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Administrative and Criminal Implications to Competition Law Infringements: EU Law Discussion and the Albanian Legislation

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Competition law is one of the essential pillars for a fully-functioning free market. Anticompetitive behaviour of the undertakings like engaging in anticompetitive agreements or abuse with a dominant position have the potential to disrupt the market by increasing prices, reducing quality and out-gaming fair competitors.

However, the competition material law alone needs a body of institutions to be implemented. A body of competition law is only as good as the institutions entrusted with their implementation. [1] In the EU, the competition law is enforced publicly by the EU Commission at a Union level and by the National Competition Authorities (NCAs) at Member States' level.

This study firstly focuses on the administrative implications of the public enforcement of competition law, discussing the ground-breaking Regulation 1/2003, the deterrent effect of the Commission's fines and the famous leniency policy which has shaped the last decades' EU competition policies. Following, the Albanian administrative measures as regards competition infringements are assessed under a comparative view.

The discussion shifts to the still hot topic of criminalising the EU competition law, focusing on the latest debates among authors and a 'pros and cons' list. The analysis also mentions non-EU examples which have already implemented the criminalisation of cartels.

Finally, the limelight shifts to the analysis of some of the cartel-enforcement systems that have already adopted criminal sanctions for serious competition infringements. In addition, the Albanian Criminal Code provisions on anticompetitive crimes are analysed.

Administrative Sanctions to Infringements of Competition Law

a. Administrative Sanctions under the EU Public Enforcement of Competition Law

- Fines under Regulation 1/2003

The actual EU competition enforcement is one of the most successful globally. This is mostly due to an efficient and updated public enforcement of competition law. The latter concerns the application of Articles 101 (prohibition of anticompetitive agreements) and 102 (prohibition of abuse with a dominant position) of the Treaty on the Functioning of the European Union (TFEU) by the EU Commission and the National Competition Agencies (NCAs) of the EU Member States.

The public enforcement of competition law is further regulated by Regulation 1/2003[2]. It substituted the older Regulation 17[3] and is known for a decentralised approach, increasing the NCAs involvement in the investigation and prosecution of anticompetitive behaviour.[4] In addition, it introduced an ex-post control of anticompetitive agreements and abuse of dominant position, as compared to the previous ex-ante control.[5]

Regulation 1/2003 establishes enforcement of competition law based on fines and penalty payments as the only sanctions enforcing Article 101 and 102 TFEU. This is firstly enshrined in Recital 29 of the Regulation.[6]

The above Regulation provides the Commission with decision- making, cooperative, investigative and sanctioning powers. The Commission's competencies are established under Chapter VI of the Regulation. Despite the more decentralised approach, it is agreed that the Commission is still left with wide discretion as regards setting the amount of administrative penalties.[7] The penalties inflicted by the Commission can be fines (as provided by Article 23) or periodic penalty payments (as provided by Article 24). The Commission can impose fines as sanctions for procedural infringements by the undertakings (such as misinformation of the Commission) as well as material violations (such as an infringement of Article 101 or 102). In each case, decisions taken for procedural or material infringements pursuant to Article 23(1) and (2) cannot be of a criminal nature.[8] In fixing the amount of the fine, the gravity and duration of the infringement are the main factors to consider.[9] Periodic penalty payments, on the other hand, are administrative sanctions applied by the Commission for continued infringements, in the cases provided for in Article 24(1) of the Regulation.

Any Commission decision imposing a fine or periodic penalty payment can be challenged before the European Court of Justice (ECJ). The latter has unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment: it may cancel, reduce or increase the fine or periodic penalty payment imposed.[10]

Interestingly, Article 5 of the Regulation provides that the NCAs can impose fines, periodic penalty payments, or any other penalty provided for in their national law.[11] In this article the Regulation leaves room for national sanctions other than fines or periodic penalties. However, it seems unlikely that an administrative (non-judicial) body like an NCA would be given the green light by a national legislation to impose criminal sanctions. On the other hand, the following article of the Regulation provides that national courts shall have the power to apply Articles [101] and [102] of the Treaty.[12] This laconic article does not elaborate further if it applies to criminal domestic courts as well.

