

# The (in)efficiency of cartel prosecution and its impact on business management

Several aspects of antitrust (un)enforcement and competitive (dis)advantage in the EU and in the Czech Republic

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**Abstract**— A healthy business competition on the internal market is a priority for the EU, and the effectiveness and efficiency of antitrust protection is critical on each sub-part of this market, i.e. as well on the Czech market. An investigation was performed comparing the efficiency of cartel punishment at both levels, EU and Czech, using as the basic criterion the annual amount of cartel proceedings launched and the ratios of the imposed and confirmed fines. The results are surprising, although their consequences can be already detected and if correctly reflected by business management, then a significant competitive advantage can emerge. The almost perfect cartel sublimation by the Commission and the weak cartel repression by the Czech Office for the protection of competition needs to be addressed for the sake of a better business environment, and for society in general. In the meantime, both operational and strategic planning of a business seeking to have a sustaining competitive advantage needs to address it in an educated and pragmatic manner and to explore a myriad of options.

**Keywords**-cartel, competitive advantage, operational and strategic planning

## I. INTRODUCTION

Today's current post-modern society is demonstrably exemplified by economic, and other, crises, an ever-growing level of business competition, an increasingly heavy reliance on information systems and technology, along with a focus on the virtualization and globalization [1]. The desire for permanent growth in a so-called sustainable form, the business survival instinct, and a plenitude of other legitimate, or at least understandable, reasons and motivations spurs on businesses. They have to find new resources for their competitiveness and to strive for an ever higher plateau of their competitive advantage, which is inherently interdependent with the business performance [2]. Regardless of its size, every business is determined to be more effective and efficient than its rivals [3]. This intention to attain a gain, which would be permanent, sustainable and superior to any benefit reached by the competition, can inherently be poisonous, externally as well internally [4]. Additionally, the impact on the market and society should not be neglected. In other words, a misunderstanding or the failed application of the so called "success-ability" concept and its strategy for the competitive advantage [5] may have a negative impact on the local market,

regional market, and even the global market of the pertinent industry. Despite the original honest or less honest or even completely dishonest motivation and trigger, some businesses can easily be tempted to participate in various schemes generating anti-competition effects. Thus other businesses and consumers can suffer the negative consequences of these antitrust, cartel and other competition deforming and limiting practices. And if this mischief often goes unpunished, the business management and planning needs to reflect it and work with it as with other business patterns, customs and other external influences.

One of the antitrust forms is a cartel, which is a direct or indirect agreement of independent businesses to fix prices, to limit production, to share or split markets or customers, etc. Goals of a cartel including avoiding competition, and reducing the incentives to provide new or better goods and services at competitive prices, i.e. lower prices for consumers and other businesses, thus being paid more than what they should, and would be, otherwise. Such a coordinated, artificial and speculative increase of prices is rejected across the range of developed countries.

The US antitrust battle, ongoing for over 110 years, is matched by the approach of the EU and its member states, including the Czech Republic, which considers and officially proclaims cartels illegal and penalizes businesses participating in cartels with heavy fines issued in administrative proceedings. In addition, criminal law prosecution and private law damages enforcement are tools also available.

Despite a similar legal framework for antitrust protection, especially in the EU and in the Czech Republic, the efficiency of the "administrative" cartel prosecution is dramatically different. Naturally, the criminal prosecution and private damage actions need to be analyzed as well, nevertheless, it is well known that the key branch of the trio against cartels is the administrative prosecution by a special agency, either the Commission or the Antitrust Office, is most critical.

Thus, when compliance with antitrust regulations is not reached and the breach is detected and considered serious, then, under certain conditions, and according to substantive rules and procedural rules, the administrative sanction process can be launched. On the EU level it is by the Directorate-General for

Competition of the European Commission ("Commission") with a judicial review by the General Court and Court of Justice located in Luxembourg ("CJ EU") which has been demonstrating a longstanding, consistent and generally well argued approach [6]. On the Czech level it is the Office for the Protection of Competition ("Czech Office") with a judicial review by Czech courts in Brno, namely the Regional Court in Brno and by the Highest Administrative Court. The imposition and collection of the ultimate, typically financial, fine from an offending business, e.g. a cartel initiator, can help to restore a healthy business environment and support for a fair business competition. The lack of the imposition or the collection of such fines means a miscarriage of justice. An abuse of proceedings is extremely large, a deterioration of the competition, manipulation of the market and a dramatic shift with respect to the business performance and to all six elements of competitive advantage, namely general (dis)advantage over competitors, sustainability of acquired advantage, the product/service quality and image, price, costs, and customer satisfaction [2].

