Institut d'Estudis Europeus

UAB Universitat Autònoma de Barcelona

ANALYSIS OF THE DEVELOPMENT OF THE DEFINITION OF "UNDERTAKING" AND ITS INFLUENCE ON THE COMPENSATION FOR DAMAGES IN ANTITRUST CASES. A COMMENTARY OF THE CASE SUMAL

Wu Junting

Working Papers IEE, No 12 (2022)

This collection, produced by the **Institut d'Estudis Europeus (UAB)**, includes a selection of research by students of the Official Master's degree in European Integration and PhD students.

Coordinator: Dra. Cristina Blasi Casagran (Cristina.Blasi@uab.cat)

Editor: Centre de Documentació Europea (UAB).

Institut d'Estudis Europeus
Universitat Autònoma de Barcelona
Edifici E1
08193 Bellaterra (Cerdanyola del Vallès)
Tel.: +34 93 581 16 81
institutestudiseuropeus.uab.cat/

Wu Junting
Master student of European Integration
Faculty of Law
1464746066@qq.com
November 2022

ANALYSIS OF THE DEVELOPMENT OF THE DEFINITION OF "UNDERTAKING" AND ITS INFLUENCE ON THE COMPENSATION FOR DAMAGES IN ANTITRUST CASES. A COMMENTARY OF THE CASE SUMAL

Abstract

In *Sumal v. Mercedes Benz Trucks España* the Court clarified whether damages may be sought from subsidiaries of the entities identified in a previous public enforcement decision and clarified under which circumstances distinct legal entities within a group of companies form one single undertaking and are thus to be made the defendant in cartel damages proceedings. This research aims to depict the notions of "undertaking", as a basis for damage claims against a subsidiary of a parent company that has been found to infringe EU competition law and to explore possible consequences in regard to compensation for damages and liability within groups of companies.

Resumen

En el *caso Sumal contra Mercedes Benz Trucks España*, el Tribunal respondió a la pregunta de si se puede solicitar una indemnización por daños y perjuicios a las filiales de las entidades identificadas en una decisión previa de "public enforcement" y aclaró en qué circunstancias las distintas entidades jurídicas de un grupo de empresas forman una única empresa y, por lo tanto, deben convertirse en la parte demandada en un procedimiento de indemnización por daños y perjuicios por cártel. Esta investigación tiene como objetivo describir las nociones de "empresa", como base para las reclamaciones de daños y perjuicios contra una filial de una empresa matriz que ha sido declarada infractora de la legislación de la UE en materia de competencia, y explorar las

posibles consecuencias con respecto a la indemnización por daños y perjuicios y a la responsabilidad dentro de los grupos de empresas.

Resum

En el *cas Sumal contra Mercedes Benz Trucks España,* el Tribunal va respondre a la pregunta de si es pot sol·licitar una indemnització per danys i perjudicis a les filials de les entitats identificades en una decisió prèvia de "public enforcement" i va aclarir en quines circumstàncies les diferents entitats jurídiques d'un grup d'empreses formen una única empresa i, per tant, han de convertir-se en la part demandada en un procediment d'indemnització per danys i perjudicis per càrtel. Aquesta investigació té com a objectiu descriure les nocions d'empresa, com a base per a les reclamacions de danys i perjudicis contra una filial d'una empresa matriu que ha sigut declarada infractora de la legislació de la UE en matèria de competència, i explorar les possibles conseqüències pel que fa a la indemnització per danys i perjudicis i a la responsabilitat dins dels grups d'empreses.

Résumé

Dans *l'affaire Sumal v. Mercedes Benz Trucks España*, la Cour a répondu à la question: savoir si des dommages-intérêts peuvent être demandés aux filiales des entités identifiées dans une précédente décision publique d'exécution. La Cour a donc précisé dans quelles circonstances des entités juridiques distinctes au sein d'un groupe de sociétés forment une seule et même entreprise et doivent donc être désignées comme défenderesses dans une procédure de dommages-intérêts pour entente. Cette recherche vise à décrire les notions d'«entreprise», en tant que base pour les demandes de dommages et intérêts contre une filiale d'une société mère reconnue comme ayant enfreint le droit européen de la concurrence exploré les conséquences possibles concernant la compensation des dommages et responsabilité au sein des groupes de sociétés.

Keywords: EU competition law; Antitrust damages; Notion of undertaking; Parental liability; Liability of subsidiary.

