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## **EU REGULATION OF CARTEL AGREEMENTS: RECENT DEVELOPMENTS AND THEIR IMPLICATIONS**

### **РЕГУЛЮВАННЯ КАРТЕЛЬНОЇ УГОДИ В ЄС: ОСТАННІ ЗМІНИ ТА ЇХ НАСЛІДКИ**

### **РЕГУЛИРОВАНИЕ КАРТЕЛЬНЫХ СОГЛАШЕНИЙ В ЕС: ПОСЛЕДНИЕ ИЗМЕНЕНИЯ И ИХ ПОСЛЕДСТВИЯ**

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**Abstract.** *Competition is a one of the most important and fundamental mechanisms of the economy, which is considered to be an essential factor for economic growth and prosperity. This article reviews the importance of competition law, which is one of the most crucial and essential part of law that has to be implemented properly to support and ensure smooth functioning of the economy in the state. This article points out the most important and significant steps taken by the European Commission towards the fight against cartel agreements in the past few years, for example, when the European Commission introduced and made recent developments by implementing specific laws, rules and programs during the last few years, which could be used as a tool to fight against cartel agreements, foster economy and support free and undistorted competition on the market. At the same time, this article discusses and clearly highlights that collaboration between the relevant bodies, as well as between the international organizations increases efficiency of competition level and fosters economic growth. The European Union has updated the relevant guidelines, and fruitful cooperation between the relevant Member States certainly facilitates the process of identifying anti-competition agreements in the marketplace. The article reviews implementation of effective Directives, legal acts or guidelines, such as Directive ECN+ empowering competition authorities to counter any anti-competitive practices, introduction of state aid modernization effective package that plays a crucial role in empowering the EU*

*Member States to execute strategies for better economy, as well as other international developments against cartels to show that these developments are aimed at governing and protecting free and undistorted market competition. These instruments are very efficient and significant for competition and its further development.*

**Key words:** *Competition Law, Cartel Agreements, European Commission, Recent Developments, Directives and Guidelines, State Aid Modernization package, Economic Growth.*

**Анотація.** Конкуренція - один з найважливіших і фундаментальних механізмів економіки, який вважається важливим чинником економічного зростання та процвітання. У цій статті висвітлюється важливість прийняття закону про конкуренцію, що є однією з найважливіших та суттєвих частин права, яку необхідно належним чином впроваджувати для підтримки та забезпечення безперервного функціонування економіки держави. У цій статті вказується на найважливіші та істотні кроки, які Європейська Комісія зробила у напрямку боротьби із картельними угодами протягом останніх декількох років, зокрема, коли Європейська Комісія запровадила останні зміни шляхом імплементації спеціального законодавства, правил та програм, які можуть бути використані як інструмент для боротьби з картельними угодами, сприяння розвитку економіки та підтримки вільної та неспотвореної конкуренції на ринку. Також у цій статті розглядаються питання та робиться чіткий наголос на тому, що співпраця між відповідними органами, а також між міжнародними організаціями підвищує ефективність рівня конкуренції та сприяє економічному зростанню. Європейський Союз оновив відповідні настанови, а плідна співпраця між відповідними державами-членами, безумовно, полегшує процес виявлення антиконкурентних угод на ринку. Розглянуто впровадження ефективних директив, нормативних актів або вказівок, таких як Директива ECN+, що надає повноваження органам з питань конкуренції протидіяти будь-якій антиконкурентній практиці, впровадження пакету модернізації державної допомоги, що відіграє важливу роль, надаючи державам-членам повноваження розробляти стратегії для покращення економічної ситуації, та інші міжнародні заходи проти картельних угод, щоб показати, що ці події мають на меті врегулювати та захистити вільну та невикривлену конкуренцію на ринку. Ці інструменти дуже корисні та важливі для конкуренції та її подальшого розвитку.