Besides the fines imposed by the EU public enforcement of competition law (the Commission and NCAs), the EU law has lately encouraged the development of private enforcement of competition law. It entails the application of competition rules by private parties in damages lawsuits. The EU Damages Directive[13] regulates the material aspects of how the damages claims are dealt with in the Member States' national courts and provides to strike a balance between public and private enforcement of competition law. However, differently from the US which is mostly focused on private enforcement of competition law,[14] the EU has followed a different path where public enforcement is by far the most developed wing of the enforcement of competition law.

- Deterrence in the EU Fining System

A hot topic about fining anticompetitive behaviour is connected with the standards applied to calculate the fines. Some theories support administrative measures (like fines) that are proportional to the illegal profit, or to the predicted illegal profit that the infringers were planning to make when they violated competition law, divided by the probability to be caught.[15] On the other hand, most authors believe that the fining system needs to have a deterrent effect, thus, fines should amount to more than illegal profits. The theory of deterrence holds that punishment can only be justified if it leads to the prevention or reduction of future crime.[16] The EU public enforcement applies this view.

The EU Commission states in its Guidelines on the Method of Setting Fines[17] that 'it is[...]considered appropriate to include in the fine a specific amount irrespective of the duration of the infringement, in order to deter companies from even entering into illegal practices'.[18] In addition, the above guidelines call for a 'necessary deterrent effect' of the Commission's decisions.[19] Moreover, the Guidelines elaborate that fines should have a sufficiently deterrent effect, not only in order to sanction the undertakings concerned (specific deterrence) but also to deter other undertakings from engaging in or continuing, behaviour that is contrary to Articles 81 and 82 of the EC Treaty (general deterrence).[20] This standing of the Commission was previously set by the ECJ case law, which established that:

'In assessing the gravity of an infringement for the purpose of fixing the amount of the fine, the Commission must take into consideration not only the particular circumstances of the case but also the context in which the infringement occurs and must ensure that its action has the necessary deterrent effect, especially as regards those types of infringement which are particularly harmful to the attainment of the objectives of the community.'[21]

The method of setting fines by the Commission undergoes a two-step procedure. First, the basic amount of fine is determined.[22] This assessment is based on two important factors:
-The gravity of the infringement (for instance, attention must be paid to the value of the sales of goods or services to which the infringement relates),[23] and
-The duration of the infringement (the fine should also reflect the number of years during which an undertaking participated in the infringement).[24]

Second, the basic amount of fine is adjusted taking into consideration: aggravating circumstances, mitigating circumstances, a specific increase of deterrence, legal maximum limits, the leniency policies and the infringer's ability to pay.[25] Some of the aggravating circumstances include recidivism, refusal to cooperate, or leading the infringement.[26] Mitigating circumstances refer to cases where the undertaking has immediately terminated the infringement after the Commission's alert, when the infringement is committed due to negligence, when the undertaking has cooperated with the Commission, etc.[27]

'Legal maximum limits' refers to Article 23 of the 1/2003 Regulation which provides that for each undertaking and association of undertakings participating in the infringement, the fine shall not exceed 10 % of its total turnover in the preceding business year. Where the infringement of an association relates to the activities of its members, the fine shall not exceed 10 % of the sum of the total turnover of each member active on the market affected by the infringement of the association.[28] The (in)ability to pay is taken into consideration in exceptional cases.[29] The leniency policy will be discussed below. These Guidelines, however, do not set a minimum limit for the fines.