Palabras clave: Derecho de la competencia de la UE; Daños antimonopolio; Noción de empresa; Responsabilidad de la matriz; Responsabilidad de la filial.

Paraules clau: Dret de la competència de la UE; Danys antimonopoli; Noció d'empresa; Responsabilitat de la matriu; Responsabilitat de la filial.

Mots clés: Droit de la concurrence de l'UE; Dommages-intérêts antitrust; Notion d'entreprise; Responsabilité de la matrice; Responsabilité de la filiale.

CONTENT

1. INTRODUCTION

Cartel infringement is often linked to businesses that have entered into agreements with competitors to fix prices, rig bids, share markets or limit production, which are unquestionably jeopardizing the interests of victims and businesses by inflating prices, reducing choices, and destabilizing the development of economy. Likewise, it also leads to fines and damage claims by injured parties running into billions. Insofar as that, it is of vital significance to discuss the question of liability. In this context, Article 101 and Article 102 of the Treaty on the Functioning of the European Union prohibit cartels and other agreements that could disrupt free competition in the EU internal market and prohibit abusing of a dominant position in the market. To be specific, the prohibitions of cartel under European competition law are addressed to "undertakings" which also are subject to fines imposed by the Commission under Art. 23 of Regulation 1/2003.[1]

What is more, damage claims by injured parties are also directed against undertakings.[2] Since undertakings cannot only consist of individual (natural or legal) persons but can also be composed of several legally independent entities which synchronously form an economic unit, the question of which legal entity or which legal entities are to be held liable in these cases has come into sight within the scope of the EU Competition law.[3]

Insofar as that, it is urged on investigating and making certain the liability of companies for antitrust fines. Since the judgment in the *case of Courage/Crehan*, the Court of Justice of the European Union (CJEU, hereinafter) confirmed that a right to damages can apply to individuals who oppose Member states, and even to individuals who stand up to each other.[4] Besides, in the CJEU's decision in Akzo Nobel,[5] there is a quantum leap explaining the mentioned liability in which a parent company may be held liable for anti-competitive behavior of its subsidiaries regardless did not itself participate in those

[1] Council Regulation 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102] of the Treaty (Official Journal L 1, 04.01.2003 at para.1-25).
[2] Directive Cartel Damages 2014/104/EU of the European Parliament and of the Council of 26 November 2014, Art.1 at para.1
[3] Sousa FERRO MIGUEL. "Binding Effect of Public Enforcement Decisions."Research Handbook on Competition Law Private Enforcement in the EU, Edward Elgar nº 13, 2022, at para.51.
[4] CJEU, Case C-453/99, Courage Ltd v Bernard Crehan and Bernard Crehan v Courage Ltd and Others, EU:C:2001:465.
[5] CJEU, Case C-97/08 P, Akzo Nobel and Others v Commission ECLI:EU:C:2009:536.

activities. Moreover, specific rules governing actions for damages under national law court for infringements of the competition law provisions of the Member states and of the European Union have improved the position of victims of competition law infringements. Still, it must pay attention to which the liability in private enforcement was not left involved.[6] Later, the judgment of the *case Vantaan kaupunki v Skanska* marks an evolution of private enforcement of EU competition law because the CJEU ruled that the concept of the undertaking must be interpreted uniformly in the context of public and private law enforcement.[7] From what have we mentioned above, certainly the notion of "undertaking" has evolved over these years.

On the topic of *case Sumal*, Sumal, an Spanish company, manufacturing roll containers, bought two trucks from Mercedes-Benz Trucks España, S.L. (MBTE), which is a Spanish subsidiary of Daimler AG (Daimler). In the "truck cartel", case occurred in 1997, Daimler was an addressee of the Commission's sanction decision but not Mercedes-Benz. However, later Sumal brought an action against Mercedez-Benz before a Spanish court for claiming damages for additional costs from the truck cartel instead of taking legal action against Daimler. In this case, the CJEU has helped to clarify whether, and if so under which conditions, the "single economic entity doctrine" justifies extending a parent company's liability for infringement of EU competition rules to its subsidiary which refers to "downward" liability.[8]

This essay aims to explore possible consequences, especially such as compensation for damages, for the evolution of imputation of liability in private enforcement. Firstly, it will shed light on the developments of notions of undertaking in EU Competition law. Secondly, by reviewing some important antitrust cases, two aspects of progress and changes via *case Sumal,* which are discussed stand in contrast to the traditional understanding of liability and provide claimants with additional for a litigation. In the end, this essay will discuss the potential positive and negative implications of the *Sumal case* within the scope of private enforcement and public enforcement, and of subsidiaries and parent companies.

