# The Effectiveness of a Leniency Program in Algerian and Comparative Competition Law: New Guidelines

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**Abstract**

Experience shows that in large cartel cases, there are often problems with proof of participation. More and more sophisticated techniques are being put in place by the conspiratorial companies in order to leave as few traces as possible. Thus, with the clemency programs, the risk of denunciation becomes a reality in the world of cartelists, so that the cartel is destabilized from within. The only way to limit the risks of denunciation is to increase controls on members and to strengthen the system of sanctions. All these measures have a cost, which is not negligible and is included in the cost / benefit calculation. The result of the calculation, negative, can dissuade companies from forming cartels. On the contrary, for the competition authorities, the financial benefits are in principle large. For this, clemency programs can effectively combat this type of behavior.

**Keywords**: leniency, competition, behavior, sanctions, controls, companies.

## Introduction

If there are criminal penalties, it does not seem that all competition law is criminally punishable. However, the "competition law" contains a wide range of behaviors, encompassing both restrictive practices of competition (dubbed "the little competition law"), such as discriminatory terms of sale, refusal of sale between traders or tied selling, and anticompetitive practices (or "big competition law"), such as cartels and abuse of dominant position. Countries have expressed concern that criminal sanctions may not have an excessive deterrent if the conduct to which they apply is not clearly defined. (OECD , 2003).

The problem in question is the following:

What are the contours of the criminalization and the intervention of leniency in competition?

In order to answer the problematic we propose the following plan:

**I-the outlines of repression in competition law**

**II-the intervention of leniency in competition matters**

**III: The qualification of the leniency program**

## I- The outlines of the repression in competition law

To get a glimpse of the need for the application of criminal law in competition law, the first step would be to establish an inventory of the evolution of criminal business law, which is undeniably moving towards a movement of decriminalization.

The appearance and evolution of a criminal law "business" is more or less recent. The study of the problem involving the role of the legislator in protecting the interest of shareholders and creditors, has allowed the creation of appropriate offenses in the absence of the application of a common law. The increasing use and practice of criminal law undeniably characterizes the business world. It should also be noted that there is currently a downward movement, namely that of the

decriminalization of business life. Nevertheless, we will highlight that there is in parallel to this phenomenon, a reinforcement of the penal sanction.

The first specific offenses specific to business law will emerge from the creation of this law. The reasons for the latter represent the legal model related to the subsequent evolution of criminal business law:

-Development of the repression of fraudulent acts related to the "vagueness" of common law, which does not always concisely identify criminal acts that are reprehensible. The sanction of fraud specific to business law has its origin in the maladjustment of common law crimes in the business world and the difficulty of extending them because of the principle of strict interpretation of criminal laws.

-In this case, the criminal sanction is used by the legislator to ensure compliance with company law. The penalty placed next to the obligation gives it renewed authority and guarantees its enforcement. Thus, we are witnessing the creation of formal offenses whose purpose is more to oblige us to do than to punish.

As a result, there is a growth in the number of company law standards leading to a corresponding increase in bonds. This excessive criminalization has been criticized by penalist and commercialist doctrine, even calling it "a mistake in criminal policy".

The decriminalization movement hardly goes unnoticed and creates many expectations on the part of the various economic actors concerned. Indeed, is correlated to this movement, a destabilization of the criminal procedure to be taken into consideration by the company and its leaders. Also note, the media impact very powerful during the stage of the indictment and not enough during the orders of non-place thus leading to economic consequences even non-negligible market at all.

Thus, a large number of economic actors emphasized the essential character of the establishment of easily applicable, consistent, transparent and stable standards in order to optimize their understanding and therefore their respect. Unfortunately, this is not the case at present for these reasons:

- Legislative inflation and multiplication of incriminations in competitions

- Jurisprudential uncertainties about the prescription

- instrumentalization of criminal justice

- abnormal criminal risk for the company considered as being one of the reasons for the reluctance of foreign companies to set up in France (one of the major challenges of decriminalization is precisely the attractiveness of France for investors).