**Ключові слова:** *закон про конкуренцію, картельні угоди, Європейська Комісія, останні події, директиви та настанови, модернізація державної допомоги, економічне зростання.*

**Аннотация.** Конкуренция - один из важнейших и фундаментальных механизмов экономики, который считается важнейшим фактором экономического роста и процветания. В этой статье раскрывается важность принятия закона о конкуренции, который является одним из важнейших и существенных частей права, которую необходимо должным образом внедрять для поддержки и обеспечения бесперебойного функционирования экономики государства. В этой статье указывается на важные и существенные шаги, которые Европейская Комиссия сделала в направлении борьбы с картельными соглашениями в течение последних нескольких лет, в частности, когда Европейская Комиссия ввела последние изменения путем имплементации специального законодательства, правил и программ, которые могут быть использованы в качестве инструмента для борьбы с картельными соглашениями, содействия развитию экономики и поддержки свободной и неискаженной конкуренции на рынке. Также в этой статье рассматриваются вопросы и делается четкий акцент на том, что сотрудничество между соответствующими органами, а также между международными организациями повышает эффективность уровня конкуренции и способствует экономическому росту. Европейский Союз обновил соответствующие постановления, а плодотворное сотрудничество между соответствующими государствами-членами, безусловно, облегчает процесс выявления антиконкурентных соглашений на рынке. Рассмотрено внедрение эффективных директив, нормативных актов или постановлений, таких как Директива ECN +, предоставляющая

полномочия органам по вопросам конкуренции противодействовать любой антиконкурентной практике, внедрение пакета модернизации государственной помощи, играющей важную роль, поскольку она предоставляет государствам-членам полномочия разрабатывать стратегии для улучшения экономической ситуации, и другие международные меры против картельных соглашений, чтобы показать, что эти события имеют целью урегулировать и защитить свободную и неискаженную конкуренцию на рынке. Эти инструменты очень полезны и важны для конкуренции и ее дальнейшего развития.

**Ключевые слова:** закон о конкуренции, картельные соглашения, Европейская комиссия, последние события, директивы и указания, модернизация государственной помощи, экономический рост.

**Introduction.** The competition law plays an enormous role in the development of economy and upkeeping the undistorted competition on the market. It is important to always strive to find the ways to restrict anticompetitive practices and introduce relevant measures from legal and practical perspective. The European Union and relevant legal bodies have been working on the specific laws, regulations, and programs recently to develop the ways for fighting against anticompetitive agreements.

**General statement of problem.** It is important to underline that developments in any area of law is necessary in order to ensure more freedom and competitiveness in the State. It is necessary to show the developments and ways introduced in the European Union, which can be studied and reviewed by other States to ensure free competition in their respective territories. The developments during last few years are quite significant and important for fighting against cartel agreements.

In past recent years, particularly in 2018, the EC took significant steps and approaches towards the fight against cartels. Some of the most important recent improvements that commission has implemented in the enforcement of the competition law and the fight against cartels are described below:

Fostering a competitive internal market in 2018, which was the EU's 60<sup>th</sup> anniversary after the formation of the European Economic Community, definitely played a crucial role in fighting against cartel agreements to foster competitive internal markets [*European Commission*, 2018: 2]. At this time, the EU had more than 24.5 million SMEs and large corporations, and which served more than 500 million consumers, with most of these successes being attributed to diverse roles played by the EU in creating a competitive business environment.

**Recent research and publications.** The issues raised in this article were highlighted, in particular, by Ms. Beatrice Roxburgh in her book "*Competition Law*" published last year, where she points out that cartel agreements are generally considered as one of the most anti-competitive form of behavior and commission has been increasingly zealous to uncover such arrangements [*Roxburgh B*, 2020: Chapter 5.2.1]. It is also important to note that in October 2020 during UN review conference on Competition and Consumer Protection – Cross Border Cartels have been also addressed. It is interesting to also read the Cartel Enforcement Global Review Journal of September 2020 by DLA PIPER which discusses the cartel issue by each EU country, including penalty trends, ECN+ Directive, investigations, leniency programs and international cooperation.

**The purpose of this article is** to explore the legal issues related to cartel agreements and to show that fighting against cartel agreements remains one of the main tasks for the European Union.

**Main research results.** From the inception of the EEC, the European Union has always maintained stringent rules, which have enabled the EU Commission to create an undistorted and fair internal market. The competition law provides a series of frameworks that are well-defined and also are to be followed by all legal entities operating within the Community. These strategies and regulations have made it possible for all businesses, irrespective of their size, to compete fairly on the market. In the past 60 years, the legal framework on competition and control of cartels has evolved significantly, with most of the changes primarily aimed at ensuring that emerging challenges are dealt with adequately. In recent years, the EU Commission has been able to implement the principles of predictability, transparency, procedural fairness, and non-

discrimination, which have been crucial pillars in strengthening the fight for fair and undistorted competition.

