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## FIGHTING AND PREVENTING CARTELS

*Стаття присвячена теорії та практиці антимонопольних дій у виявленні та запобіганні картелів, аналізу розвитку сучасної ліберальної політики з акцентом на неklasичну економіку. Виходячи з економічної теорії Шумпетера ми показали, що ліберальні програми, що супроводжуються сильними повноваженнями контролюючих органів та ефективними санкціями, підвищують внутрішню нестабільність картелів, а тому являють собою функціональний та ефективний інструмент для виявлення і покарання, а також перешкоджають утворенню антиконкурентних угод.*

*Ключові слова: картелі, конкуренція, ліберальна політика, Шумпетер, творче руйнування.*

*Статья посвящена теории и практике антимонопольных действий в выявлении и предотвращении картелей, анализа развития современной либеральной политики с акцентом на неклассическую экономику. Исходя из экономической теории Шумпетера мы показали, что либеральные программы, сопровождающиеся сильными полномочиями контролирующих органов и эффективными санкциями, повышают внутреннюю нестабильность картелей, а потому представляют собой функциональный и эффективный инструмент для выявления и наказания, а также препятствуют образованию антиконкурентных соглашений.*

*Ключевые слова: картели, конкуренция, либеральная политика, Шумпетер, созидательное разрушение.*

*The paper focuses on the theory and practice of antitrust action in detecting and deterring cartels and analyzing the development of the modern leniency policy with a focus on heterodox economics. Drawing from Schumpeterian economic theory, we show that leniency programs, accompanied by strong enforcement powers and effective sanctions, increase the inherent instability of cartels and therefore represent a functional and successful tool for detecting and punishing, as well as preventing the formation of anti-competitive agreements.*

*Keywords: Cartels, Competition, Leniency policy, Schumpeter, Creative Destruction.*

Since cartels are secret by definition, "the greatest challenge in the fight against hard-core cartels is to penetrate their cloak of secrecy and counter the increasingly sophisticated means at the companies' disposal to conceal collusive behavior" [1]. Creative destruction is a powerful force in maintaining a homeostasis in among cartels also. In this sense, one of the most significant contributions of recent years to the global fight against cartels is leniency policy (leniency could mean any reduction in the penalty compared to what would be otherwise imposed if the cartel was detected: smaller fine, shorter sentence, less restrictive order, or complete amnesty. Leniency programs are based on particular conditions which must be achieved and respected in order to qualify for such treatment.), designed as to encourage a cartel member to confess and implicate its co-conspirators with direct evidence about their illegal activity. Though most of the national competition laws already provided an opportunity to reduce fines for companies cooperating with competition authorities during cartel investigation, but the real breakthrough in detecting and fining cartels was achieved when the existing leniency programs were changed as to guarantee to the first – and only the first – business or individual to cooperate with competition authorities in collusion prosecution, complete amnesty or immunity from sanctions for its conduct.

The fight against cartels is likely to be far more effective when a leniency program is implemented for the following reason. The success of a cartel very much depends on the cartel members trusting each other. The mere existence of a leniency program weakens a cartel as it adds an instrument for cartel members to cheat on each other. Creating more tension among its members, a leniency program may effectively hinder the existence of long lasting cartels.

The experiences of the United States and the European Commission have shown that a properly structured leniency program can dramatically increase the success of a fight against cartels.

The first country to introduce a leniency program was the United States in 1978, but there was not an immediate success. During the following 15 years it generated on average only one application per year [2]. In 1993 the US Department of Justice made some important changes, firstly, making the corporate leniency available not only in situations in which the Department had no prior knowledge of the possible car-

tel, as it was under the original program, but also even after an investigation had begun if the Department had not developed enough evidence to sustain a conviction for the conduct. Secondly, under the original program granting leniency was still subject to the Departments discretion, while under the new program the grant was automatic if the necessary conditions were met [3]. These changes had a substantial impact on the program: the rate of applications jumped to approximately one per month. Leniency applications were directly responsible for successful prosecutions in several high profile prosecutions by the Justice Department, including conspiracies in vitamins, graphite electrodes, marine construction and fine art auctions. From 1998 to 2002 the fines imposed in cases resulting from leniency applications totaled more than US\$ 1,5 billion, and many individuals were sentenced to terms of imprisonment [4].