Statistical analysis and assessments of the Commission decisions show that a significant use is made of the aggravating and mitigating circumstances listed in the Guidelines on the Method of Setting Fines to adjust the basic amount of the fine, as well as of the leniency and cartel settlement procedures.[30]

These Guidelines on the Method of Setting Fines have increased the legal predictability among infringers. Authors have different points of view on this issue. On the one hand, increased predictability would render it easier for infringers to calculate their risks. However, it would amount to a more predictable outcome for the leniency whistle-blowers, therefore making the leniency program (discussed below) more efficient.[31]

The EU method of imposing competition fines has proven over the years to set high (and therefore, deterrent) fines for infringers. As some authors argue, with a cap of 10 percent of the defendant's prior year revenue, the fines [...]can be quite large.[32]

- Leniency Policy: The Key to a Successful EU Public Enforcement of Competition Law

The leniency policy is one of the ground-breaking novelties introduced by the Commission. It is briefly defined by the Commission as a policy where 'companies that provide information about a cartel in which they participated might receive full or partial immunity from fines'.[33] The leniency policy has proven to be an important source of collecting evidence and a convenient method of prosecuting cartels. The central idea of self-incrimination of the leniency policy, if not provided with sufficient legal certainty for the whistle-blowers, could render this policy less attractive for cartel members.

The terms and conditions to apply for leniency are established in Commission's Leniency Notice.[34] The success of the leniency policy is linked to the fact that penalties are already set at a very high level.[35] The fines need to be high enough for one cartel member to be willing to expose a cartel to receive immunity.

The success of the leniency policy is based on encouraging cartel members to race to the competition authorities. The history of EU competition law has shown that a difficult aspect of building an efficient leniency policy is setting the optimal level of clarity or transparency when dealing with leniency applicants.[36] The transparency of the way immunity is granted and the fines are calculated (in cases of partial immunity) directly influences the degree of predictability and therefore the degree of legal certainty, which could comfort or deter cartel members to apply.

b. Administrative Sanctions under the Albanian Public Enforcement of Competition Law

- Fines under the Albanian Law on Protection of Competition

Albania has a relatively new competition law framework that started to develop only after the fall of the communist regime in 1991. The main legal instrument regulating the substance of competition law and its public enforcement in Albania is the Law 'On Protection of Competition' (LPC).[37] The procedural aspects are covered by Chapter II of this law, the Albanian Code of Administrative Procedures[38] and other normative instruments adopted by the Albanian Competition Authority (ACA). The above law has transposed Articles 101 and 102 TFEU and has also been aligned with most provisions of Regulation 1/2003. Even though the Criminal Code of Albania provides for criminal sanctions for specific, serious infringements (as will be discussed below), most of the anticompetitive behaviour is sanctioned via administrative measures.

Being a Candidate Member of the EU, Albania has signed and ratified the Stabilisation and Association Agreement between the EU and Albania (SAA), meaning that the latter has to transpose and implement the primary and secondary EU legislation, including competition legislation.

The competent body entitled to carry out the public enforcement of competition law in Albania is the Albanian Competition Authority (ACA), which is a public and independent body, consisting of the Commission and the Secretariat.[39]

Administrative infringements and sanctions are regulated under Part VI of the LPC. In a similar fashion to Article 23 of Regulation 1/2003, LPC divides fining into two categories: Fines for minor violations[40]: reflecting the provision for procedural infringements provided by Article 23(1) of the Regulation, and fines for serious infringements[41]: reflecting the provision for substantial infringements provided by Article 23(2) of the Regulation. LPC stands by the same standards as Regulation 1/2003 concerning the importance of the severity and duration of the infringement and the maximum amount of fines.[42] The LPC has also fully transposed the 2003 Regulation regarding periodic penalty payments.[43]

Interestingly, the LPC also mentions the individual administrative responsibility of natural persons. Labelling them as 'individual sanctions' the LPC provides that the ACA Commission imposes fines of up to 5 million ALL on individuals who, intentionally or through negligence, commit or collaborate in serious infringements of competition law.[44] A similar provision is not found in Regulation 1/2003. The efficiency of imposing financial sanctions (such as fines) on individuals has not always been supported by competition law authors. They argue that companies can relatively easily compensate their agents in advance for taking the risk of being fined and/or indemnifying them ex-post when they have to pay the fine.[45]

