fields, of smaller importance for the Romanian economy.

Returning to the activity areas in which cartels operated, the following can be highlighted: on the EU market most cartels have operated in industry and energy, whereas on the Romanian market cartels mainly operated in the services sector. We must acknowledge the importance of industry and energy sector within the EU and taking this into account we conclude that the existence of such agreements produced large imbalances in terms of competition. Consequently, it is desirable that Romanian authorities should approach with more courage and professionalism major areas (energy and some industries) where the competition rules are not working properly, due to various reasons.

References

- Berinde, M. & Fora, A. F. (2014). *The Cartel in the European Union and Romania – Retrospective of the Years 2009-2013*, 1st Issue/July 2014 The Annals of the University of Oradea – Economic Sciences, TOM XXIII, pp. 70-78, Available: <http://anale.steconomieuradea.ro/en/2014/07/28/1st-issue-july-tom-23-2014/>.
- Harding, C. & Joshua, J. (2010). *Regulating Cartels in Europe* (Second ed.), Oxford, MA: Oxford University Press.
- Commission Decisions relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (2004-2013)*. Available: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.
- Competition Council Decisions having as object the alleged infringement of the provisions of article 5 (1) of the Competition Law no. 21/1996, republished (2004-2013)*. Available: <http://www.consiliulconcurentei.ro/ro/documente-oficiale/concurenta/decizii.html>.
- Competition Law no. 21 of 10 April 1996. Republished (2014)*. Available: http://www.consiliulconcurentei.ro/uploads/docs/items/id8047/lege_nr_21_republicata_apr_2014.pdf.
- Consolidated version of the Treaty on European Union and the Treaty on The Functioning of the European Union (2010)*. Available: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2010:083:FULL&from=EN>.
- National Bank of Romania, Available: <http://www.bnr.ro/Cursul-de-schimb-3544.aspx>.