



**TRIBUNAL TAL-APPELL
GHALL-KOMPETIZZJONI U GHALL-KONSUMATUR**

**ONOR. IMHALLEF MARK CHETCUTI LL.D
Prof. Lino Briguglio**

Illum it-Tlieta, 21 ta' Frar, 2017

Numru 1

Rikors Nru. 2/2010

**A.A.J.E. Abela Brothers Partnership, Mario Axiaq,
Carmelo Bros Partnership, N. & C. Camilleri Partnership,
Carmelo Fenech, John Fenech, Lajmic Burdnara Partnership,
Carmelo Gatt, G.S.L. Grech Brothers Partnership, Philip Meli,
Aaron Mizzi, John Mizzi, G. & A. Refalo Partnership,
Nazzareno Sammut & Sons Partnership, Victor Vella,
E. & S. Zahra Brothers Partnership, Alex Zammit,
V. Zammit & Sons Partnership, T. & R. Zammit Partnership u
C. & F. Abela Partnership, kollettivament maghrufa taht l-isem
"Burdnara Bulk Cargo Group" u Central Cement Limited (C6108)**

vs

**L-Ufficju ghall-Kompetizzjoni
wara l-ilment ta' Carmelo Meli Limited**

It-Tribunal

Ra l-ilment ta' Carmelo Meli Limited tas-6 ta' Marzu 2007 imressaq quddiem l-Ufficju tal-Kummerc Gust ("l-Ilment") (a fol. 31 *et seq.*);

Ra d-decizjoni tad-Direttur tal-Ufficju ghall-Kompetizzjoni Gusta ("l-Ufficju") tas-6 ta' Jannar 2010 ("id-Decizjoni") (a fol. 5 *et seq.*);

Ra z-zewg rikorsi tad-Direttur tal-Ufficju (a fol. 26 *et seq.* u fol. 29 *et seq.*) li permezz taghhom tressqu quddiem il-Kummissjoni ghall-Kummerc Gust (illum it-Tribunal) it-talbiet tal-appellanti, u cioe' l-Burdnara Bulk Cargo Group u Central Cement Limited, sabiex id-Decizjoni tigi riveduta mill-Kummissjoni;

Ra l-verbal tad-29 ta' Jannar 2014 (a fol. 157) fejn il-vertenza tkomplet bit-Tribunal kompost biss mill-President u membru wiehed;

Ra d-decizjoni in parte moghtija mit-Tribunal nhar is-27 t'Ottubru 2014 (a fol. 171 *et seq.*) fejn gie deciz li l-ftehim mertu tal-appell odjern m'ghandux effett fuq il-kummerc bejn l-Istati Membri u li kwindi l-Artikolu 101 tat-Trattat dwar il-Funzjonament tal-Unjoni Ewropea ("it-Trattat") m'huwix applikabli ghall-agir in kwistjoni;

Ra l-verbal tas-26 ta' Novembru 2015 fejn il-vertenza thalliet ghad-decizjoni;

Ra n-noti ta' sottomissjonijiet prezentati.

Ikkunsidra

Illi fis-6 ta' Marzu 2007 is-socjeta' lanjanti Carmelo Meli Limited (gia Salvu Meli & Sons Limited) ressqet l-Ilment fil-konfront tal-appellanti Burdnara Bulk Cargo Group u Central Cement Limited quddiem l-Ufficju tal-Kummerc Gust fejn allegat li l-Burdnara Bulk Cargo Group eskudiet lis-socjeta' lanjanti mill-attivajiet tal-garr tac-cement mill-port lejn diversi klijenti f'Malta u li Central Cement Limited naqset milli tirrikonoxxi d-dritt tas-socjeta' lanjanta u ghalhekk milli tikkoncedi lill-istess socjeta' d-dritt li ggor ic-cement minn Central Cement Limited lill-klijenti tal-istess Central Cement Limited u dan kollu bi ksur tal-artikoli 5 u/jew 9 tal-Kap. 379 tal-Ligijiet ta' Malta;

Illi l-Ufficju ddecieda l-Ilment nhar is-6 ta' Jannar 2010 fejn ikkonkluda li jezisti akkordju vertikali bejn Central Cement Limited u l-membri tal-Burdnara Bulk Cargo Group u akkordju orizzontali bejn l-istess membri tal-Burdnara Cargo Group liema akkordju jew prattika miftiehma jiksru d-disposizzjonijiet tal-Artikolu 5(1) tal-Kap.