[6] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014
[7] CJEU, Case C-724/17, Skanksa Industrial Solutions, EU:C:2019:204
[8] CJEU, Case C-882/19, Sumal, S.L. v Mercedes Benz Trucks España, S.L, EU:C:2021:800, at para.12

2. NOTION OF UNDERTAKING IN EU COMPETITION LAW

2.1 Undertaking as a single economic entity

According to EU antitrust law, the concept of "undertaking" covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed, and any activity consisting in offering goods and services on a given market is considered as an economic activity. Besides, Articles 101 and 102 of TFEU can apply to the activities of undertakings. An economic unit may comprise several natural or legal persons, together referred to as a "single economic entity".[9] A single economic entity, in a broad sense, signifies different companies or entities constituting a single entity from an economic standpoint. Within the framework of competition law, if two or more entities or companies are construed as a single economic entity, agreements between them are not generally estimated anti-competitive.

In *case Viho*,[10] which related to a conduct which occurred within a group of companies, the Court considered the company Parker and its subsidiaries formed a single economic unit and the subsidiaries simply implemented the instructions issued by the parent company controlling them, instead of being entitled to any real autonomy in determining their course of action in the market.[11] With respects to the *case Höfner and Elser*, the Court defines "undertaking" as "every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed".[12] What reveals from the two mentioned cases is that it can be regarded a real participation in commercial activities as long as it involves private or public activities of an economic nature.

The Courts have made the definition of the term "undertaking" putting particular emphasis on the nature of the activity, instead of the characteristics of the actors performing it.[13] When a company in the EU commits an antitrust conduct, the EU antitrust

---

[9] CJEU, Case T-352/94, Mo Och Domsjö AB v Commission of the European Communities EU:T:1998:103, para 87; Case C-90/09 P, General Química v. Commission, EU:C:2011:21, at paras 34-36 and case law cited.

[10] CJEU, Case C-73/95, Viho Europe BV v Commission of the European Communities, EU:C:1996:405

[11] Dreyer-Mälzer SUSANNE, and Jesper SVENNINGSEN, "Important Judgements Delivered by the Court of Justice of the European Communities in the period 1 March to 15 May 1998."EIPASCOPE, nº 2, at paras 1-5.

[12] CJEU, Case C-41/90 Hofner and Elser v Macrotron EU:C:1991:161, at para. 21

[13] Joined Cases C-264, 306, 354 and 355/01 AOK Bundesverband v Ichthyol-Gesellschaft Cordes EU:C:2003:304, Opinion of AG Jacobs, at para. 26

law can be applied not only to that company but also to other affiliated companies outside the Community on the condition that the company is not independent in its decision-making. Furthermore, if a subsidiary commits an antitrust crime within the Community, the parent company outside the Community can be held liable according to this principle (extraterritorial effect of the EU Competition Law). In the judicial practice, the CJEU relies primarily on the actual exercise of control by the parent company to determine whether it is "jointly and severally liable". If the parent company can prove that it owns more than 50 % of the shares but does not interfere with the operations and decisions of the subsidiary, on this occasion the parent company can be exempted from liability of damage claims. This principle was established for the first time in the 1972 *Fuel case*, in which three out-of-Community fuel preparation companies, including ICI, enforced price agreements through their intra-Community affiliates, and the EC imposed fines on all three out-of-Community parent companies and their intra-Community affiliates under the single economy principle.

The concept of undertaking is the centerpiece of the CJEU's reasoning in Sumal. At first, the Court specially makes a reference that from the wording of Article 101(1) TFEU the concept of "undertaking" is not equal to other concepts, such as those of "company" or "legal person".[14] However, in this what has a break through as to the interpretation of the concept of an "undertaking" is that, article 101 TFEU is not addressed at legal persons but at undertakings, which points to cover any entity engaged in an economic activity, and thus defines an economic unit even if in law that economic unit consists of several persons, natural or legal.[15] In so doing, EU competition law, in assessing whether an entity plays a part of an economic unit, the activities of undertakings, enshrines as the decisive criterion the existence of unity of conduct on the market, which elucidates that the decisive factor is in every case in which, the constituent parts of the undertaking must act in conformity on the affected market as one economic unit, pursuing a specific economic aim at a long-term basis.