Decriminalization has nonetheless been perceived positively by some stakeholders, describing it as a device in the sense of the general interest and allowing the respect of a public order of protection; the latter imposes:

- Protection of the "weak against the strong" through the principle of equality before the law to protect the interveners being in a position of economic inferiority and to rebalance the situations of inequality; this can be done through legal tools, criminal or non-criminal, accessible to all;

- Protection of the security, health, and patrimony of the citizens, if necessary by requiring the setting up of counterparts to criminal offenses

- A legitimate expectation in the market, and therefore in the overall economic system.

In addition, the important and the principal of the criminal law of the business which is that which foresees the sanction of fraud must be strengthened and consolidated as the foreign examples highlight it. Indeed, in the era of globalization, we note the need to sanction fraudulent behavior in order to protect employment and growth through the protection of investments themselves.

Community law and certain international conventions thus form part of this movement favorable to the criminal sanction. Thus, the main issue of the decriminalization of the law in the business world is mainly the respect of equality before the law, the protection of the investments as well as the respect of the general interest by combining the legitimate need of confidence of the companies in the standard and the standard actors

Penal sanctions, in competition law, are heavy penalties, such as the prison sentence, accompanied by heavy fines, which the judge, even timidly, has continued to pronounce, and despite the development that preceded, the examination the movement of decriminalization, leads us paradoxically to note, that the penal sanction is reinforced, it is a renewal.

It should be noted, however, that the United States is a pioneer in the criminalization of competition law, and until then, has pronounced the most important penal sanctions, especially since the revision of the Sherman Act in 2004[1]. The custodial sentences are hardened, such as the maximum duration of 10 years in prison. The statistics for the year 2009 demonstrate this: 144 criminal proceedings in progress, the highest number of prosecutions since 1992.( Barnett B. A., 2009).

Under a trend of decriminalization, we are actually witnessing a renewal of the criminal sanction.

The renewal of the penal sanction. The penal sanction seems to live a renewal.( Sylvain Jacopin, 2010).

Criminal sanction (and its enforcement) is the expression of the values of society at a given moment. When society evolves, this supposes that the sanction evolves too: questioning, modification ... Etc.

he penal sanction is no longer the only solution to offenses; it has actually redeployed itself elsewhere, under a semblance of decriminalization. In fact, there is every reason to believe that the criminal sanctions that the legislator seems to want to evict are reintroduced into the administrative repression.

Indeed, the study of the administrative repression makes it possible to detect similarities with the penal sanction:

- The AAI have particularly pecuniary property sanctions, close to the criminal fine, whose repressive purpose, at the base of the penal sanction, is not negligible here. We can even argue that the repressive purpose of administrative fines is much greater than that of criminal fines. In fact, the amount of the criminal fine is determined while the amount pronounced by the IAA varies according to the seriousness of the alleged acts, the extent of the damage caused to the economy, the situation of the business, recidivism or not ... Etc.

- The rule of clemency provided for in Article L462-2 of the French Commercial Code, is largely reminiscent of the device for "repentant" Article L132-78 of the Criminal Code, which allows individuals to communicate information to the authorities administrative or judicial, to benefit from a reduction of sentence or relaxation, when they participated in the preparation of the offense, committed an offense, or held information to prevent the commission of the offense[2].

As a result, the introduction of criminal sanctions would increase the likelihood of cartel detection, thus making the criminal risk even greater. The deterrent effect of the penal sanction is again demonstrated.