379 in kwantu ghandhom l-iskop li jipprevjenu l-kompetizzjoni fis-suq rilevanti tac-cement kif definit fl-istess Decizjoni u ghalhekk l-Ufficju ordna fl-ewwel lok li Central Cement Limited u Burdnara Bulk Cargo Group jieqfu milli jippartecipaw fl-akkordju jew prattika miftiehma fis-suq rilevanti u li Central Cement Limited ghandha tibda' tissupplixxi x-xoghol taghha b'mod mhux esklussiv lil kwalunkwe burdnar li jitlob li jigi hekk supplit;

Illi l-Ufficju sab li t-trasport u d-distribuzzjoni tac-cement griz (*bulk grey cement* u *bagged grey cement*) hu provdut b'mod esklussiv f'Malta mill-membri tal-Burdnara Bulk Cargo Group ghal dawn l-ahhar erbghin sena meta hadd ma ried jaghmel tali xoghol u l-burdnara membri ta' dan il-grupp inghaqdu ghal dan il-ghan. Qabel ma gie ffurmat tali grupp jirrizulta li l-burdnara kienu jikkompetu bejniethom sabiex jipprovdu s-servizz in kwistjoni u kienet sitwazzjoni fejn ma kien hemm l-ebda organizazzjoni bejn il-burdnara bir-rizultat li mhux kulhadd kien jahdem u ma kienx hemm garanzija ta' xoghol. Illum pero', wara li gie ffurmat il-grupp, il-burdnara jahdmu b'sistema ta' *roster* u ghalhekk huma organizzati b'tali mod li x-xoghol hu maqsum bejniethom, tant li hemm anki rapprezentant tal-grupp li jiehu l-ordinijiet u jiehu hsieb il-pagamenti tal-burdnara. Tirrizulta wkoll lista ta' prezzijiet ghas-servizzi moghtija mill-grupp, liema prezzijiet huma applikati mill-membri kollha tal-grupp. L-Ufficju sab ukoll li kien hemm okkazjonijiet fejn il-Burdnara Bulk Cargo Group effettivament ipprekludew lil importaturi ohra tac-cement milli jorganizzaw id-distribuzzjoni taghhom, jekk mhux tramite is-servizzi tal-grupp. Anke klijenti tal-istess grupp, ghalkemm ghandhom id-dritt li jittrasportaw ic-cement minnhom stess impurtat, gew prekluzi milli jaghmlu dan. Irrizulta wkoll li fuq medda ta' snin is-socjeta' lanjanti giet prekluzi milli tifforma parti mill-Burdnara Bulk Cargo Group;

Illi fir-rigward ta' Central Cement Limited, l-Ufficju sab li bhala importatrici tac-cement in kwistjoni tifforma parti mill-akkordju jew prattika miftiehma mal-Burdnara Bulk Cargo Group in kwantu effettivament irrifjutat li tqabbad lis-socjeta' lanjanti ghas-servizz ta' transport u distribuzzjoni tac-cement minnha impurtat u dan in kwantu, fi kliem l-istess Central Cement Limited, dan hu servizz allokat esklussivament lil Burdnara Bulk Cargo Group, u Central Cement Limited hu klijent tal-imsemmi grupp. Fil-fatt l-Ufficju kkonkluda li l-partecipazzjoni ta' Central Cement Limited bhala l-uniku importatur ta' cement griz hi indispensabbli sabiex il-

Burdnara Bulk Cargo Group jilhq l-ghan tagghom li jkunu d-distributuri esklussivi fis-suq in kwistjoni;