Thus, businesses operating in the second decade of the 21<sup>st</sup> century need to carefully monitor the situation on their respective markets and their "L" from SLEPT analysis should not be perceived only in a static and substantive manner, but must entail as well dynamic and procedural aspects. In other words, businesses wanting to reach the famous sustainable competitive advantage on the current Czech and single internal market of the EU cannot just perform a superficial study of the famous Porter 5 forces and look into lowering costs or differentiation [7]. They must study more than the tip of the iceberg, they must go down in the deep water under, often very muddy, and discern what game is really played and what are the truly followed rules. In other words, businesses must be aware whether cartelism is going on and what is done about that. Sadly, if the state fails to perform its task, and the administrative and criminal prosecution is weak and applied without eagerness and efficiency, then third parties must take the burden and "do something about that."

There is a duo of hypothesis to be addressed. Firstly, the Czech Republic does not perform a sufficiently good job with respect to battling against cartels, this contrasts strongly with the high efficiency of the EU, i.e. Commission and CJ EU. Secondly, the cartel tolerance in the form of inefficient administrative cartel prosecution has a strong impact on business management for both, conspiring and not conspiring businesses. The cartelists can gain a lot while assuming only a symbolic risk while those not colluding dramatically suffer and must mitigate this negative impact by many measures and instruments, namely they cannot rely on the state and instead they must integrate cartel concerns in their management and especially in their strategic planning.

## II. THE EFFICIENCY OF CARTEL PROSECUTION IN THE EU AND IN THE CZECH REPUBLIC

Despite the European oscillation between various economic competition models, such as neo-classical and ordoliberal, and schools, such as Post-Chicago and Freiburg [8], there is a shared condemnation of cartels across the EU and EU member states. Thus, prosecution of cartels is perceived as

the right thing, i.e. it is endorsed as effective. However, there is a question of its enforcement, i.e. how the prosecution of cartels is performed in praxis and what is the result. The Czech national framework mirrors the framework set by EU law and, in addition, there is a very close cooperation between EU and Czech antitrust organs along with the delegation of tasks. Thus, one would legitimately expect a similar level of efficiency of cartel prosecution in the EU and in the Czech Republic. However, such an assumption is seriously challenged, resp. rejected, based on the scrutiny performed via comparative analysis. It may be suggested that this is one of the greatest paradoxes of the current competitive environment in the Czech Republic and in the EU. We often hear about the Czech Office and its actions based on Czech antitrust law, which is very similar to the EU antitrust law, and even based upon the EU law. We frequently hear about the Commission and its proceedings based on EU antitrust laws. We sometimes hear about pertinent cartel case-law generated by the Czech Supreme Administrative Court and by the CJ EU. Yet, we are almost never informed about the end result, the entire cartel story and the fines ultimately paid by cartels. Nevertheless, a thorough and in-depth investigation can produce necessary statistical data and other information about the number of proceedings and the amounts of fines for cartels. Knowledge from other disciplines, as well as mere observations of markets and society in general, along with a critical and comparative approach, can assist one in putting these bits of information, as akin to a jig-saw puzzle, together. These apparently contradictory fragments can blend into a colorful and extremely interesting picture, a snap-shot of the global competitive environment taken from the antitrust angle.

Obviously, the tedious extraction of relevant and often not easily accessible data, their deeper description with comparative analyses, especially of the critical cases, can teach us much more than we would expect. They can inform us a lot about business competition, the behavior of businesses under pressure, and about the consequences for a business that is part of a cartel, from cartel suffering businesses and consumers, and for the potentially largest victim, society itself.