The objective of prevention is further satisfied by the control of the legal person over the deviant behavior of its employees. Undoubtedly, the introduction of criminal sanctions encourages companies to control their agents and to denounce them in case of violation of the competition law. Indeed, criminal sanctions encourage the corporation to monitor the behavior of its employees more closely, in particular by setting up information programs on antitrust laws (also known as compliance programs). Until then, the legal person did not have sufficient motivation to set up such programs, notably because of the insufficiency of the administrative repression which, at the end of a cost / benefit calculation, encouraged the company to participate in the cartel. Thanks to the penal sanctions, the establishment of information programs make it possible to

1 - The Sherman Anti-Trust Act of July 2, 1890 is the first attempt by the US government to limit corporate anti-competitive behavior: it signals the birth of modern competition law.

2 - In the state of French law, it should be made clear that the clemency granted by the administrative authorities has no effect on possible prosecutions by the judicial authorities.

reinforce the culture of the respect of the competition law of the employees of the company (whatever their hierarchical level) and educate them to the antitrust law ( E. Combe, 2006 ).

The penalties imposed by the competition authorities, therefore, constantly refer to the techniques of criminal law. Moreover, the Coulon report even goes so far as to propose extending the transactional mechanism of criminal law into regulation.( Jean Marie Coulon, 2008).

This mechanism can be translated into fines paid to public treasuries, temporary suspensions of the exercise of the activity ... Etc. These sanctions, which are likely to affect individual rights, require, in a paramount way, the intervention of the judicial judge; This is indeed what the Constitutional Council recalls in a 1995 decision.(Constitutional Council, February 2nd, 1995).

The Coulon report therefore wishes to give the A.A.I.[1] a dispute resolution system specific to criminal law.

On the principle of "non bis in idem", the ground is favorable to the eviction of the penal sanction, putting an end to the cumulation, in favor of the administrative sanction. The Penal Code laid down rules to avoid excessive punishment in the event of a real plurality of the criminal offense; but we will note the lack of coordination between the form of administrative and penal repression, the principle does not apply. The removal of one of the two forms of sanctions is the solution.

Under the pretext of decriminalization, it is really a redeployment of the penal sanction, which only changes in its pronouncement; it exists as a rivalry between the administrative sanction and the penal sanction. The administrative sanction borrows from the criminal a few formulas, and largely competes with the penal sanction.

In reality, we are not witnessing a suppression of the criminal sanction, but rather a solution; a procedural solution indeed, which uses this duality between the two sanctions, as an instrument at the service of the punitive system.

Penal sanction has become a possible, and not exclusive, avenue of action in a punitive system that is broader than criminal law, since the repressive function of the law of regulation is based in the field of criminal law within European law.

Here each punitive process, allows the criminal sanction to reveal itself. The latter does not retreat, it is strengthened.

It is therefore possible to argue that the penalization of repression finds its place, and is necessary, even if it manifests itself other than in the conventional form of a penal sanction.

We can now check the desirability of applying the criminal law to cartels.

**II-The intervention of leniency in competition matters**

Do the main approaches to promoting compliance work? Answering this question will enable us to know if it is appropriate to introduce the custodial sentence, in view of the effectiveness or not of the arsenal already in place.

The main enforcement methods used by competition authorities to promote compliance with competition law are pecuniary sanctions and leniency programs. The frequency and intensity with which these methods are used has increased considerably over time; and yet the offenses of understanding, in particular, are not diminishing. The total number of international agreements detected, for example, increased from an average of 6.3 per year between 1990 and 1995 to 32.9 between 2004 and 2007. It could reasonably be expected that, if the conventional approaches had been effective, the number proceedings against cartels would have decreased during this period. Unless the sanctions are still too lenient or need to lengthen and increase prison sentences .( Discussion Paper, Financial and Business Affairs Directorate, 2011).

The lack of efficiency of the methods used to promote compliance with competition law demonstrates the desirability of applying the custodial sentence to competition law offenses. In fact, although the amount of the sanctions, although high, shows insufficient results, and the leniency program put in place, in order to increase the detection of the offenses, manifests several flaws.

1 - A.A.I : means independent regulatory authorities.