- The Leniency Procedure in Albania

The LPC has established a leniency policy, mostly mirroring the standards introduced by the EU Commission's Leniency Notice. Article 77 of LPC stipulates that an undertaking involved in a prohibited agreement may be granted full or partial immunity from fines if it assists in the discovery and the termination of the prohibited agreement, as well as in determining the responsible persons, ensuring data not previously acquired by the Authority. [46]

However, the procedure is detailed in another normative act: The ACA Regulation 'On fines and their leniency'.[47] The above regulation has transposed two EU Commission instruments: the Commission's Guidelines on the Method of Setting Fines and the Leniency Notice. Regarding the latter, the ACA Regulation has fully harmonized the EU standards discussed above on full and partial procedures for the granting of immunity.

Even though the LPC provides for individual financial sanctions (discussed above), the ACA Regulation does not mention any way to grant individual leniency. It provides that the undertakings under investigation are advised by the ACA Commission about the possibility of benefiting from leniency if they cooperate with the Authority.[48] By a wording interpretation of the provision, it can be concluded that the leniency policy in Albania applies only to legal, not natural persons.

Discussion on Criminalisation of Competition Infringements in the EU

The EU law itself does not provide criminal sanctions to deal with serious competition infringements like cartels. Can Member States impose additional criminal sanctions on serious anticompetitive behaviour?

Administrative and criminal sanctioning of anticompetitive behaviour differs on many levels. First, administrative sanctions like fines or periodic penalty payments target undertakings (as legal persons). Criminal sanctions, on the other hand mostly target natural persons like managers and other executive directors of undertakings. Administrative sanctions result in monetary payments by the infringers. Criminal sanctions on the other hand may include imprisonment for serious offences like hard-core cartel activity, such as price fixing, bid rigging, and allocation agreements[49]. In addition to prison sentences, other punitive measures of a criminal nature may be applied, like disqualification orders on directors of undertakings.[50] However, criminal punishments for competition infringers may even result in fines, making it difficult to determine prima facie whether a fine is the result of an administrative or criminal proceeding.

Even though the EU competition law does not deal with competition infringements criminally, the US competition law does. Based on Sherman and Clayton Acts,[51] the US cartel prosecution is exercised at the federal and state level. Cartels are punished as felonies and individuals may be punished by imprisonment not exceeding 10 years.[52]

On the other hand, in the EU the deterrent effect is claimed to be achieved by the high fines set via an administrative procedure in the Commission or the NCAs (discusses above). However, some authors argue that personal sanctions are needed to ensure deterrence.[53]

Some of the advantages of criminalising competition law are summarised below:
·Increased level of deterrence for competition infringements;
·Discouraging employees to violate competition rules without the consent of the employers;[54]
·Criminal sanctions to the individuals would render the leniency policy even more successful if criminal immunity was granted to the first individual whistle-blowers.[55]

Some of the challenges of criminalising competition law are summarised below:
·The risk of the criminal responsibility being shifted to employees who only executed the employer's policies;
·A difficult burden of proof for the employers and employees to prove their claims;
·Criminally prosecuting cartels can be more expensive for the competent enforcement bodies compared to administrative measures. This is due to stricter burden of proof standards and the engagement of a larger number of public bodies.[56]

Even though the EU legislation does not criminally prosecute competition infringements, it does not prohibit the Member States to do so, provided that they follow the rule of law and fair trial standards that the EU stands by. For instance, Estonia, Germany, and Denmark have in place individual criminal

sanctions (i.e., custodial sentences) for (some forms of) cartel activity.[57] Other non-EU members that have imposed criminal sanctions for the most serious competition infringements are the US, the UK, Australia, etc.

Albania's Dilemma in Fighting Cartels Criminally

As mentioned previously in this study, the Albanian Competition Authority (ACA) can impose fines on undertakings and the individuals behind them. In other words, legal and natural persons are both liable according to the Albanian LPC. The law also applies a similar leniency program, just like the EU, for undertakings that report to the Authority about different agreements that infringe market competition.