### A. *The impressive efficiency of the Commission in cartel cases*

Firstly, the collected, and, due to the difficult access, inherently incomplete, data about cartel prosecution in the EU should be studied and processed via quantitative analysis. Thus the annual number of cartel cases prosecuted by the EC (X) during the period 2008-2013 (N=7) is averaged in order to identify the mean ( $\mu=5,67$ ) and the range as the highest value minus the lowest value + 1 (range=5). The variance according to the above mentioned formula is  $\sigma^2 = 2,22$  and the square root from it, the standard deviation, is  $\sigma = 1,49$ . The efficiency of cartel prosecution by the EC as the rate of fines confirmation, or at least not rejection by CJ EU, deserves the same quantitative analysis assessment. Thus, the annual percentage of direct, indirect or implied confirmation rates by the CJ EU of the fines, as imposed by the EC (X) during the period 2008-2010 (N=3) is averaged in order to identify the mean ( $\mu=83$ ). To put it another way, on the average during this time, 83% of cartel fines were upheld, and the range as highest value minus lowest value + 1 (range=25). The variance according to the

above mentioned formula is  $\sigma^2 = 104$  and the square root from it, the standard deviation, is  $\sigma = 10,20$ , i.e. the “motion” was 10,20%.

Secondly, the collected data suggests that the number of cartel proceedings initiated annually by the Commission steadily varies between four and seven, and the total annual amount of fines issued by the Commission to punish cartels ranges between 1.5 to 2 million EUR. Exceptions to this is a dramatically high amount in 2010 and a dramatically low amount in 2011. The time proximity of these two extreme results may be interpreted either as a practical reason (e.g., it was mere happenstance that the issuance of fines occurred in December 2010 and not in January 2011) or as a mediating reaction to an excess (e.g., the high amount for 2010 being perceived as a sign of an extreme severity) or even in a different manner based on the concrete cases. Thus, a deeper study should be conducted in this respect. Nevertheless, for the purposes of this paper, the confirmation and modification rational is more critical. Since the Commission conducts one-stage cartel proceedings, the Commission’s decision about a fine cannot be reviewed or appealed internally and the only manner of its modification is via the CJ EU. This is done through a claim to the General Court to review the Commission’s cartel proceedings and the resulting Commission decision. The decision about it made by the General Court can be appealed to the ECJ. It is extremely interesting to observe that the fines for cartels issued by the Commission are often fully endorsed or just slightly modified by the CJ EU and that their cancellation or radical reduction is very rare. Thus, fines for cartels as issued by the Commission enjoy a rather confirmative judicial review, which translates into an average small modification of the fine in the range from 7% to 31%. In other words, businesses prosecuted and fined by the Commission in cartel affairs may expect a judicial confirmation of the fine in the extent of 69% to 93%. Hoping for the judges to reject the Commission proceedings and to cancel the fine is pretty much a lost cause. Nevertheless, considering the amounts involved, even a reduction by a few percent can be very significant for the cash flow of the punished business. In addition, the so called administrative cartel proceedings conducted by the Commission are, even after the adoption of the antitrust best practices package, arguably not in full compliance with the due process requirements and thus open, to some extent, to judicial scrutiny [9] and partially uncertainty and unpredictability [10]. Nevertheless the cartel punishment by the Commission is significantly more consistent, predictable, better founded, and ultimately more fair and just than the repression done by the Czech Office.

Thirdly, the collected data shows a clear trend of businesses seeking a judicial review, which generally ends up with a confirmation or partial recalculation of the fines but virtually never concludes with a cancellation of the fine, i.e. fines are confirmed in general in the extent of 69% to 93% and the mega fines are confirmed in the extent of 58% to 100%.

TABLE I. THE HIGHEST CARTEL FINES IN EUR ISSUED BY THE COMMISSION AND THEIR ADJUSTMENT BY THE CJ EU (ENDED CASES).