We will demonstrate in this section that the deprivation of liberty is appropriate because of the counterproductive nature of the analysis of financial penalty and its ineffective accumulation between the administrative system and the penal system.

Economist Gary Becker[1], in his work on the rational modeling of criminal behavior, provides an economic basis for the idea that decisions to engage in law-abhorrent behavior are simply interest.

Before engaging in reprehensible behavior, each individual draws up a comparative table: benefits / costs, so that the agreement will only be formed if it is economically viable. In order to be profitable, the agreement must make a profit in excess of the costs of a possible sanction, added to the probability of detection of the agreement (benefit of the agreement> cost of the penalty + probability of detection).( Gary Becker, 1969).

Thus, the effective sanction, will be the one that will succeed in reversing this equation.

According to the economist, it would be wiser to concentrate his efforts. There is no need to try to detect all infringements of competition law, and to enforce sanctions that are simply equal to the benefits of the agreement in order to dissuade the perpetrators. It is better to reduce the detection percentage and increase the amount of the monetary penalty until the amount of the benefits of the infringement is negative. This is the "optimal" sanction, which should represent 150% of the turnover achieved on the market concerned by the company pursued.

A study carried out by the Office of Fair Trading (O.F.T.) confirmed that "the main contribution, fundamentally, is that the high amount of financial penalties is a crucial deterrent".( An Assessment of Discretionary Penalties Regimes, 2009).

The average amount of EU business-related pecuniary sanctions imposed was less than EUR 2 million between 1990 and 1994 and was around EUR 46 million between 2005 and 2009, an increase of 2200%. Similarly, the data recorded by the antitrust division of the US Department of Justice, shows that the average amount of pecuniary penalties imposed on companies, has increased from 480 000 USD to about 44 million USD, a variation of the order of 9000%.

These statistics make it possible to confirm that the instruction of reduced number of cases gave way to a higher monetary penalty, which is more judicious than to instruct several small cases to less repressive amounts.

John Connor & Robert Lande, conclude in an article,( An Assessment of Discretionary Penalties Regimes, 2009). that the profits of the offenders, are considerably higher than the fines that they cause. They therefore recommend a substantial increase in the amount of these fines both in the United States and in the EU.

However, other economists raise the question of the effectiveness of the pecuniary sanction, whatever the amount.

Douglas Ginsburg, and Joshua Wright, recall that "At this stage, there is no evidence that the imposition of financial penalties even heavier against companies would be more dissuasive. It may just be that the fines imposed on the companies do not produce the desired effect, so that increasing their amount is useless in the best case and could be counterproductive if the companies pass on the price they charge consumers. the additional cost of increasing monitoring and compliance costs " ( Douglas Ginsburg & Joshua Wright, 2010).

Arrived at a certain amount, the repressive action becomes ineffective, even counterproductive.

An excessively high fine may exceed a company's ability to pay, thus driving it out of business and foreclosing it permanently. According to Frederic Jenny, companies may need assets representing six times their annual turnover to be able to pay an optimal fine.( Frederic Jenny, 2010).

1 - Gary Stanley Becker, (1930-2014), is an American economist, known for his work to broaden the scope of microeconomic analysis to many human behaviors. In 1992 he received the Swedish Bank of Economics Prize in memory of Alfred Nobel and in 2000 the National Medal of Science, a top American distinction. He was a professor at the University of Chicago, in the Department of Sociology and Economics.

The company should be punished but allowed to survive.

A priori, would be the consumers who would pay the high price. In addition, another significant element is that the penalty may be optimal in its deterrent capacity, but will be contrary to the preservation of competition and other current priorities, such as the preservation of employment and the fight against corruption. unemployment.

Without going into mathematical considerations, Becker's equation of optimality of sanction, once perceived as abusive, could undermine the respect of competition law and be more harmful than beneficial. Extremely heavy fines could also raise fears that it would be too much of a deterrent, causing companies to overly invest in monitoring and compliance and to refrain from practices that are not really anti-competitive. These effects would ultimately result in higher costs for consumers.