Thus, from the case-law we can draw a conclusion that the conduct of a subsidiary may be attributed to the parent company, especially when the subsidiary does not

[14] CJEU, Case, C-882/19, Sumal v. Mercedes Benz Trucks España, EU:C:2021:800, at para. 39.
[15] CJEU, Case C-882/19, Sumal, S.L. v Mercedes Benz Trucks España, S.L, EU:C:2021:800, at para. 41

determine independently its own economic conduct and actually carries out the instructions given to it by the parent company. Under this situation, both the subsidiary and the parent form part of the same economic unit, which indicates that they belong to the same undertaking.[16] The Court makes a supplementary instruction that, however, several legal entities within one corporate group may form separate undertakings and even between does not exist a connection between them.[17] Thereupon, "upward" liability cannot be applied automatically when a parent company infringes EU competition law. Besides, a victim may not invoke liability of any subsidiary of a group of companies or conglomerate where different constituents of said group-structures are active in distinct economic fields, which themselves have no connection between them.[18] As a result, the same parent company can take over a few different undertakings, but if the parent company and its different combinations of its subsidiaries do not constitute the same group of companies, then the subsidiaries may be held liable for infringements even though their conducts are irrelevant, no matter directly or indirectly.[19]

In addition, the CJEU has made a further clarification on how proving that the distinct group entities form one undertaking. In the first place, it is must-have that have the economic, organizational, and legal links among the entities. Secondly, the existence of a specific link between the economic activity of that subsidiary and the subject of the infringement for which the parent company was held to be responsible, that subsidiary, together with its parent company, constituted an economic unit.[20] Nonetheless, what has drawn our attention is one possible consequence, for example, since the victim of infringement has to seek all necessary paths for the effective exercise to prove that the subsidiary does constitute part of the undertaking,[21] in this case, it might lead to burdensome proceedings.

Let us suppose the Court opinions that a parent company liable for an infringement of EU competition law, however, which not address other groups of companies, it does

---

[16] CJEU, Case C-882/19, Sumal, S.L. v Mercedes Benz Trucks España, S.L, EU:C:2021:800, at para. 43
[17] CJEU, Case C-882/19, Sumal, S.L. v Mercedes Benz Trucks España, S.L, EU:C:2021:800, at para. 45
[18] Freund BENEDIKT, "Heralds of Change: In the Aftermath of Skanska (C-724/17) and Sumal (C-882/19)."IIC-International Review of Intellectual Property and Competition Law nº53, 2022, published in https://link.springer.com/article/10.1007/s40319-022-01150-5.pdf
[19] CJEU, Case C-882/19, Sumal v. Mercedes Benz Trucks España, EU:C:2021:800, at para. 47.
[20] CJEU, Case C-882/19, Sumal v. Mercedes Benz Trucks España, EU:C:2021:800, at para. 51.
[21] CJEU, Case C-882/19, Sumal v. Mercedes Benz Trucks España, EU:C:2021:800, at para. 51.

not imply that other constituents of the group not formed part of the same infringement because they are considered as the same undertaking. Therefore, victims of anti-competitive practices may seek compensation for damages either against the parent company punished by the Commission for said practice or against a subsidiary of that company which is not referred to in that decision because those companies together constitute a single economic unit.[22]

According to the CJEU case law, "undertaking" shall be recognized as an economic unit constituted by a unitary organization of individuals, tangible and intangible elements, which pursues a specific economic purpose over time, and it is capable of producing the commission of an infringement of competition law. For the purpose of competition law, the concept of "undertaking" is defined more from the economic point of view than from the point of view of a legal entity. As a result, the concept of "undertaking" under Articles 101 and 102 is not necessarily identify to the definition of a legal person under the company law of a Member state. In essence, no matter in case *Viho Europ*e or *case Höfner*, the concept of an "undertaking" includes any entity engaged in economic activity, regardless of its legal personality or legal nature and regardless of the way it is financed. Consequently, *case Sumal* does not change the concept of "undertaking", but it has sought another way to explain it. Besides, it does not matter at all whether the undertaking is a single person (legal or natural) or several companies or natural persons, as long as they form an economic unit,[23] which lead to two consequences. Firstly, an agreement between members of an economic association is not considered an agreement between undertakings (according to Article 101). Secondly, a parent company can be held liable for the wrongful behaviors of its subsidiaries.