The European Commission first introduced its leniency program in 1996 and revised it twice, in February 2002 and in December 2006. The principal changes, comparing the 2002 revision to the original version, were to promise full (100%) immunity from fines to the first corporation to provide evidence before the Commission has begun an investigation and to drop the "decisive evidence" requirement for receiving full immunity, requiring only that it provide enough evidence to permit the Commission to initiate an investigation on the premises of suspected enterprises. The effect of these two changes was to increase both the rewards that a successful applicant would receive and the degree of transparency and certainty in the program. The improvements in the 2006 revision reflected the experience acquired in implementing previous versions and were set out to create even greater transparency and legal certainty.

Under the 1996 Leniency Notice the Commission received 188 applications for non-imposition or reduction of fines and decided either not to impose fines or to grant a very substantial reduction (from 75 % to 100 %) or a significant reduction (50 % to 75 %) in 17 cases. Under the 2002 and the 2006 Notices the Commission received 157 applications for immunity and 146 applications for reduction of fines, granting conditional immunity on 58 applications, from entry into force of the Notice on 14 February 2002 until the end of 2008. In the period from 2002 to the end of 2008, the Commission adopted statements of objections in 52 cartel investigations. 46 of these investigations started

on the basis of information received under the 1996, 2002 or 2006 Leniency Notice [5]. These numbers prove that leniency policy has been extremely effective making detection of cartels more probable and prosecution more frequent. However, the ultimate purpose of using leniency to fight cartels is to deter every company from continuing or engaging in such behavior. Miller [2009] provides evidence that leniency programs might have positive effects in this respect. His study of US cartels between 1985 and 2005 shows that the number of cartel discoveries significantly increased around the date of the introduction of 1993 corporate leniency program and then sharply dropped. Such a

pattern is consistent with intensified cartel detection and improved deterrence.

The success of the US and EC programs has stimulated other countries to adopt national leniency programs as an effective instrument to counter cartels. Lithuanian Competition Council, integrating the guidelines of EC Leniency Notice, introduced its leniency program in 2008 [6].

The data presented in table 1 and figure 1 shows that after implementing of Leniency Notices by European Commission (since 1998) the fight against cartels has become more efficient: the number of decisions in cartel cases increased three times. 77,9% of cartels since 1990 were detected, prosecuted and fined in the period of 2000 – 2011.

**Table 1. Cartel cases decided by the European Commission since 1990**

Period	Number of cartels	% total
1990-1994	11	11,6
1995-1999	10	10,5
2000-2004	30	31,6
2005-2009	33	34,7
2010-2011	11	11,6
Total	95	100

Source: calculated by the author using data from [www.europa.eu.int/competition/cartels/statistics](http://www.europa.eu.int/competition/cartels/statistics)

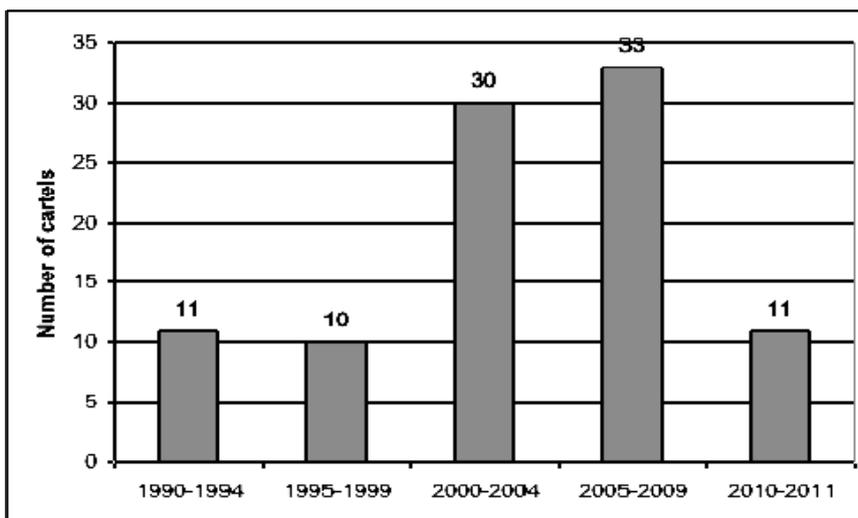
Comparative analysis of leniency programs and their implementation experiences in the US and European Union allows conclusions to be drawn about the necessary elements of a successful leniency policy, which could be summarized as follows:

- Maximum motivation for a cartel member to be the first in the "race to confess"; this can be achieved by awarding complete immunity from sanctions only to the first applicant. Such provision results in a destabilizing factor within a cartel;
- Certainty and transparency; in general, parties are more likely to cooperate with the competition authorities when the results of their applications are predictable as accurately as possible;

- Possibility to apply for immunity or reduction of fines even if the competition agency already begun an investigation;

- Maximum degree of confidentiality permitted by law to the leniency application and the grant of leniency if it occurs, as well as to the information that is provided by the applicant; it increases the uncertainty among the cartel members about whether or when, or which one of them might have defected.

There is another, overriding aspect to a successful leniency program: there must be a credible threat of severe sanctions for participating in a cartel. Unless cartel operators are at risk for substantial punishment if their agreement is discovered and prosecuted, they will have little or no incentive to enter leniency program.



**Fig. 1. Dynamics of cartel cases decided by the European Commission since 1990**

Source: created by the author using data from [www.europa.eu.int/competition/cartels/statistics](http://www.europa.eu.int/competition/cartels/statistics)

The statistical analysis of fines imposed by European Commission on companies that infringe EC Treaty rules, leads to the conclusion that the success of leniency policy by increasing the number of prosecuted cartels is based on the synergy created by the joint application of the Guide-

lines on the method of setting fines [7], adopted by the Commission in 1998 in order to enhance transparency as to its fining policy, and the Leniency Notice. The synergies derived from the combination of a preventive and deterrent approach were further strengthened by the adoption in

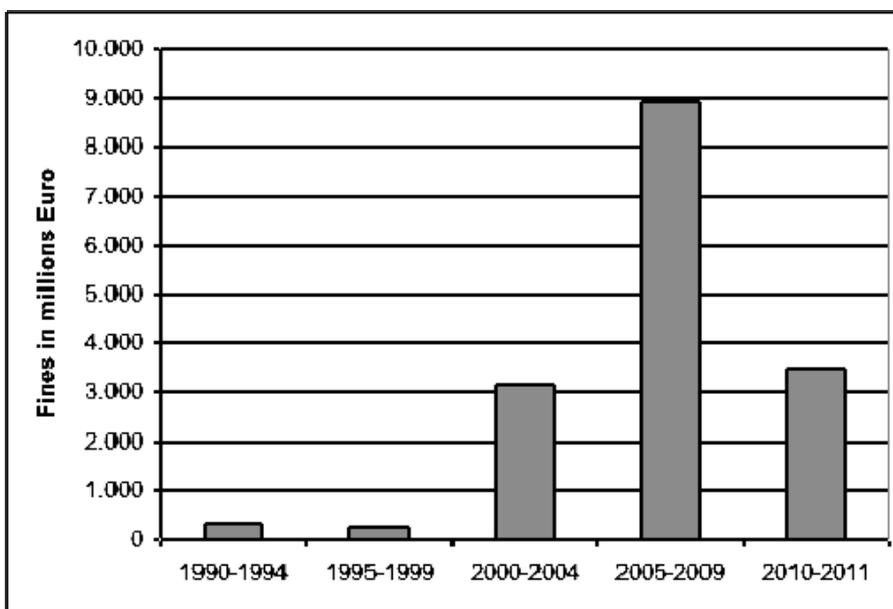
2006 of the new Guidelines on the method of setting fines [8]. The revised Guidelines included three main changes: the new entry fee, the link between the fine and the duration of the infringement, and the increase for repeat offenders [9]. The implementation of these new Guidelines not only increased the total amount of fines imposed by the Commission with respect to cartel infringements in recent