Up until this point the philosophy in fighting cartels in Albania has been quite similar to the philosophy followed by the EU institutions. However, the EU and Albania differentiate at an important point. Similarly to a few EU Member States, the Albanian legal framework includes criminal sanctions against certain cases of competition infringements.

Article 170/b of the Albanian Criminal Code (CC)[58] establishes that:

"The performance, during the exercise of commercial activity, of competition infringements through threat or violence, is punished with imprisonment from one to four years. When the competition infringements are directed towards activities financed fully or partly or in any way by the state or from the public entities, the sentence of imprisonment is added with one third."

Analysing the elements of this specific provision one by one from the criminal law point of view, the findings are as follows:

The protected element of this article is the normal functioning of the financial market. The latter is protected from illegal activities that aim to fragmentize it in various ways. Since agreements to manipulate the market are already under the supervision of the Albanian Authority of Competition, why is it necessary to have a specialized provision in the Criminal Code as well?

One of the main reasons why this Article exists in the Criminal Code of Albania (as of the writing of this article), is that sometimes the market is manipulated using threats or violence. From a criminal law point of view, these two elements (threat or violence) are considered the modus operandi, of the criminal offence. Consequently, as soon as threat or violence is used, it is not a matter of administrative nature anymore. It becomes a matter of criminal nature and the court needs to be invested to prosecute the offenders criminally. Societal dangerousness is increased dramatically when individuals start using these means to achieve their criminal purposes. What can be further noted by this specific article in the Albanian Criminal Code is that in the second paragraph, if the acts of threats or violence are directed towards a company whose activities are financed fully or partially or in any other way by the state the imprisonment sentence will increase by 1/3.

Even though Article 170/b of the CC applies mostly to the individuals as natural persons, undertakings can be also held responsible criminally under another national law 'On the Criminal Liability of Legal Entities'.[59]

This law stipulates that in Albania, legal entities can be criminally charged and prosecuted just like natural persons if they commit a certain crime within the scope of this law.

One of the main pillars of the abovementioned law is established under Article 3. It establishes the scenarios when a legal entity can be criminally prosecuted and/or charged. A legal entity can face criminal liability for a crime committed by a natural person in the following cases:
a) in its name or for its benefit, by its bodies and representatives;
b) on behalf of or for its benefit, by a person who is under the authority of the person who represents, directs, and administers the legal entity;
c) in its name or for its benefit, due to the lack of control or supervision by the person who directs, represents, and administers the legal entity.

Thus, if the crime committed by the natural person is done in the name of, on behalf of, or for the benefit of the legal entity, by its representatives, administrators, supervisors, or people under their supervision, the legal entity can be charged with a criminal offence. This means that the legal entity theoretically can be prosecuted for every offence stipulated in the Criminal Code of Albania, and be punished accordingly. What happens when a legal entity is found guilty by a court of law of a certain crime? Naturally, the legal entity cannot suffer jail time, so according to this law, the penalty for legal entities found guilty is either through fining or the forced closure of the legal entity. The forced closure can be manifested in various ways, for instance by putting the legal entity under forced administrative control by the state, etc.

Albania has all of the necessary legal frameworks in power to prosecute legal entities. Taking an example, let us assume a company is specialized in wine production. They are fairly successful and have an increasing reputation, they have a set list of prices and are quite preferred by the general public. A competitor is not happy with their success, so the owner(s) of the company directly threatens and coerces the first company so that they can fictively raise the prices and their product will be too expensive for the customers. If the first company fails to comply with the requests, they are further threatened with violence. By applying the standards discussed above, one can conclude that the competitor is actively trying to damage the fair-trade balance and the competition created in the market. They are doing this using threats and violence so that their product becomes unattainable by the customers, thus effectively taking them out of business. All of these actions are done in the name, on behalf and benefit of one of the companies. Taking all of these factors into consideration, the legal entity and the natural persons shall be liable for the breach of Article 170/b of the Albanian Criminal Code and shall suffer the consequences accordingly.