By virtue of *Sumal case*, the evolving interpretation of "undertaking" has reached to another level. The CJEU has reaffirmed its broad understanding of "economic unit" because Sumal not only for an extension of responsibility and liability from subsidiary to parent, but also the other way around. In the pass, most of the Member states would tend to focus on individual company's fault and only extend liability to other group companies on the basis of control considerations.

---

[22] CJEU, Case C-882/19, Sumal v. Mercedes Benz Trucks España, EU:C:2021:800, at para. 67.
[23] Beveraggi DE LA SERNA WALTER. "The joint and several liability of the parent company on competition matters, a European approach." Cuadernos Derecho Transnacional nº 8, 2016,at para. 36.

What is clear is that the concept of "undertaking" identifies the economic unit that violates the competition rules and covers any entity engaged in economic activity, regardless of its legal status and means of financing.

2.2 The principle of parental liability

The idea of "parental liability" as the concept of "single economic entity" started to develop as early as 1969 in *Christiani & Nielsen* along with the concept of "single economic entity", which led to the conclusion that Article 85 (currently Article 101) of the EU Constitutional Treaty no longer applied. This conclusion was based on the fact that it there was no competition between the parent company and the subsidiary, but rather that the subsidiary was an integral part of the economic entity under the control of the parent company.

Starting with this case, the CJEU has established the single economic entity doctrine via cases and has further regulated the scope and application of the parent company's liability. According to previous EU cases, the conduct of a subsidiary may be imputable to its parent company, despite the subsidiary's separate legal personality, especially when the subsidiary carries out the instructions given to it by the parent company instead of independently determining its conduct in the market.

The broader definition of undertaking under EU competition law legally paves the way for the issue of parent company liability and has a direct impact on the scope of application of Article 101 of the EU Constitution Treaty. In particular, agreements or concerted practices between a parent company and a subsidiary that can form part of the same economic unit and that involve only an internal division of tasks between them are not covered by Article 101 TFEU, since they form part of the same undertaking and such arrangements are only internal conducts but not between independent enterprises.

In *Viho*,[24] the CJEU held that the European Commission was correct in dismissing a claim that a distribution agreement between Park and its 100 % owned subsidiary violated Article 101. In that case, Park controlled the sales, advertising and marketing policies of its subsidiary and its subsidiary had no real autonomy to determine its actions.

[24] CJEU, Case C-73/95 P, Viho Europe BV v. Commission, EU:C:1996:405

As a result, the agreements and arrangements between the parent company and its subsidiaries were not governed by Article 101, and the activities between them constituted only an internal division of a single corporate function and did not constitute the collusive action required to enable the application of Article 101. In addition, if the parent company exerts a decision-making influence on the subsidiary company, such as the subsidiary company's market strategy is formulated by the parent company, then in such a scenario, the subsidiary company and the parent company have the same economic pursuits which shall be considered as a unified conduct on the market.[25]

The legal consequence of the single economic entity doctrine is that it allows the imputation of violations of competition law rules to the parent company, which forms part of the same undertaking. The fact that the parent company and its subsidiary form a single economic unit and therefore form a single undertaking enables the Commission to impose fines on the parent company, without having to establish the personal involvement of the latter in the infringement.[26] According to the principle of personal responsibility, when an economic entity infringes the competition rules, it is for that entity whom to answer for that infringement.[27]

Immediately after the establishment of the single economic entity doctrine, other more significant questions arise, namely: 1) What is the scope of application of the parent company liability? 2) What degree of independence does a subsidiary have to prevent the application of the principle?

Although there is little EU jurisprudence that provides a clear answer as to the circumstances in which an agreement falls outside the scope of application of Article 101, there are a number of cases on the attribution of liability that shed light on how to decide whether a parent company and a subsidiary constitute a unitary economy. According to CJEU cases, the central element in determining whether a single economy is formed, falls on whether a parent company has the ability to exert and actually exerts a decisive

[25] CJEU, Case T-102/92, Viho Europe BV v. Commission, EU:T:1995:3, at para. 50.
[26] CJEU, Case C-97/08 P, Akzo Nobel v. Commission, EU:C:2010:512, at paras. 58-59.
[27] CJEU, Case T-587/08, Fresh Del Monte Produce v. Commission, 14 March 2013, para. 53.; Case C-521/09 Akzo Nobel and Others v Commission, para 51 above, para 56, and Elf Aquitaine v Commission, para 51 above, para 53 and the case-law cited.