To individuals: The idea of collecting bonuses, increasing profits, are sufficient arguments for business leaders, who do not care, the sanctions that could be imposed. The perpetrator could change his business, or even be punished, but the amount can not match the amount that will be imposed on the company. The divergence of interests may therefore lead business managers to place themselves against the rules of competition. The interest of the leader in question then takes precedence over the sanctions that can be imposed on the company.

Thus the high amounts of the pecuniary sanction to the company, could lead this company to increase these internal control mechanisms. But by referring to a concrete reality, business owners are often passive investors. Their scope will be limited to the impact of the company's behavior on its earnings performance. They will not prevent employees from engaging in illicit practices.

Anti-competitive practice therefore remains profitable, despite the heavy pecuniary penalties.

Whereas in Algerian law (ordinance 03-03 on competition , J.O.R.A 43 of 2003)the pecuniary sanction is provided only by the administrative system; in French law, they are provided for, both at the administrative level and at the criminal level.

We will try to demonstrate in the following, that our interest to demonstrate the appropriateness of the penal law, is on the effectiveness of its sanction depriving of freedom and not on its pecuniary sanction, which by cumulation with the administrative sanction, presents a total lack of interest.

Taking into consideration the administrative sanctions imposed, one realizes that the penal penal sanction has no added value.

Even by concealing the factor, that the pecuniary sanction is not able to tend towards the optimal sanction, this one has no interest in that it can be cumulated.

Indeed, among the penal sanctions in force in French law, one finds the pecuniary sanction. It should be noted that this is already provided for in the administrative system. Despite their independence from each other, the combination of the two can pose problems with regard to the aforementioned principle of "no ibis in idem"[1].

Here is the problematic scene that could arise: an agreement was discovered by the competition authority, and is imposed by a pecuniary penalty of the administrative judge. The criminal judge intervenes and sends the authors of the agreement to prison. It is the same facts, the same causes, the same perpetrators who will be judged twice for the same offense. Surprisingly, however, this situation was validated by the Constitutional Council in a 1989 decision. (Constitutional Council, , 1989).

, stating that "the rule according to which a person can not be punished twice for the same act does not apply in case of accumulation of criminal and administrative sanctions ".

This position appears contrary to the commitments made by France in the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 7 of which requires States parties to comply with the non bis in idem adage.

1 - The rule "not ibis in idem" is a classic principle of criminal procedure, already known from Roman law, according to which "no one can be prosecuted, or punished criminally, for the same facts"

Although France has certainly expressed reservations on this point.( Protocol No. 7 1984 )[1], the scope of the latter may seem limited.

Moreover, this situation is unsatisfactory insofar as it entails more costs incurred by the State to regulate these sectors.

This problem of cumulation between criminal and administrative pecuniary sanction did not really exist. Indeed, the Conseil de la concurrence sanctioned legal persons, the criminal judge pronounced for its part sanctions against individuals. The reform of Article 121-2 of the Penal Code with the law of 9 March 2004 (law , 2004), generalized the liability of legal persons to all offenses, including Article L. 420-6 of the French Commercial Code.

Removing the administrative penalty to put an end to the double sanction is not the appropriate solution, because the French system of regulation of competition, relies mainly, in relation to the penal system, on the necessary means and expertise in the legal field and complex economic law of competition law. The economic and institutional players heard emphasized the effectiveness of this institution, whose effective action as a regulator of competition is undisputed.

It would therefore be more coherent to provide for an exception to the generalization of the liability of legal persons, by providing that Article L. 420-6 is not applicable to them because of the existence of administrative sanction entrusted to the Conseil de la concurrence.