Another important milestone that the EU Commission has achieved in recent years includes the increased collaboration with other bodies, which have the same objectives, such as the International Competition Network, the OECD, and the United Nations Conference on Trade and Development (UNCTAD). The EU Commission also coordinates with national authorities on competition of the Member States, the national legislative and court system, in ensuring that a fair environment for the competition is created. As A. Goldthau and N. Sitter indicate, the national, regional, and international collaboration between the EU and other authorities has played a crucial role in the fight against anti-competitive behaviors [Goldthau, Sitter, 2015: 1-10]. International cooperation between the competition bodies for investigating cartel agreements has been significantly progressed upon executing different types of bilateral or multilateral agreements [OECD, 2019: 7].

On 7 June 2018, the EU accepted the Recommendation for a Single Market Program, which was a part of the Multiannual Financial Framework, and which was to be implemented until 2027 [European Commission, 2018: 1]. What is important about the proposed program is that it provided valuable guidelines concerning competition, with the required funding mechanism needed for the implementation of the program. Some of the benefits of the competition program include the fact that it provides newer and more effective policies and strategies that can help in fighting anticompetitive behaviors that are ever-changing. Examples of modern challenges that the commission faces are associated with modern technology, which include fast-moving developments, algorithms, and big data [Bloom, 2006: 70]. Moreover, the competition program has been espoused as being able to strengthen the levels of cooperation and coordination between the EU Member States to work together in the creation of a competitive environment.

Furthermore, in 2018 the competition policy was strengthened even further. Specifically, the policy was improved to target important markets for EU companies and consumers. Some of these markets which the competition policy has been improved to focus on include transport, manufacturing, agriculture and food, energy and environment, financial services, as well as telecommunication and digital sectors [DLA Piper, 2020: 2].

Apart from just enacting stringent laws, the EU has in recent years improved the mechanisms of implementing the competition laws. The EU Commission has shown significant efforts that have been aimed at streamlining and improving the efficiency of different procedures, including the calculation of the economic effects of cartels and other processes in competition cases. All these measures have been aimed at enhancing effectiveness, efficiency, and ensuring the competitiveness on the market.

Some of the specific milestones that the EU has taken to improve effectiveness in competition enforcement are described below.

The EU Commission provided an updated guideline in December 2018 on various aspects concerning competition, including confidentiality rings, confidential information, and secret information for companies. Also, the amendment provided significant guidelines on how companies and other key stakeholders could access valuable information from the commission files, especially during antitrust cases. The two changes reveal the important milestones that the EU Commission has taken towards increasing effectiveness, efficiency, and timeliness [Maudos, Vives, 2019: 1-20]. However, it is important to note that while the EU Commission has been undertaking the changes, it has remained vigilant in safeguarding the rights of all the interested parties. The new guidelines were important complements to the existing guidelines about the best practices in competition. Moreover, the EU Commission provided important guidelines about the adoption of electronic document submission, which is one of the strategies that the Commission has applied in ensuring effectiveness, efficiency, and timeliness.

In 2018 the EU commission completed investigation of a series of antitrust cases, which was particularly successful due to the cooperation between different EU Member States. The increased cooperation between the different authorities raises the impact and relevance of the decisions by

enhancing the speed at which the investigations are conducted. Also, these improvements imply that companies are willing to cooperate so that they can benefit from the reductions of fines [Marco Colino, 2019: 147], which can be realized in several ways, including the leniency or settlement notices. For instance, the EU Commission provided guidelines in 2018 about the mechanism that companies can adopt to avoid higher fines in antitrust investigations. In 2019 we see the adoption of e-leniency tool, which enables companies to submit documents via online through a very secured and safe system [Aliende Rodriguez, 2021: 51].

On 11 December 2018 the EC and the European Parliament started the implementation of the ECN+ Directive, which is another important recent measure that has been taken in the fight against cartels. The role of the ECN+ is to empower the competition authorities in each of the members, so that they can easily counter any anti-competitive practices in the respective countries [Official Journal of the European Union, 2018: 1]. The ECN+ has been highly instrumental in empowering the EU member states to enhance cooperation between NCAs [Montaldo, Costamagna, Miglio, 2021: 248]. The ECN+ was based on the proposal that had been raised by the EU Commission in 2017, and which was an outcome of a series of consultations that had occurred in previous years. Other functional role of the ECN+ includes that it helps in creating uniformity and fairness during the enforcement of the EU antitrust laws. The Directive has provided adequate resources and frameworks that enable the national authorities in detecting firms that fail to act in compliance with the EU competition rules [Gomulka, 2018: 1]. ECN+ has also empowered the national authorities, so that they can act independently in deciding based on the presented facts [Wills, 2017: 14]. Moreover, the new rules under the ECN+ Directive have enhanced the credibility of the decisions that the EU Commission take, since it promotes jobs and growth, the overall goal of competitive markets, as well as the realization of genuine single market goals. It is expected that the ECN+ will be reordered by the end of 2021, and this is aimed at implementing the Directive into national laws, since, as of now, only few Member States have implemented the above-mentioned Directive.