influence on the policies and conduct of its subsidiaries, such that the subsidiaries do not enjoy real autonomy or independence in the market with respect to their conduct.[28]

In the *Akzo Nobel case*, the CJEU gave a detailed and clear statement: for the liability assumed by the parent company factor company, when the parent company controls 100 % or close to 100 % of its subsidiary company, it can be presumed that the parent company has a substantial and decisive influence on the policies and actions of the subsidiary company. Therefore, in this case, the parent company assumes joint and several liabilities, unless the parent company has sufficient evidence to show that the subsidiary can act independently, this conclusion can be overturned.[29]

In these circumstances, it is sufficient for the European Commission to prove that the subsidiary is 100 % owned by its parent company to presume that the parent company exerts a decisive influence on the commercial policies of its subsidiary. The European Commission may then hold the parent company jointly and severally liable for the payment of fines by its subsidiary, unless the parent company, subject to the burden of proof to rebut the presumption, produces sufficient evidence to show that its subsidiary can act independently in the market.

In this regard, we can conclude that, according to the relevant EU cases, the fact that a parent company controls 100 % of the equity of its subsidiary is sufficient in itself to presume that the parent company is able to exert and actually exerts a decisive influence on the actions of its subsidiary. Nevertheless, when a subsidiary commits a violation of EU competition law, this does not necessarily lead the European Commission to impose joint and several liabilities on the parent company that has 100 % control over it; the European Commission has full discretion to impose joint and several liabilities on the parent company, usually based on the inter-company structure, economic relations, market competition and the degree of connection of the parent company to the case The European Commission usually makes judgments based on the organizational structure of the companies, economic relations, market competition and the degree of connection between the parent company and the case. Although the parent company is given the opportunity to rebut the presumption that it exerts a decisive influence on the conduct of its 100 %

[28] CJEU, Case 48/69, Imperial Chemical Industries v. Commission (Dyestuffs), EU:C:1972:70, at paras. 125-146.
[29] CJEU, Case C-97/08 P, Akzo Nobel v. Commission, EU:C:2010:512, at paras. 60-61.

owned subsidiary, past cases show that this rebuttal is highly unlikely to be accepted by the CJEU, and that the parent company will need to present not only the facts presented by the EC in support of the presumption, but also extensive and detailed coherent facts to prove that the subsidiary was able to act autonomously in the market; for example where the parent company argues that it does not interfere with the commercial policies of its subsidiaries, the CJEU will reject this on the grounds that the division of functions within the group is a normal phenomenon; where the parent company argues that it is a pure holding company with no operational role, the CJEU will reject this on the grounds that this does not exclude the possibility that it exerts a decisive influence on its subsidiaries by way of coordinating financial investments.

The *Sumal case*, in discussing the extension of subsidiary liability to the parent company, the Court, in reviewing the settled case-law, demonstrates that the parent company may be liable for the infringement of one of its subsidiaries,[30] especially if the subsidiary's decisions in the market are guided by the parent company. At this point, both the subsidiary and the parent are part of a unified economic unit and therefore belong to the same undertaking.[31] On the contrary, if the subsidiary can be proved to independently determine its own market behavior, the parent company will generally not be liable for its infringement of the subsidiary. In this case, the Court focuses on the possibility of attributing the parent company's liability to the subsidiary.[32] The CJEU clarified that within a group of companies, separate businesses can be composed of multiple legal entities. Moreover, the different components of these groups are not necessarily related to each other, for example, some of them might be active in completely different sectors of the economy, hence the victim may not invoke liability of any subsidiary or business group responsible.[33]

However, how does the *Sumal case* on parent company liability align with the well-established single economic entity principle and the concept of "undertaking" in the antitrust field of competition law?