Ikkunsidra

Illi l-Burdnara Bulk Cargo Group qeghdin jissottomettu fl-ewwel lok li l-agir lanjat huwa ezentat minn analizi ai termini tal-Artikoli 5 u 9 tal-Kap. 379 tal-Ligijiet ta' Malta u tal-Artikoli 101 u 102 tat-Trattat u dan bis-sahha tar-Regolamenti 169/2009/KE u 1017/68/KEE, liema Regolamenti jikkategorizzaw l-agir lanjat bhala wiehed ezentat. It-Tribunal jinnota li l-Burdnara Bulk Cargo Group gia ressqu talba u sottomissjonijiet f'dawn il-proceduri sabiex l-agir lanjat jigi ddikjarat bhala ezentat ai termini tar-Regolamenti msemmija in kwantu, skont il-Burdnara Bulk Cargo Group, tali Regolamenti huma applikabbli peress li l-agir lanjat ghandu effett fuq il-kummerc bejn l-Istati Membri. Pero' t-Tribunal gia esprima ruhu u ddecieda li fil-fatt l-agir lanjat m'ghandux effett fuq il-kummerc bejn l-Istati Membri u li per konsegwenza r-Regolamenti in kwistjoni u l-ezenzjonijiet relattivi m'humieix applikabbli in kwantu l-Artikolu 101 tat-Trattat (li fir-rigward tieghu japplikaw l-ezenzjonijiet imsemmija) hu applikabbli biss meta l-agir lanjat ikollu effett fuq il-kummerc bejn l-Istati Membri;

Illi issa l-Burdnara Bulk Cargo Group qeghdin xorta wahda jippretendu li tali ezenzjonijiet rizultanti mir-Regolamenti 169/2009/KE u 1017/68/KEE ghandhom jigu applikati ghall-agir lanjat, mhux in kwantu tali agir ghandu effett fuq il-kummerc bejn l-Istati Membri, izda peress li, skont l-istess grupp, tali hija l-prassi tal-Ufficju li anke fejn l-agir in kwistjoni ma jkunx jaffettwa l-kummerc bejn l-Istati Membri, u kwindi ma jkollux dimensjoni Ewropea, l-Awtoritajiet Maltin dejjem u konsistentement applikaw l-ezenzjonijiet kollha naxxenti mir-Regolamenti Komunitarji. F'dan ir-rigward il-Burdnara Bulk Cargo Group spjegaw li l-ezenzjonijiet komunitarji kienu gew introdotti fil-ligi Maltija permezz ta' diversi avvizi legali li pero' gew sussegwentement revokati u ma gewx promulgati *block exemption regulations* godda f'Malta fil-forma ta' Avvizi Legali. Cio' nonostante, l-grupp qieghed isostni li l-Awtorita' ta' Malta ghall-Kompetizzjoni qeghda tapplika direttament il-*block exemptions* komunitarji ghal sitwazzjonijiet kompletament domestici. It-Tribunal ma jaqbilx mat-tezi tal-Burdnara Bulk Cargo Group. L-ezenzjonijiet in kwistjoni japplikaw fir-rigward tal-Artikolu 101 tat-Trattat u gia gie

deciz mit-Tribunal li l-Artikolu 101 m'huwix applikabbli fil-kaz in ezami in kwantu l-agir lanjat m'ghandux effett fuq il-kummerc bejn l-Istati Membri. L-ezenzjonijiet rizultanti mir-Regolamenti 169/2009/KE u 1017/68/KEE huma mahsuba ghal akkordji jew pratici miftiehma li jaffettwaw il-kummerc bejn l-Istati Membri. Tali Regolamenti ma japplikawx ghall-Artikolu 5 tal-Kap. 379 tal-Ligijiet ta' Malta. Fil-fatt, il-*carrying capacity* tal-Burdnara Bulk Cargo Group, kemm kollektiv u anki dak individwali ta' kull membru, zghir kemm hu zghir u ghalkemm ma jeccedix l-limitu msemmi fir-Regolamenti, fil-mument tal-Ilment jikkostitwixxi u jirrapresenta prattikament is-suq kollu tat-trasport u d-distribuzzjoni ta-ciment griz f'Malta u f'Ghawdex. Ghalhekk l-attivitá in kwistjoni ma tistax titqies bhala wahda minima fil-kuntest tas-suq domestiku. In oltre, ma ngiebet l-ebda prova jew eżempji ta' kazijiet ohra fejn dawn ir-Regolamenti gew applikati ghal cirkustanzi purament domestici, kif allegat mill-Burdnara Bulk Cargo Group.