Cartel	Fine Amount in EUR set by the Commission and adjusted by the CJ EU		
	Commission	CJ EU	Ratio
PISU – Siemens, ...	396562500	396562500	100%
GAS – E.ON	553000000	320000000	58%
GAS – GDF Suez	553000000	320000000	58%
VITAMIN – BASF	296000000	236670000	80%

Source: Author's own work based on the information available on the Internet page of the Commission and CJ EU, <http://ec.europa.eu/competition/cartels/statistics/statistics.pdf> and <http://curia.europa.eu/>

Certainly, this is a general statement which deserves much more fine-tuning. Nevertheless, for the purposes of this paper, it is sufficient to consider these approximate numbers about the confirmation and enforcement of cartel fines going from 58% to 100%, which contrast drastically with the shocking 0% ratio for the confirmation and enforcement of top fines issued by the Czech Office.

#### B. *The impressive inefficiency of the Czech Office in cartel cases*

The era when national cartels were thought necessary to help national businesses to be competitive abroad, so typical for the Czechoslovak First Republic, are definitely long gone and replaced by the era of the European (single) internal market. The Czech national antitrust framework is very similar to the EU antitrust framework and the manner of the proceedings against cartels shows but few differences. There is decentralization, delegation and co-operation between EU and Czech antitrust organs. Thus, they are comparable and their data is fit to be compared, in other words, if the EU efficiency is relatively high and comparable to the famous US efficiency, then the Czech one should match. The intrastate, national, Czech framework regarding cartels is patterned on the EU model and the Czech Office mirrors, to some extent, the functions of the Commission. As a matter of fact, it performs some functions originally performed in a centralized manner by the Commission and newly delegated to EU member state’s anti-monopoly offices, to be carried out in a decentralized manner. ...

Firstly, the collected, and, due to the difficult access inherently not complete, data should be scrutinized and processed by the quantitative analysis. Thus the annual number of cartel cases prosecuted by the Czech Office (X) during the period 2008-2013 (N=7) is averaged in order to identify the mean ( $\mu=6$ ) and the range as highest value minus lowest value + 1 (range=16). The variance, according to the above mentioned formula, is  $\sigma^2 = 26,67$  and the square root from it, the standard deviation, is  $\sigma = 5,16$ . These values are dramatically higher than for the EC, but it needs to be pointed



out that, due to the limited accessibility of basic data, not exactly identical data could be compared. Since the efficiency of cartel prosecution by the Czech Office, especially regarding the largest fines, has been historically extremely low, a further calculation for comparison with the EC result is obsolete. Instead, there can be quantitatively analyzed the amount of annual imposed fines in the 1<sup>st</sup> instance proceeding by the Czech Office (X) and this for the period 2005-2011 (N=7). It is averaged in order to identify the mean ( $\mu=350,86$ ), i.e. in the average during this time annually in the first instance the Czech Office issued fines in a total volume of 350,86 million CZK, and the range calculated as highest value minus lowest value + 1 reached an unbelievable 939. Thus, the difference between the highest volume in 2007 of 956 million CZK and the lowest volume in 2011 of 30 million CZK plus 1 (range=939). The variance, according to the above mentioned formula is  $\sigma^2 = 103\,078$  and the square root from it, the standard deviation, is  $\sigma = 321$ . Sadly, the results of the Czech Office were inconsistent, as a matter of fact the qualitative analysis by formula is necessary. Yet it is obvious that there is a dramatic discrepancy in the results of the Czech Office and that such a fluctuation is incompatible with an effective and efficient operation of a national antitrust office.