---

[30] CJEU, C-882/19, Sumal v. Mercedes Benz Trucks Espana, EU:C:2021:800, at para. 43.
[31] CJEU, C-882/19, Sumal v. Mercedes Benz Trucks Espana, EU:C:2021:800, at para. 43
[32] CJEU, C-882/19, Sumal v. Mercedes Benz Trucks Espana, EU:C:2021:800, at para. 45;
[33] CJEU, C-882/19, Sumal v. Mercedes Benz Trucks Espana, EU:C:2021:800, at para. 45

3. DEVELOPMENT AND CHANGES VIA "CASE SUMAL"

3.1 From "upward" liability to "downward" liability for damages claims in EU Competition Law

Aiming to better comprehend the development of liability for antitrust infringements, the evolution of the parental liability can be described through two stages: "pre" and "post" *Sumal*. In the first stage, the parent company, to which the unlawful conduct of its subsidiary is attributed, is held liable for an infringement of EU competition law. And as for the second stage, in the context of the notion of the "doctrine of the single economic unit developed by the Court of Justice", parent companies have been held liable in respect of the conduct of their subsidiaries. It can be summarized, while determining whether a parent company may be held liable for an infringement of Articles 101 or 102 TFEU carried out by a subsidiary, in general terms, when the parent company could and did exercise decisive influence over the subsidiary, it may be held liable.

The first instance where a parent company was held liable for the anti-competitive behavior of its subsidiaries occurred almost fifty years ago, which exactly refers to *Dyestuffs case*.[34] Dealing with the appeal of the case a few years later, the European Court of Justice confirmed that a parent company may be held liable if its anti-competitive conduct arises from an order it issued to its subsidiary.[35] Thus, the Court confirmed that the conduct of a subsidiary may in certain circumstances be imputable to the parent company if it does not independently determine its own conduct in the market, but rather carries out in all material respects the instructions of the parent company,[36] which clarified that the Commission may, at its discretion, hold the parent company or the subsidiary, or both, liable for antitrust infringements.[37]

Later, the tipping point could be traced back to the seminal *Akzo judgment*. In *Akzo*, the ECJ had established a rule for "upward" attribution of anti-competitive conduct: when a subsidiary infringement is being attributed to a parent company, the parent company can also be fined. It is worth mentioning that in its appeal, *Akzo Nobel* relied on the *case Total v Commission.* In this case, the Court held that the liability of a parent

[34] CJEU, Case T-410/03, Hoechst GmbH v Commission of the European Communities, EU:T:2008:211.
[35] CJEU, Case 48/69 Imperial Chemical Industries Ltd. v Commission, EU:C:1972:70, at paras 129-137
[36] CJEU, Case 48/69 Imperial Chemical Industries Ltd. v Commission, EU:C:1972:70, at paras 133- 135
[37] CJEU, Case 48/69 Imperial Chemical Industries Ltd. v Commission, EU:C:1972:70, at paras 131- 137

company cannot exceed that of its subsidiary when its liability is purely derivative of that of its subsidiary and no other factor individually reflects the conduct for which the parent company is held liable. In this situation, the parent company must, in principle, benefit from any reduction in the liability of its subsidiary which has been imputed to it.

From the view of the Court, Akzo Nobel NV was regarded to have carried out the anti-competitive activities since it formed an economic unit with its subsidiaries. In addition, the participation of Akzo Nobel NV and its other subsidiary in the infringement beyond the first infringement period (The Commission divided Akzo Nobel's participation in the infringement into three separate periods in 2009) was persistent, which differentiated assessing Akzo Nobel NV's liability differently from that of its two subsidiaries. Indeed, this judgment demonstrates that even if a parent companies liability results exclusively from the direct participation of its subsidiary in the infringement, the parent company cannot always benefit from defenses which are available to its subsidiary.[38]

The *Sumal case*, regardless, does not concern upward attribution. In this case, it is also all-important to refer to the judge's opinion in this case.[39] First, *AG Pitruzella* states that the notion of undertaking in Art. 101 TFEU, which defines that the economic unit is a functional concept, instead of being legal. Having regard to the subject of the agreement at issue. The constituted economic unit must be identified. Therefore, an action for damages cannot automatically be brought against any subsidiary of the parent company referred to in a Commission decision, which the CJEU confirms in the ruling.

