



Parental liability under EU competition law

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Importance of Parental liability

Main rationale:

- effective competition enforcement and fines
- reflecting economic reality and avoiding circumvention

Further impact of parental liability:

- more effective recovery of the fine
- finding of recidivism

Basic concepts: undertaking - company

EU competition rules apply to undertakings

- Autonomous econ. concept & broad definition (not same as company/legal entity under company/fiscal law)
- Single economic unit: different companies/legal entities forming one undertaking (e.g. parent + subsidiaries)

Concepts apply in EU law cases enforced by both Commission and NCAs (irrespective of national law cf. Art. 3 of Regulation 1/2003)

Attribution of liability

Identification of responsible undertaking = crucial

- Direct participant: normally legal entity which employed natural person involved in the cartel activity
- In addition possible liability parent company if single economic unit:
 - No real autonomy of subsidiary
 - Parent exercised decisive influence over commercial strategy of the subsidiary

Burden of proof

Commission has to show that the parent

- is in a position to exercise decisive influence (\approx level of control cf. Merger control)
- actually exercised decisive influence over its subsidiary's commercial strategy
 - factual assessment
 - for example: majority representation on the subsidiary's board, same people holding management positions in both companies, specific controlling mechanism, etc.

Parental Liability presumption

Exception in case of wholly owned (or almost wholly owned) subsidiaries

Parental liability presumed (Case C-97/08P - *Akzo*)

- 100% shares (or slightly more than 96%)
- Parent can exercise decisive influence
- Presumption that parent in fact exercised it

No proof of additional indicia required

Rebuttable presumption

Rebuttable presumption but very difficult to counter (e.g. International Removers case)

Not contrary to Fundamental Rights (Art. 6(2) ECHR)

- Presumption of innocence (Elevators & Escalators Case)
- Principle of legal certainty (Case T-372/10 - *Bolloré*)

Specific situation: Joint Ventures

Joint Venture:

- Joint control by at least two parent companies (not only 50/50 shareholding)
- JV single economic unit with respective parents?
- Conditions:
 - (joint) ability to exercise decisive influence
 - actually exercised decisive influence
- Parental liability presumption may apply (see Case T-343/06 *Shell*)



Thank you !