years compared to the previous periods (see table 2 and figure 2), but also resulted in a number of record fines imposed in separate cartel cases (see Table 3), including fines amounting to a total of EUR 1.384 billion on four companies in the Car glass cartel in 2008 and fines amounting to EUR 992 million imposed on four companies in the Elevators cartel in 2007.

**Table 2. Fines imposed by European Commission in cartel cases 1990-2011**

Period	Amount in €
1990 – 1994	344.282.550
1995 – 1999	270.963.500
2000 – 2004	3.157.348.710
2005 – 2009	8.922.838.162,50
2010 – 2011	3.482.729.432
Total	16.178.162.355

Source: calculated by the author using data from [www.europa.eu.int/competition/cartels/statistics](http://www.europa.eu.int/competition/cartels/statistics)



**Fig. 2. Dynamics of cartel cases decided by the European Commission since 1990**

Source: created by the author using data from [www.europa.eu.int/competition/cartels/statistics](http://www.europa.eu.int/competition/cartels/statistics)

**Table 4. 10 highest cartel fines per case (since 1969)**

Year	Case name	Amount (€)
2008	Car glass	1.383.896.000
2009	Gas	1.106.000.000
2007	Elevators and escalators	832.422.250
2010	Airfreight	799.445.000
2001	Vitamins	790.515.000
2008	Candle waxes	676.011.400
2010	LCD	648.925.000
2010	Bathroom fittings	622.250.782
2007	Gas insulated switchgear	539.185.500
2007	Flat glass	486.900.000

Source: [www.europa.eu.int/competition/cartels/statistics](http://www.europa.eu.int/competition/cartels/statistics)

As we can see, nine of the ten largest fines were imposed in the period of 2006-2011, including a record fine for Car glass cartel. In this case, the European Commission imposed fines on four automobile glass manufacturers Asahi (Japan), Pilkington (United Kingdom), Saint-Gobain (France) and Soliver (Belgium) for illegal market sharing

and exchanging of commercially sensitive information between 1998 and 2003. These four companies controlled about 90% of the glass used in the European Economic Area in new cars and for original branded replacement glass for cars at that time, a market worth about €2 billion in the last full year of the infringement. The Commission

increased the fines on St Gobain by 60% because it was a repeat offender. Asahi provided additional information to help expose the infringement and its fine was reduced by 50% under the Leniency Notice. These are the highest cartel fines Commission has ever imposed, both for an individual company (€896.000.000 on Saint Gobain) and for a cartel as a whole [10].

In the light of these cartels, their different probability and timeframe of working in concert with the made agreements between the competitors, applying Joseph Schumpeter's [1942] theory of creative destruction may offer insights on a broader scale. Following Schumpeter's assumption that creative destruction works for the betterment of markets, economies and – in the end – societies, a few observations can be made: traditional sectors of economy tend to progress in a manner of gradual improvements over time rather than being shaped by the disruptive force of spikes of innovation caused by a limited number of entrepreneurs. Thus, participants in these markets tend to be less creative and innovative in a Schumpeterian sense, while their longevity allows them to build lasting market structures that make them more prone to unofficial agreements between competitors. Additionally, their constant development gives them an amount of predictability that, combined with usually high barriers of entry into the market, lessens the incentives to defect from agreements made with the other actors. Secondly, we stated the trend of more mobile economic sectors to support only shorter lasting alliances with competitors due to more frequent changes in the market and its hierarchies. These markets and sectors allow more fluctuation among their participants, usually supported by lesser barriers of entry. While this absence of established market structures means un-

certainty for actors, it incentivizes disruptive innovation by creating an environment where upward mobility and the rewards are as high as the risks involved [11].