Criminal and administrative charges for competition infringements in Albania are both feasible alternatives in cases similar to the one described above. However, a main point of reflection is the fact that Albania is undergoing the process of EU integration, and as we have pointed out numerous times through this article, breaching the competition in the EU is considered solely an administrative offence. Individual countries in the EU have laws that criminalize cartels, but the offenders are seldom criminally charged, thus opting for

fining as the best way to fight unfair breaching of competition in the single market.

It can be safely be assumed that Albania will follow the same strategy once a full Member State of the European Union, still considering public and private enforcement as the best ways to fight unfair practices of competition. However, Albania can also follow the example of some actual EU Member States which preserve criminal sanctioning of certain anticompetitive behaviour in their national Criminal Codes.

Summing up, the fight against cartels is never-ending and is always being updated. However, the best remedy that has been applied against them is administrative public enforcement and private enforcement of competition law, and as such this is the expected path Albania will take too in the approximate future when the country becomes a Member State of the EU.

This article analysed the features of EU and Albanian public enforcement of competition law, with a focus on fines and penalties. The EU competition law relies only on administrative measures to tackle anticompetitive behaviour. However, the EU Treaties and Regulation 1/2003 do not impose limits on the Member States to use additional criminal sanctions. This EU model emphasizes the deterrent effect of penalties, setting large fines over the years. The EU leniency programme has become the key to the successful enforcement of EU competition law.

The Albanian legal framework to tackle competition infringements was the focus of this article. As a Candidate EU Member, Albania has harmonised the EU treaties, Regulation 1/2003 and the Commission's notices on competition. However, it has opted to add other provisions in its national competition law, like providing for individual sanctions to the natural persons that infringe competition law. In addition, Albania prosecutes certain cases of competition infringements criminally. Albania has fully transposed the EU leniency policies. Although Albanian competition law provides for individual sanctions, the Albanian leniency policy tends to apply to undertakings only.

Even though the EU does not prosecute cartels criminally, many authors believe that it would be more effective than setting large fines. Others argue that it would increase the investigation costs. Other non-EU countries like the US, the UK and Australia have already criminalised serious anticompetitive infringements.

Concerning the criminalisation of cartels in Albania, Article 170/b of the Albanian CC stipulates that when a competitor uses threats, coercion, and violence to shape the market, they are criminally liable for this specific offence. The above article, together with the Albanian law 'On the criminal liability of Legal Entities' render the undertakings criminally liable when competition infringements are associated with threat or violence. Nonetheless, fining is the most commonly used penalty for infringing competition in Albania. Taking into consideration the path of integration into the EU of Albania and the harmonisation of the EU legislation into the Albanian one, it can safely be assumed that Albania will follow up the examples of other Member States and the European Commission when dealing with public enforcement of competition law.

[1] Duke, A., Sweeney, B., Duns, J., Comparative Competition Law, Edward Elgar Publishing, November 24, 2015, ISBN 9781785362576, page 271.

[2] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81[101] and 82 [102] of the Treaty, link https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02003R0001-20090701

[3] EEC Council: Regulation No 17/1962: First Regulation implementing Articles 85 and 86 of the Treaty, link: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31962R0017

[4] See also: Jones, A., Sufrin, B., Dunne, N., EU Competition Law- Text, Cases and Materials, Seventh Edition, Oxford University Press, 2019, page 878.

[5] Ibid. page 874.

[6] Recital 29 of Regulation 1/2003 stipulates that Compliance with Articles 81 and 82 of the Treaty and the fulfilment of the obligations imposed on undertakings and associations of undertakings under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels of fine should also be laid down for infringements of the procedural rules.