Illi fit-tieni lok il-Burdnara Bulk Cargo Group isostni li l-Artikolu 5(3) tal-Kap. 379 hu applikabbli ghal kaz in ezami. Dan l-Artikolu jaqra hekk:

(3) Id-disposizzjonijiet tas-subartikolu (1) ma ghandhomx japplikaw fil-kaz ta' –

(a) ftehim bejn intraprizi; jew

(b) decizjoni minn assocjazzjoni ta' intraprizi; jew

(c) xi prattika miftiehma,

li f'kull kaz jikkontribwixxu lejn l-iskop ta' titjib fil-produzzjoni jew fid-distribuzzjoni ta' oggetti jew servizzi jew fil-promozzjoni ta' progress tekniku jew ekonomiku u li jkun jippermettu lill-konsumatur igawdi sehem ekwu mill-beneficju li jirrizulta u li:

(i) ma jimponix fuq l-intraprizi involuti xi restrizzjoni li ma tkunx indispensabbli biex jintlahaq l-iskop imsemmi; jew

(ii) ma jaghtix lill-intraprizi involuti l-possibilitá li jeliminaw jew inaqqsu b'mod sinifikanti l-kompetizzjoni ghar-rigward ta' parti sostanzjali tal-prodotti li jirreferu ghalihom il-ftehim, decizjoni jew prattika miftiehma.

Dan is-subinciz hu mmudellat fuq l-Artikolu 101(3) (gia 81(3)) tat-Trattat. Fil-*Commission Guidelines on the application of Article 81(3) of the Treaty*¹ inghad li:

“The aim of the Community competition rules is to protect competition on the market as a means of enhancing consumer welfare and of ensuring an efficient allocation of resources. Agreements that restrict competition may at the same time have pro-competitive effects by way of efficiency gains. Efficiencies may create additional value by lowering the cost of producing an output, improving the quality of the product or creating a new product.

¹ (2004) OJ C101/97

When the pro-competitive effects on an agreement outweigh its anti-competitive effects the agreement is on balance pro-competitive and compatible with the objectives of the Community competition rules. The net effect of such agreements is to promote the very essence of the competitive process, namely to win customers by offering better products or better prices than those offered by rivals. This analytical framework is reflected in Article 81(1) and 81(3). The latter provision expressly acknowledges that restrictive agreements may generate objective economic benefits so as to outweigh the negative effects of the restriction of competition.”²

“Article 81(3) sets out four criteria, all of which must be satisfied if the agreement is to benefit from it.³ The onus is on the undertaking or undertakings invoking the benefit of the exception.⁴ The exception rule applies for as long as the four conditions are met. It ceases to apply when that is no longer the case.”⁵ L-erba kriterji li jirrizultaw mill-Artikolu 81(3) huma, (i) li l-ftehim, akkordju jew prattika miftiehma tikkontribwixxi lejn l-iskop ta’ titjib fil-produzzjoni jew fid-distribuzzjoni ta’ oggetti jew servizzi jew fil-promozzjoni ta’ progress tekniku jew ekonomiku; (ii) li l-ftehim, akkordju jew prattika miftiehma tkun tippermetti lill-konsumatur igawdi sehem ekwu mill-beneficcju li jirrizulta; (iii) li l-ftehim, akkordju jew prattika miftiehma ma timponix fuq l-intraprizi involuti xi restrizzjoni li ma tkunx indispensabbli biex jintlahaq l-iskop imsemmi; u (iv) li l-ftehim, decizjoni jew prattika miftiehma ma taghtix lill-intraprizi involuti l-possibilita’ li jeliminaw jew inaqqsu b’mod sinifikanti l-kompetizzjoni.

Illi ghalkemm l-oneru jinkombi fuq l-appellanti li jippruvaw li l-agir in kwistjoni jissodisfa dawn l-erba kriterji, l-Burdnara Bulk Cargo Group ressqet is-sottomissjonijiet taghha fuq tlieta mill-kriterji biss, fejn tallega li l-agir lanjat ma eliminax u ma naqqasx il-kompetizzjoni u dan in kwantu fil-mori tal-kaz dahlu operaturi ohrajn fis-suq rilevanti u tallega wkoll li kien bis-sahha tal-operat tal-grupp li kien hemm servizz tajjed, irhis u regolari fis-suq rilevanti li ghalhekk ikkontribwixxa ghal titjib fis-servizz u li ppermettiet lill-konsumatur igawdi ukoll sehem ekwu mill-beneficcju li rrizulta.