Accordingly, using leniency programs to incentivize market actors into defecting from their agreements with other actors aims at creating uncertainty and mobility among the parties of any given cartel. However, while this may not immediately lead to the breaking up of cartels, we have shown that the mere existence of leniency programs shortens the average time of a cartel's existence considerably.

1. Commission adopts new leniency policy for companies which give information on cartels. IP/02/247 13/02/2002 2. Hammond S. D. A Review of Recent Development and Cases in the Antitrust Division's Criminal Enforcement Program. Presentation before the Conference Board's 2002 at Antitrust Conference, March 7, 2002. [Online] // Antitrust Division, US Department of Justice: [web page]. – Access at: [www.usdoj.gov/atr/public/speeches/10862.htm](http://www.usdoj.gov/atr/public/speeches/10862.htm) 3. mCorporate Leniency Policy. US Department of Justice – Antitrust Division (1993) 4. Ms Kroes. European Parliament. Parliamentary questions. Joint answer given on behalf of the Commission. – Written questions: E-0890/09, E-0891/09, E-0892/09. – 2 April 2009. 5. Rules on immunity from fines and reduction of fines for the parties to prohibited agreements. Resolution No. 1S-27 of 28 February 2008 of the Competition Council of the Republic of Lithuania 6. Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty fines. Official Journal C 9, 14.01.1998, p. 3-5. 7. Guidelines on the method of setting fines imposed pursuant to Article 23 (2)(a) of Regulation No 1/2003. OJ C 210 2006 9 1, p. 2. 8. Competition: Commission revises Guidelines for setting fines in antitrust cases. Press release: IP/06/857 28/06/2006. 9. Summary of Commission Decision of 12 November 2008 relating to a proceeding under Article 81 of the Treaty establishing the European Community and Article 53 of the EEA Agreement (Case COMP/39.125 – Car glass). OJ C 173, 25.7.2009, p. 13–16. 10. Schumpeter J. Capitalism, Socialism, and Democracy. – New York: Harper, 1942.

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## FOREIGN-EXCHANGE CRISIS IN BELARUS (2011): INFLUENCE OF THE ACCOUNTING AND TAXATION SYSTEMS ON THE ECONOMICS OF ENTERPRISES

*Розглядаються етапи розвитку та подолання валютної кризи, яка відбулася у Білорусі в 2011 році, та призвела до девальвації національної валюти більш ніж в 2,5 рази та гіперінфляції. Вивчається вплив білоруських систем бухгалтерського обліку та оподаткування валютних операцій на формування фінансових результатів комерційних організацій на різних етапах розвитку кризи.*

*Ключові слова: валютна криза, бухгалтерський облік, різниця у валютних курсах, переоцінка валюти, оподаткування.*

*Рассматриваются этапы развития и преодоления валютного кризиса, который произошел в Беларуси в 2011 году, и привел к девальвации национальной валюты более чем в 2,5 раза и гиперинфляции. Изучается влияние белорусских систем бухгалтерского учета и налогообложения валютных операций на формирование финансовых результатов коммерческих организаций на разных этапах развития кризиса.*

*Ключевые слова: валютный кризис, бухгалтерский учет, разница в валютных курсах, переоценка валюты, налогообложение.*

*The stages of development and overcome of the foreign-exchange crisis in Belarus in 2011, which led to the devaluation of the national currency by more than 2,5 times and to hyperinflation, are considered. The paper studies the influence of the Belarus system of accounting and taxation of currency transactions on the formation of financial results of the business organizations at different stages of the crisis development.*

*Keywords: Foreign-exchange crisis, accounting, difference in rates of exchange, currency revaluation and taxation.*

In 2011 the Republic of Belarus passed through significant disturbances, caused by the foreign-exchange crisis, the result of which has turned up 2 stage devaluation of the Belarusian ruble: in May the Belarusian ruble went down in value by 56 %, in October – still 52% more,

in general by the year the devaluation of the Belarusian ruble amounted 189% [1].

US dollar official quotation dynamics in Belarus in 2011 is presented on fig. 1.