[7] As established by ECJ case law: Case C-289/04P Showa Denco v Commission (Graphite Electrodes) [2006] ECR I-5859, link: https://curia.europa.eu/juris/showPdf.jsf;jsessionid=77C45AF11459553D1ECB19DF1543D8C7?text=&docid=65026&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=3087454, paragraph 36.

[8] Article 23(5) of Regulation 1/2003.

[9] Article 23(3) of Regulation 1/2003.

[10] Article 31 of Regulation 1/2003.

[11] Article 5(1) of Regulation 1/2003.

[12] Article 6 of Regulation 1/2003.

[13] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, link: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32014L0104

[14] For more information, see also: Kammin J., Reforming Private Antitrust Enforcement in Europe: Between Harmonisation and Regulatory Competition, Duncker and Humblot GmbH, Berlin, 2014, page 76.

15] Lianos, Ioannis and Jenny, Frederic and Wagner-von Papp, Florian and Motchenkova, Evgenia and David, Eric, An Optimal and Just Financial Penalties System for Infringements of Competition Law: A Comparative Analysis (May 1, 2014). CLES Research Paper No. 3/2014, Available at SSRN: https://ssrn.com/abstract=2542991, page 60.

[16] Whelan, Peter, Antitrust Criminalization as a Legitimate Deterrent (January 5, 2021). The Cambridge Handbook of Competition Law Sanctions, Tóth (ed) (Cambridge University Press, Forthcoming), Available at SSRN: https://ssrn.com/abstract=3760522, page 4. See also: Walker, N., Punishment, Danger and Stigma: The Morality of Criminal Justice, Barnes & Noble, Totowa, NJ, 1980, page 26.

[17] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (2006/C 210/02), link: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006XC0901(01).

[18] Recital 7 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

[19] Recital 4 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

[20] Ibid.

[21] Joined Cases 100/80 to 103/80 Musique Diffusion française and others v Commission [1983] ECR 1825, link: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006XC0901(01), paragraph 106.

[22] Articles 12 to 26 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

[23] Recitals 2 and 5 of the Guidelines on the method of setting fines.

[24] Ibid.

[25] Articles 27 to 35 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

[26] Article 28 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

[27] Article 29 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

[28] Article 23(2)(a) of Regulation No 1/2003 (emphasis added).

[29] Article 35 Article 28 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

[30] Geradin, Damien and Sadrak, Katarzyna, The EU Competition Law Fining System: A Quantitative Review of the Commission Decisions between 2000 and 2017 (April 25, 2017). TILEC Discussion Paper No. 2017-018, Available at SSRN: https://ssrn.com/abstract=2958317 or http://dx.doi.org/10.2139/ssrn.2958317, page 4.

[31] See also: The OFT, 'An assessment of discretionary penalties regimes', London Economics, 2009, page 22.

[32] Huffman, Max, Civil Sanctions in Antitrust Public Enforcement (March 1, 2022). in Cambridge Handbook of Competition Law Sanctions 205-217 (Toth ed. 2022), Available at SSRN: https://ssrn.com/abstract=4187367, page 4

[33] The European Commission webpage on leniency: http://ec.europa.eu/competition/cartels/leniency/leniency.html

[34] Commission Notice on Immunity from fines and reduction of fines in cartel cases, link https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52006XC1208%2804%29

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[36] See also: Groussot X., Pierce J., 'Transparency and Liability in Leniency Programmes: A question of balancing?' in Bergström M., Iacovides M. and Strand M. (eds.), Harmonising EU Competition Litigation, the New Directive and Beyond, Hart Publishing, Oregon.

[37] Law No. 9121, dated 28.07. 2003 'On Protection of Competition' (LPC), link: https://qbz.gov.al/eli/ligj/2003/07/28/9121

[38] Law No. 44/2015 ,'The Code of Administrative Procedures of the Republic of Albania', link:https://qbz.gov.al/preview/de7df9ee-7c2e-440a-9f46-1929531dc7d1

[39] Article 18 of the LPC.

[40] Article 73 of the LPC.

[41] Article 74 of the LPC.