Secondly, the collected data suggests that the number of cartel proceedings initiated annually by the Czech Office varies significantly. Naturally, this is not, in and of itself, conclusive evidence per se of a lack of efficiency of the Czech office. At the same time, it needs to be stressed that the Czech Office uses its discretion and decides whether and when it will launch a cartel proceeding, so the Czech Office has a total control over the number of cases annually launched. The concept of legitimate expectations and the need of legitimacy, standardization, transparency and promptness of administrative proceedings according to the due process clause requires that there should not be any unexplained discrepancies in the amount of annually commenced proceedings. Also required is that the majority of proceedings launched should prove to be worthy of prosecution, i.e. end with the proving-out of a cartel and with its resulting punishment. However, the total number of new cartel cases launched by the Czech Office in 2008 was 16, but collapsed in 2009 to only two cases, and in 2010 to just one case. A mere observation of the pricing from cell phone operators, as well as the speculatively high level of pricing in certain industries over time, supports the general perception, shared by the public at large, that, in the market of the Czech Republic, there most definitely are cartels, often very sophisticated and powerful. Less laudatory and pleasant reasons for the small number of cases needs to be considered. These would include the length of proceedings and the related incapacity to successfully bring the cartel prosecution to an end within a reasonable amount of time. Even worse reasons could be a conceptual instability, a lack of a uniform approach and an insufficiency of resources. It would be remiss not to mention the possibility of the darkest reasons, such as a lack of interest to fight against certain cartels in an efficient and effective manner. This would lead to an extremely harsh criticism and even perchance amount to criminal charges, but since there is

no strong evidence for it, this worst possible explanation should be rejected at this point in time.

Thirdly, as mentioned above, businesses are inclined to fight against administrative fines and to challenge administrative decisions condemning cartels before courts. However, their success rate before the CJ EU is slim and the majority of Commission decisions and imposed fines for cartel behavior are confirmed by the CJ EU. The above indicates that numbers about the EU high confirmation rate contrasts drastically with the shocking 0% ratio for the confirmation and enforcement of top fines issued by the Czech Office.

TABLE II. THE HIGHEST CARTEL FINES IN CZK ISSUED BY THE CZECH OFFICE IN THE 1.I AND 2.INSTANCE AND THEIR COURT ADJUSTMENT.

Cartel	Fine Amount in CZK set by the Czech Office and by Courts		
	1.instance	2.instance	Court
PISU – Toshiba, ...	979221000	941881000	0
Building Saving	484000000	55000000	0
GAS - Agip, Aral, Benzina, ....	313000000	313000000	0 (pending)
BAKERIES – Delta, Odkolek,...	120000000	52800000	0
SUGAR – Eastern Sugar Curkrovary..	118700000	0	N/A
PHARMACEUTIC – Gehe, Pharma	113064000	113064000	113064000

Source: Author's own work based on the information available on the Internet page of the Czech Office for the protection of competition, especially <http://www.uohs.cz/cs/informacni-centrum/statistiky/prehled-nejvyssich-pokut-ulozenych-v-oblasti-hospodarske-souteze.html>

Naturally, it does mean that the Czech Office never succeeds to sustain its decision within the adjudicative overview, though recently the situation seems to improve. Nevertheless, the hard facts are that the Czech Office initiated in one year 16 cartel proceedings and another year only one cartel proceeding and managed to issue just a reduced number of fines and repeatedly failed to sustain them in the court proceedings. The rate of the judicial confirmation and the collection of the fines remains deep under 50%. With a touch of sarcasm and exaggeration, it could be suggested that the only predictability and consistency related to the Czech cartel punishments, especially if a large fine is involved, is that everything will be quashed by the courts.

Fortunately, the Czech Office appears to have undergone a self-reflection and improvement, e.g. the fine for the Waste and Disposal Management cartel became final.

At the very heart of the matter are the burning questions implied from the discovered, investigated, and reassessed data. These are, why the same proclaimed effectiveness at the EU and Czech national cartel punishment level is not matched by the same efficiency, why the fines set by the Commission to parties complicit in a cartel are paid by them and why the fines set by the Czech Office are not paid, and what are the consequences from it for the Czech, and perhaps even the EU and global, competitive environment.

Unfortunately, the first hypothesis about the inefficiency of the administrative arm of cartel prosecution in the Czech Republic, as compared especially with the EU, is confirmed and the burning question emerges – whether businesses conducting business have addressed this grim fact and, if yes, then how. Namely how business management should address it, especially in the light of the battle for the sustainable competitive advantage, by operational measures and strategic measures.