At the economic level, the criminalization of competition law can also give rise to a number of problems. On the one hand, imprisonment has a cost, not only of the costs of living in the prison itself, but also of social costs, when imprisoned leaders no longer manage the business. in question. On the other hand, it is the entire economy that is also affected, in the sense that future leaders, frightened by increasingly heavy penalties, refrain from setting up companies or taking the lead already exist, so that growth and economic progress would be weakened. In particular, the Chamber of Commerce and Industry of Paris highlights that the repressive threat can paralyze the creation and development of SMEs, paralysis that will ultimately affect competition and innovation. In addition, the C.C.I.P. emphasizes an alteration of the attractiveness of the territories where the penal sanction is potential, so that the financing or the industries will be implanted on other territories where the legislation is more favorable to the companies. Norguet, For a criminal policy adapted to the life of business ", (C.C.I.P., 2008 ).

Thus pecuniary sanctions, or more generally sanctions, act on two axes of effects: a priori and a posteriori. The sanction produces a punitive effect after the infringement has been completed, thus a posteriori. The sanction also has a deterrent effect for potential offenders, so a priori.

In order for the penalty to have its intended effect, the offenses must still be detected, this is "supposed" to be the role of the leniency program.

**III: The qualification of the leniency program**

"The certainty of a punishment, even moderate, will always make more impression than the fear of a terrible punishment if to this fear is mingled the hope of impunity".( Cesare Beccaria, 1764).

The leniency program is "the most important event that has ever happened in the fight against collusive practices. "( Scott Hammond, 2010).

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1 - Article 4 - Right not to be tried or punished twice. No one shall be prosecuted or punished by the courts of the same State for an offense for which he has already been acquitted or sentenced by a final judgment in accordance with the law and criminal procedure of that State. [...] Reservation contained in the instrument of ratification, deposited on 17 February 1986. The Government of the French Republic declares that only offenses falling under French law under the jurisdiction of courts dealing with criminal matters should be regarded as offenses within the meaning of Articles 2 to 4 of this Protocol.

While the agreement is characterized by its great discretion, its detection is complex. Offenders usually have the best information about their illegal activities. They could even be the only ones to hold the information needed by the competition authorities to get the guilty convicted, so that the leniency program seems very effective.

Both in French law and in Algerian law, the operation of the leniency program is the same:

- A company that first denounces an agreement is exempt from pecuniary sanctions

- Companies that come after a first denunciation, providing additional information, will have their sanctions reduced.

The leniency program allows the agreement to be destabilized from within. As a result, the authors of the agreement will increase their member control systems, to reduce the risks of denunciations, which increases the costs put in place for the realization and sustainability of the agreement. The negative cost-benefit ratio (previously formulated by Becker) may deter companies from forming cartels.

-Example of the success of the leniency program:

In the plywood case(competition authority, 2008) the competition authority remained ineffective for more than 17 years, during which manufacturers coordinated the price increase. Only when the company UPM Kymmene Corporation denounced the agreement, the authority was able to impose a fine of 8 million euros. UPM has been fully exonerated.

Thus, only the competition authorities can do nothing. So, to increase the probability of detection, the leniency programs appeared very effective. The operation is simple: the company which denounces a cartel the first is exempted from any pecuniary sanction. Businesses arriving afterwards, but providing information with "added value", also see their sanction reduced according to the rank of denunciation. All national competition authorities have a leniency program, which is strongly inspired by the Community system (itself inspired by the American system).

Thus, the positive effects of the leniency program are easily identifiable. The ex-post effect, first of all, is obvious: clemency puts an end to collusion faster and the loss of the cartel price disappears.

But clemency also has several ex-ante effects.

First, with the leniency programs, the risk of denunciation becomes a reality in the world of cartelists, so that the cartel is destabilized from within. The only way for its members to limit the risk of denunciation is to increase controls on members and to strengthen the system of sanctions. All these measures have a cost, which is not negligible and is included in the cost / benefit calculation. The result of the calculation, negative, can dissuade companies from forming cartels.