² Ibid. para. 33

³ “The requirements are cumulative, Case T-528/93, *Metropole Television SA v. Commission* (1996) ECR II-649, (1996) 5 CMLR 386 para. 86. In case T-65/98, *Van den Bergh Foods* (2004) 4 CMLR, para. 144 the CFI thus held that once it had been concluded that the Commission had been correct to find that the first criterion of Article 81(3) had not been met it was unnecessary to consider whether or not the other criteria had been satisfied.”

⁴ Artikolu 5(4), Kap. 379 - L-intrapriza jew assocjazzjoni ta’ intraprizi li jitolbu l-beneficcju tas-subartikolu (3) ghandhom ikunu responsabbli li jippruvaw li l-kondizzjonijiet ta’ dak is-subartikolu jkun qeghdin jigu sodisfatti.

⁵ Jones and Sufrin, *EC Competition Law*, Oxford University Press, 2nd Ed., p. 234

Illi l-Burdnara Bulk Cargo Group ma ressqet l-ebda sottomissjoni fir-rigward tat-tielet kriterju tal-Artikolu 5(3) u cioe' li l-ftehim jew prattika miftiehma ma timponix fuq l-intraprizi xi restrizzjoni li ma tkunx indispensabbli sabiex jintlahaq l-iskop taghhom. Fir-rigward ta' dan it-tielet kriterju inghad li, *“An agreement which satisfies the first two positive criteria set out in Article 81(3)⁶ must only contain restrictions which are indispensable to the achievement of the benefits shown to result from the agreement.⁷ According to the third condition of Article 81(3) the restrictive agreement must not impose restrictions, which are not indispensable to the attainment of the efficiencies created by the agreement in question. This condition applies a two-fold test. First, the restrictive agreement as such must be reasonably necessary in order to achieve the efficiencies. Secondly, the individual restrictions of competition that flow from the agreement must also be reasonably necessary for the attainment of the efficiencies.⁸ In the context of the third condition of Article 81(3) the decisive factor is whether or not the restrictive agreement and individual restrictions make it possible to perform the activity in question more efficiently than would have been the case in the absence of the agreement or the restriction concerned. The question is not whether in the absence of the restriction the agreement would not have been concluded, but whether more efficiencies are produced with the agreement or restriction than in the absence of the agreement.⁹ Restrictions will not therefore be indispensable if the efficiencies specific to the agreement can be achieved by other practicable and less restrictive means, or if individual restrictions are not reasonably necessary to produce the efficiencies. Conversely, a restriction will be indispensable if its absence would eliminate or significantly reduce the efficiencies that follow from the agreement or make it significantly less likely that they will materialise. The assessment of indispensability must be made within the actual context in which the agreement operates.”¹⁰*

Illi ghalkemm jidher illi fil-mori s-socjeta' lanjanta saret tiffirma parti mill-Burdnara Bulk Cargo Group u ghalhekk ma jidhirx li ghad ghandha interess f'dawn il-

⁶ Ghalkemm mhuwiex qed jinghad li dawn gew sodisfatti f'dan il-kaz

⁷ Jones and Sufrin, EC Competition Law, Oxford University Press, 2nd Ed., p. 241

⁸ Commission Guidelines on the application of Article 81(3) of the Treaty, (2004) OJ C101/97, para. 73

⁹ Ibid. para. 74

¹⁰ Jones and Sufrin, EC Competition Law, Oxford University Press, 2nd Ed., p. 242

proceduri, fil-mument tal-Ilment jirrizulta li l-Burdnara Bulk Cargo Group imponiet fuq Central Cement Limited, li min-naha taghha accettat, li tuza s-servizzi tal-grupp ghall-garr u t-trasport ta' cement b'mod esklussiv u fil-fatt Central Cement Limited irrifjutat li tuza s-servizzi tas-socjeta' lanjanti proprju in kwantu, kif iddikjarat l-istess Central Cement Limited b'risposta ghat-talba tal-lanjanti, *“the transport of cement is a task exclusively allocated to the Burdnara Bulk Cargo Group.”* Jirrizulta wkoll li fil-mument tal-Ilment kemm Central Cement Limited u kif ukoll importaturi ohra tac-cement kienu gew prekluzi mill-Burdnara Bulk Cargo Group milli jgorru u jittrasportaw huma stess ic-cement minnhom impurtat u ghalhekk kellhom juzaw biss is-servizzi tal-istess grupp. Ma giex ippruvat u ma jirrizultax li tali restrizzjonijiet huma indispensabbli sabiex il-membri tal-Burdnara Bulk Cargo Group jilhqu l-ghan taghhom li joffru servizz tajjed u li minnu jgwadi wkoll il-konsumatur.