The dark effects of cartel tolerance and its mitigation, the social high tolerance of cartelism and the state incapacity to vigorously and successfully fight against distortion of markets by antitrust plotting means that bad businesses might avoid the punishment that they deserve, while innocent businesses could become unjustly punished by being sanctioned or through the lack of sanctions for the bad businesses, and all this at the expense of consumers and society in general. In front of, but more often hiding behind the curtains, a dangerous game is being played out. Cartels have been, are, and will be, and thusly before any discussion regarding their prosecution can start, they must be detected. Thus, probably the greatest challenge for each and every antitrust enforcement system is to ensure that appropriate and proportionate sanctions are imposed on convicted individuals and entities [11]. Thus should be preserved the undistorted competition with a fair play game for a higher gain and a growing pool of happy and loyal customers under the flag of the sustainable competitive advantage.

Globally, cartels are very bad news for competition on each and every level. A domestic cartel causes, on average, an illegitimately unjustified increase in prices by 15% and an international cartel causes, on average, an illegitimate increase in prices by 25% [12]. Generally, cartels last considerably more than one year, escape the public's attention, and their detection rate oscillates around 10% and even the champion in discovery of cartels, the USA, brings to light only 25% of cartels [13]. Therefore, no one single detected case can be wasted and each and every cartel case should be correctly prosecuted and justly sanctioned.

Manifestly from the 10-25% of detected cases, approximately 60-90% get punished on the EU level, but much less than 50% on the Czech national level. In other words, cartelists plotting on the EU level risk discovery and punishment by 5-15%, while cartelists plotting on the Czech national level risk discovery and punishment by less than 5%. The message for businesses considering cartel conspiracy in the Czech Republic is clear. They may reach an increase of prices by 15% for a period of time longer than one year while the risk to be caught and punished is way under 5% and the imposition and collection of a fine in the maximal amount of 10% of turnover is virtually impossible.

The Czech Republic does not have a long tradition of high business ethics and it is well known that businesses operating on the Czech market often succumb to various temptations and seize “opportunities” offered by a low law enforcement. They can gain a sustainable competitive advantage by skillfully manipulating prices and chasing away other competitors, and thus by an agreement can become the masters of the market not

needing to worry about Porter's lower cost and differentiation. A case study of a trio of Czech phone operators, O2, T-Mobile and Vodafone and their tariff policies and business management, both operational and strategic, in the past decade can offer an interesting insight. Naturally, there are many other industries and fields suitable for a similar case study.

Well, what about those not wanting to collude or not offered to collude? Are they condemned to vanish or to be play just a marginal role on the market? Manifestly, this is a large problem and no business can afford to give up and just passively tolerate it.

The list of possible mitigations and counter-measures is long and, as with medicine, each of them has positive, negative and side effects. In addition, this field has not been covered by an extensive and well-analyzed and argued academic study. This is extremely sad, because such information is desperately needed and businesses as well as Czech consumers and other stakeholders desperately need it. Intuitively and based on general observation, the following areas and lines can be suggested for such a future study.

Firstly, the tolerance of cartels is a problem with possible micro-economics, as well as macro-economics, effects and so the low efficiency of cartel prosecution is a true issue for the executive branch of government. Boldly, it should be among the tasks discussed in programs of political parties and an integral part of the discussion conducted by the government and the legislative body. The public-at-large can voice its opinion and request such changes. Nevertheless, the voices of businesses harmed by cartels might be intentionally overheard.

Secondly, cartel tolerance is a social problem reflecting on the entire society open to degrade and diminish ethical and legal concerns. An enhancement of awareness and educative process is desperately needed and businesses, especially those hurt by cartel practices of their dishonest competitors, should work in a synchronized manner in this direction. Their advertisement, marketing, public relation actions, etc. should incorporate it.

Thirdly, a bottom up active approach should be embraced by all stakeholders and the cartel prosecution should be done through all three pathways. Namely the private damage venue should be explored by businesses suffering losses by cartelists.

Next, businesses on the EU territory can form an alliance with consumers and use the consumer protection law in their battle against cartelists.