On the contrary, for the competition authorities, the financial benefits are in theory great: thanks to the information provided by the informing company, the administrative costs of investigation and prosecution are reduced, and the financial resources thus saved can be redistributed on other, more complex surveys, which can then increase the probability of detection.

Then, the increase in the probability of detection leads to a significant psychological effect on the behavior of companies. Indeed, if cartels are regularly condemned and in various sectors, companies will tend to overestimate the probability of detection, and the cost / benefit calculation will be all the more affected.

However, on closer examination, the leniency program as presented by the European Commission and inspiring the national programs is not as satisfactory as it seems.

First of all, the company that breaks the promise of the agreement later pockets the reward of the denunciation. Indeed, the immune-producing company retains the gains it has made unlawfully during the life of the cartel, before denouncing it to the authorities. To this morally reprehensible gain is added the one she obtains at the end of the condemnation of the other members of the cartel: the latter being pointed out, customers will be redirected to the informing company, congratulated for its action. The latter will then see its sales increase, all to the detriment of other members of the cartel .( François Levêque, 2006).

Because the leniency program eliminates some or all of the penalties for violating competition law, these programs run counter to the goal of convincing society that these offenses are morally wrong: Massimo Motta and Michele Polo, in their

publication "Leniency Programs and Cartel Prosecution".( Massimo Motta & Michele Polo, 2003), show that the leniency program can, conversely, encourage fraudulent practices under certain conditions.

They observed that there is a trade-off between leniency and pecuniary sanctions because agencies are proposing reduced fines to companies to encourage them to disclose the existence of an agreement. If the reductions are excessive, and / or if the information disclosed only marginally benefits the agency, then the probability of detection induced by the program may be more important than the loss of deterrence due to reduced fines.

Thus, the company that denounces the agreement, keeps the gains it has made fraudulently. To this gain, there is the one that the company will touch when customers turn away from the companies denounced, to move to the company debater: sales of it will then increase.

This mechanism leaves room for vicious manipulation so that the companies could participate in an agreement, make illegal profits, denounce the agreement to obtain the immunity of the leniency program, and collect the gains of the denunciation by the increased customer base These are strategies that could seriously threaten the effectiveness of the program.

It is clear, according to Connor that "The leniency program is essentially to" buy "convictions in exchange for sanctions sold. ( John Connor, 2008).

It is therefore, according to the leniency program, better to leave a member of the cart unpunished, in order to better apprehend all the culprits.

It is therefore essential that leniency, requested during one of the procedures, be guaranteed when the other is put in place. The cartel will be further weakened by the ax of criminal sanction that its members have the opportunity to avoid such a sentence by denouncing the first unlawful practice, the prison then giving back the effectiveness of leniency. In addition, the deferred potential will more readily accept collaboration with the antitrust authorities if it anticipates criminal immunity, so that the evidence and the conviction of the practice are obtained quickly, thus limiting the damage to the economy. and consumers. Thus, the extension of the leniency program to custodial sentences makes it possible, on the one hand, to favor a conviction and to minimize the risk of error and, on the other hand, to limit the duration of the cartel. As a result, the fine imposed by the administrative courts, taking into account the duration of the cartel, will be lower, without however weakening the punishment of the illicit practices, since the penal sanctions also contribute to the suppression of the cartels. (E. Combe, n ° 52)

**Conclusion**

The clemency program, very effective in theory, presents paradoxes, which tarnish the effectiveness of leniency.

The French example of cumulation of criminal and administrative pecuniary sanctions is not to be retained, but that the application of criminal law in the regulation of competition is not to be dismissed, in view of its capacity to pronounce imprisonment.

For the algerian example, it will first be necessary to refer to the texts concerning leniency, to concentrate on the proper application of these texts by the competition council, and above all to develop a policy of consciousness directed towards the various companies that are active on the algerian market to avoid even the birth of several disputes.

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