

The problem of *inverted* liability



Not Far from the Tree

Can innocent subsidiaries be held liable for the parent company's wrongdoing?

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- Inverted liability cases in **public enforcement** are very rare
 - Advantages of suing the parent company:
 - Higher fines
 - Greater likelihood of having sufficient funds
 - Prevention of opportunistic corporate restructurings
 - Problem much more common in **private enforcement**
 - Allows plaintiffs to avoid extra costs
 - Anchor claims in “claimant-friendly” jurisdictions
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Subsidiary liability In Continental Europe

- 2016: Trucks' Manufacturers Price Fixing Cartel
- Commission Decision addressed to parent companies and a couple of German subsidiaries
- Flood of damages claims in Spain:
 - Claims brought against the local subsidiaries

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- Spanish courts divided:
 - Do local subsidiaries - not addressed by the Commission Decision - have legal standing?
 - Request for a preliminary ruling (C-783/19):
 - Can the doctrine of the single economic unit doctrine be applied inversely, i.e. to attribute liability to the subsidiary for the parent company's conduct?
 - If yes, what conditions must be fulfilled?
 - Compatibility with EU law of national norms that only foresee the possibility of attributing liability to the parent company for the subsidiary's infringement but not the other way round
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Will the Court embrace a full form of enterprise liability?

- Will it continue its ever-encompassing liability attribution tendency?
 - *AC-Treuhand* (C-194/14 P), *Icap* (T-180/15), *Eturas* (C-74/14), *Otis* (C-435/18), *Kone* (C-557/12)
 - Mixed signals from the *Biogaran* case (T-677/14, appeal pending)
 - Crucial opportunity for the Court to clarify case-law
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Hopefully not...

- Arguments against the adoption of a full-form of enterprise liability:
 - Compatibility of the single economic unit doctrine with the principle of personal liability;
 - Subsidiary (and sister company) liability serves no deterrent purpose
 - Subsidiary (and sister company) liability not dictated by the principle of effectiveness



Thank you for your attention!