Fifth, provided certain cartels seem to be above the law, other businesses need, at least temporarily, to learn along with them. In other words, no conspiring businesses should mirror by their planning the cartel action curve, i.e. they need to predict future steps of cartelists and take advantage of them. This is an extremely sophisticated task, but, if managed, then it could mean that businesses which do not collude, would beat businesses which conclude, while using their own, cartelists, weapons and methods.

Sixth, legal measures of sharing and cooperating, such as licensing and other forms of partially independent co-exploring of the intellectual property, should be used. This venue should

definitely take full advantage of the fact that, recently, franchising gained considerable popularity [14].

Next, post modern global society is heavily based on information systems and information technologies [15], and the e-business is an indispensable form of business conduct and namely the Website with an appropriate domain name is a must. [16] Their employment can become a fantastic weapon in the fight of the honest David against the big cartel Goliath.

Eight, nine. well, there are many others and they need to be studied, analyzed and implemented in the most appropriate and pro-active manner.

### III. CONCLUSION

In today's competitive world, we are faced with a multitude of various concepts of knowledge and methods hampering efforts of communications and/or integration. While there are many issues and challenges, there exists a healthy potential for selecting and employing corrected models [17] to address commonly perceived priorities, such as the optimal functioning of the market. Cartels are bad, hurt the entire society, its market and even individuals. Cartels have existed for a long time and will continue, their detection is rather unlikely and their prosecution must be successfully completed to serve preventive, deterioration, reparation and other effects. The American pragmatism, the honesty value proclaimed by its entire society, the general endorsement of an aggressive criminal prosecution and private parties proceedings are the true motive power, along with the developed methodology for administrative proceedings against cartels. The EU and even the Czech Republic per se have been slowly following the USA model, and it seems that it should keep doing so, and, for the sake of our economies and we the consumers, faster rather than slower [18].

As a matter of fact, the framework to protect competition is set in a similar manner by the EU and by the Czech Republic, as a matter of fact these two frameworks overlap. The Commission performs a very similar function to the Czech Office, but with much different results. Research and investigation of various sources, focusing on the official online presentations of the pertinent institutions and organs, leads us to information both surprising and hard to reconcile. It appears that the Commission proceeds steadily, consistently, and in a justified and predictable manner, with a reasonable success rate both for the Commission's proceedings and the judicial approval of the cartel fines. In sum, the Commission launches between four and five cases annually and the issued fines are confirmed by the CJ EU generally in the extent of 69% to 93%, and regarding the mega fines in the extent of 58% to 100%. Thus it is much more likely to see the rejection of the appeal against the cartel fine or a minor reduction of such a fine, than a big reduction or even a total cancellation of the cartel fine.

The apparent effectiveness and efficiency of the Commission and the apparent lack of effectiveness and efficiency of the Czech Office with respect to cartel punishment is startling, and has a serious impact for individuals as well as society as a whole. It appears that the Czech office either does a wrong thing, or it does things wrongly. It could be that it chases innocent businesses with unjustified charges and

forces them to use their resources to prove out their non-cartel behavior, and so is ineffective. On the other hand, doing things wrongly, it desperately chases businesses plotting and, via cartels, harming, or even destroying markets, and the office is incapable of proving it and enforcing the market and competition protection, and so it is inefficient. This outcome is bad news for the Czech business environment, for honest businesses, customers and other stakeholders. The situation is complicated, but not desperate. There is a noticeable recent effort of the Czech Office to improve, to be more effective and efficient, in the last couple of years. With educated, efficient and effective support, the Czech Office has a chance to become a true authority protecting the competitive environment in the Czech Republic, especially fighting against cartels. In addition, businesses should carefully study the situation and adjust their operational as well as strategic planning. In other words, there is a myriad of methods and instruments to be implemented by a vigilant business in the Czech Republic, which is seriously and honestly competing for a sustainable competitive advantage.

The wait and see attitude is definitely not appropriate at this point. Academia should contribute to the common society project. After the disastrous effects of cartels and their inefficient punishment have been strongly developed in the academic press, then is the time to develop a methodology and recommendations on how to proceed when the executive powers fail to do their cartel battling job. After all, except for the few cartelists, the business life and business management not impaired by collusive conspiracy is in the best interest of all of us!

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