[42] Article 75 of the LPC.

[43] Article 24 of Regulation 1/2003 and Article 76 of LPC.

[44] Article 78 of the LPC.

[45] W., Peter, Antitrust Criminalization as a Legitimate Deterrent (January 5, 2021). The Cambridge Handbook of Competition Law Sanctions, Tóth (ed) (Cambridge University Press, Forthcoming), Available at SSRN: https://ssrn.com/abstract=3760522 , page 10. See also: Wils, W., 'Is Criminalization of EU Competition Law the Answer?'

[46] Article 77(1) oft he LPC.

[47] Regulation ,On fines and their leniency' dated 11.09.2009 (ACA Regulation), link: http://www.caa.gov.al/uploads/laws/RRegullore%20e%20Gjobave.pdf

[48] Article 7 of the ACA Regulation

[49] See also: Dabbah, M. and Hawk, B. (Eds), Anti-Cartel Enforcement Worldwide, Cambridge University Press, 2009.

[50] These sanctions entail prohibiting a natural person from exercising their executive roles for an amount of time. For more information, see also: Lianos, Ioannis and Jenny, Frederic and Wagner-von Papp, Florian and Motchenkova, Evgenia and David, Eric, An Optimal and Just Financial Penalties System for Infringements of Competition Law: A Comparative Analysis (May 1, 2014). CLES Research Paper No. 3/2014, Available at SSRN: https://ssrn.com/abstract=2542991, page 58.

[51] Wils, Wouter P. J., Private Enforcement of EU Antitrust Law and Its Relationship with Public Enforcement: Past, Present and Future (November 7, 2016). Presented at the Mannheim Centre for Competition and Innovation Law and Economics Conference on Cartel Damages in Europe, 10-11 November 2016. Available at SSRN: https://ssrn.com/abstract=2865728, page 14.

[52] The US Directorate for Financial and Enterprise Affairs, Competition Committee, Relationship between Public and Private Antitrust Enforcement, United States, 2015, page 3: https://www.ftc.gov/system/files/attachments/us-submissions-oecd-other-international- competition-fora/publicprivate_united_states.pdf.

[53] Geradin, Damien and Sadrak, Katarzyna, The EU Competition Law Fining System: A Quantitative Review of the Commission Decisions between 2000 and 2017 (April 25, 2017). TILEC Discussion Paper No. 2017-018, Available at SSRN: https://ssrn.com/abstract=2958317 or http://dx.doi.org/10.2139/ssrn.2958317, page 3

[54] See also: Ibid. page 32.

[55] See also: Wagner-von Papp, Florian, Compliance and Individual Sanctions for Competition Law Infringements (April 27, 2016). Johannes Paha (ed), Competition Law Compliance Programs - An Interdisciplinary Approach, Springer (Forthcoming), Available at SSRN: https://ssrn.com/abstract=2771289, page 42.

[56] See also: Whelan, Peter, Antitrust Criminalization as a Legitimate Deterrent (January 5, 2021). The Cambridge Handbook of Competition Law Sanctions, Tóth (ed) (Cambridge University Press, Forthcoming), Available at SSRN: https://ssrn.com/abstract=3760522, page 12.

[57] Whelan, Peter, Antitrust Criminalization as a Legitimate Deterrent (January 5, 2021). The Cambridge Handbook of Competition Law Sanctions, Tóth (ed) (Cambridge University Press, Forthcoming), Available at SSRN: https://ssrn.com/abstract=3760522, page 3.

[58] Law No. 7895, dated 27.01.1995 'The Criminal Code of the Republic of Albania', link: https://qbz.gov.al/preview/a2b117e6-69b2-4355-aa49-78967c31bf4d.

[59] Law No.9754 dated 14.06.2007 "On the Criminal Liability of Legal Entities", link: https://qbz.gov.al/eli/ligj/2007/06/14/9754/cfab5450-037a-499b-85de-884f4ad4fe36;q=ligji%20nr%209754