Illi hawn irid jinghad li Central Cement Limited issottomettiet li hi ma tiffurmax parti mill-ebda akkordju jew prattika miftiehma mal-Burdnara Bulk Cargo Group sabiex ma taccettax u ma tuzax is-servizzi ta' burdnara ohra li ma jiffurmawx parti mill-imsemmi grupp, izda li din hi *policy* unilaterali imposta fuqha mill-istess grupp u li ghalhekk m'hemmx il-kunsens mehtieg sabiex jirrizulta ksur tal-Artikolu 5 tal-Kap. 379 da parte taghha. It-Tribunal ma jaqbilx ma tali sottomissjoni in kwantu, kif qal korrettement l-Ufficju, ghalkemm ma jirrizultax li din hi *policy* imposta fuqha, Central Cement Limited tat il-kunsens taghha bl-agir taghha meta rrifjutat li tqabbad lil terzi li m'humix membri mill-Burdnara Bulk Cargo Group, liema agir kien indispensabbli sabiex jintlahaq l-ghan tal-grupp li jkunu d-distributori esklussivi tac-cement. In oltre, *“An undertaking which engages with others in anti-competitive activities ... cannot rely on the fact that it did so under pressure from the other participants. It could have complained to the competent authorities about the pressure brought to bear on it and lodged a complaint with the Commission.”*¹¹ Ir-rifjut esplicitu ta' Central Cement Limited li tqabbad lis-socjeta' lanjanti in kwantu hi tqabbad esklussivament lill-membri tal-grupp, maghdud man-numru twil ta' snin li ilu fis-sens tali akkordju jew prattika miftiehma u mal-posizzjoni strategika tal-

¹¹ Case T-141/89 Trefileurope Sales SARL v Commission para. 58

partijiet fis-suq, ma jhalli l-ebda dubju ghat-Tribunal li Central Cement Limited jiffurmaw parti mill-akkordju jew prattika miftiehma in kwistjoni.

Illi kif gia inghad l-erba' kriterji tal-Artikolu 5(3) huma kumullattivi u ghalkemm gia jirrizulta li t-tielet kriterju m'huwix sodisfatt, issir referenza wkoll ghar-raba' kriterju tal-istess Artikolu. *"The last requirement is that the agreement as a whole must not lead to the substantial elimination of competition.¹² Ultimately the protection of rivalry and the competitive process is given priority over potential pro-competitive efficiency gains which could result from restrictive agreements. Rivalry between undertakings on the market should be preserved since rivalry is the essential driver of economic efficiency, including dynamic efficiency.¹³"* Illi l-akkordju jew prattika miftiehma in kwistjoni huma tali li fil-mument tal-Ilment eliminaw il-kompetizzjoni in kwantu mill-lat vertikali Central Cement Limited, li kienet prattikament l-uniku impurtatur fis-suq rilevanti, irrifjutat li tqabbad lis-socjeta' lanjanti, filwaqt illi mill-lat orizzontali l-membri tal-Burdnara Bulk Cargo Group, li kienu l-unici distributuri fis-suq rilevanti, pprekludew lis-socjeta' lanjanti milli tiffirma parti mill-istess grupp. Ghalhekk, lanqas dan l-ahhar kriterju tal-Artikolu 5(3) ma jirrizulta sodisfatt u kwindi l-istess Artikolu ma jistax jigi applikat ghall-agir lanjat.

Decide

Dan it-Tribunal ghalhekk jichad it-talbiet tal-Burdnara Bulk Cargo Group u ta' Central Cement Limited ghar-revizjoni tad-Decizjoni u konsegwentement jichad l-appell u jikkonferma d-Decizjoni tal-Ufficju tas-6 ta' Jannar 2010 fl-intier taghha.

Onor. Mark Chetcuti LL.D.

Prof. Lino Briguglio

Imhalled

Membru

Anne Xuereb

Deputat Registratur

¹² Ibid. p. 243

¹³ Commission Guidelines on the application of Article 81(3) of the Treaty, (2004) OJ C101/97, para. 105