The anonymous whistleblower tool and settlement procedures are also recent key measures that the EC has taken in the fight against the hardcore cartels [Jones, Sufrin, Dunne, 2019: 651]. These measures augment the leniency program, which has proved to be a highly effective tool in the fight against cartels and anti-competitive behaviors. The anonymous whistleblower tool improves cartels detection rate, since individuals can easily provide insider information, which can lead to further investigations. The whistleblowers can provide valuable information to anonymously come forward besides the existing leniency application [OECD Report, 2019: 25].

The settlement procedure, which was created in 2008 successfully settled around 6 cartel cases in the first 5 years [Laina, Laurinen, 2013: 1], although in dealing with hardcore cartels effectiveness was especially witnessed in 2018, as evidenced by the record number of decisions reached. It is also important to note that more than half of the hardcore cartels in 2017 were resolved using above mentioned settlement procedure. Adoption of this system helps the EC in easily detecting the members of a cartel, which is helpful for cost-saving. Under the settlement procedures, members of a cartel willingly agree for having participated in anti-competitive behaviors and express their readiness to settle the liabilities associated with their behaviors.

The implementation of State Aid Modernization is another recent measure that the EU has taken to deal with cartels. The State Aid Modernization is an effective package that plays a crucial role in empowering the EU Member States to execute strategies to enhance the economy, including swift creation of jobs, economic growth, as well as improving development. The General Block Exemption Regulation (GBER) is also a part of the State Aid Modernization that helps in lowering the burden of administrative costs. The GBER was introduced in 2014. Also, the new rules help in intensifying the fight against cartels through enhanced scrutiny. The implementation of the Multinational Financial Framework (2021-2027) is another strategy that is underway, and which is aimed at strengthening the fight against anti-competitive behaviors even further. The EU Commission has also launched a diverse range of frameworks, which are designed to evaluate the performance actions implemented to combat anti-competitive behaviors. The Better Regulation Guidelines is an excellent example of the frameworks used in performance appraisal.

Hardcore cartels have significant negative impacts on different stakeholders. Cartels are primarily formed between companies operating within the same sector with the primary aim of manipulating prices, production, and supply. In addition to raising prices, cartels lower supply and reduce competition.

Overall, it can be indicated that the EU has put in place stringent measures, including the antitrust and competition laws, which are aimed at creating a competitive environment for business and attempt to resurrect barriers to trade [Barnard, 2016: 9]. Specifically, Article 101 of TFEU plays a central role in the fight against anti-competitive behaviors. Recent measures, such as the implementation of leniency programs, settlement notices and cooperation have proved to be highly effective in the fight against cartels and other anti-competitive practices within the EU and almost everywhere in the world, designed to detect price cartels much more effectively [Drexel, Kerber, Podszun, 2011: 323]. The Leniency program provides total or partial reduction for all undertakings applying for the same and accordingly they are getting reduction from the Commission [Tomljenovic V., Bodiroga., N, Malnar V., Kunda I., 2017: 119]. FOTREX and Maritime car carrier cases typify the increased success rate of the settlement process. Recent specific measures that the EU has implemented to fight against cartel are anonymous whistleblower tool, State Aid Modernization, General Block Exception Regulation, ECN+ Directive, and Multinational Financial Framework. Increased financial cooperation with the OECD, UNCTAD, and national authorities has improved the detection and settlement of cartel cases significantly.

**Conclusion and prospects for further research.** The EU Commission strengthens the competition policy and the legal framework in order to fight against anti-competitive practices and detect the cartel agreements, which needs to be followed by the countries willing to harmonize their legislation with the EU standards. It can be pointed out that Georgia and Ukraine willing to join EU or harmonize their respective legislation are required to introduce State Aid Modernization programs, relevant Directives that would enable competent authorities to cooperate efficiently. It is also necessary to actively concentrate on new measures, regulations that would empower states to execute strategies to detect the cartel agreements and anti-competitive practices and at the same time to enhance the economy.

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