According to AG Pitruzella, the liability in the "top-down" direction can be applied is based on, both the parent and subsidiary company act as one undertaking on the market. And several legally independent companies act together as one single economic unit, in this case, can form a part of a single undertaking within the scope of EU Competition law, which be concluded from *AG Pitruzzellas's* findings that one group of companies may encompass more than one economic unit. Later, he reviews the *case ICI* and gives a summary in which, an "economic unity" or undertaking has to be based on organizational, economic and legal links defined by control. But what kind of link is sufficient that shall

[38] De OLIVEIRA, Ana PERESTRELO, and Miguel SOUSA FERRO. "The sins of the son: Parent company liability for competition law infringements."Revista de Concorrência e Regulação nº 1,2010, at para. 3.
[39] Opinion of AG Pitruzzella, Case C-882/19, Sumal v. Mercedes Benz Trucks España, EU:C:2021:293

be present between parent and subsidiary? *AG PItruzella* explains that the subsidiary must have substantially contributed to the implementation of the anti-competitive conduct.[40]

According to the AG, it is practicable to allow a parent company to be held liable for the anti-competitive behavior of its subsidiary when the parent company "exercises a decisive influence on the commercial policy of its subsidiary". The key point for the subsidiary to be held liable for its parents' behavior is that the subsidiary must have formed a part of the economic activity of the parent company which has substantially committed the infringement. Besides, whether the subsidiaries' activity on the market was objectively integral to realize the anti-competitive practice in question is a matter of consideration.[41] Henceforward, along with that both companies are members of the same group, it is substantive that there is a link between their economic activities. In other words, the subsidiary cannot be held liable if its activity is not related to the antitrust behavior or practice.

The CJEU in essence and in line with the *AG's Opinion* that a subsidiary might be held liable for the damage resulting from the anti-competitive conduct of its parent company under certain circumstances. The Court pays more attention to whether a parent company and a subsidiary form part of the same undertaking, scilicet an "economic unit", if the parent company and its subsidiary form part of the same economic unit and consequently constitute a single undertaking: it is "the very existence of that economic unit which committed the infringement that decisively determines the liability of one or other companies making up that undertaking for the anti-competitive conduct".[42] Moreover, even though exist many undertakings within the same group, if it is proven that the subsidiary belongs to the same undertaking as to the parent company which has been fined, also between the parent company and its subsidiary there is an economic activity that caused the damage, the subsidiary is responsible for infringement caused by the parent companies conduct.[43]

---

[40] Opinion of AG Pitruzzella, Case C-882/19, Sumal v. Mercedes Benz Trucks España, EU:C:2021:293, at para. 45
[41] Opinion of AG Pitruzzella, Case C-882/19, Sumal v. Mercedes Benz Trucks España, EU:C:2021:293, at paras 45-47
[42] CJEU, Case C-882/19, Sumal, S.L. v Mercedes Benz Trucks España, S.L, EU:C:2021:800, at para. 43
[43] CJEU, Case C-882/19, Sumal, S.L. v Mercedes Benz Trucks España, S.L, EU:C:2021:800, at para. 47

To answer for that infringement, the CJEU concluded that in EU competition law the principle of personal responsibility applies to the entire "undertaking" of which they form part instead of individual legal entities within a corporate. It is for the economic unit which constitutes the undertaking that has committed the infringement to answer for it.[44] Consequently, the CJEU states that, where the Commission has identified a parent company as liable for an infringement committed by an undertaking, if there are economic, organizational and legal links uniting the companies and exist specific links between the economic activity of the subsidiary and the subject of the infringement for which the parent company has been held responsible and therefore, one or more of its subsidiaries may also be considered liable for this infringement.[45] What is more, the CJEU confirmed that the requirement for specific links between the activities of group companies implies that a corporate group may comprise different undertakings, one for each set of unlinked activities that are carried out within the group.[46] Besides, it also has to be demonstrated that the parent company actually has decisive influence over its subsidiary.[47]

From "upward" liability to "downward" liability for damages claims, in short, the central axis is actually the economic connection between the parent company and the subsidiary and whether they form an economy, while the previous case law was concerned about whether the decisions made by the subsidiary in the market receive decisive influence from the parent company, or the share of equity between the subsidiary and the parent company, and other adjudication factors, which are materially branches of the central axis that has mentioned. The doctrine of the single economic unit developed by the Court itself provides grounds for extending liability from the parent company to the subsidiary or in an upside-down order.

Accordingly, another doubt comes up, some sort of links between the parent company and the infringement in question has to be elucidated more clearly and more

---

[44] CJEU, Case C-882/19, Sumal, S.L. v Mercedes Benz Trucks España, S.L, EU:C:2021:800, at para. 44 and 58

[45] CJEU, Case C-882/19, Sumal, S.L. v Mercedes Benz Trucks España, S.L, EU:C:2021:800, at paras 51-52

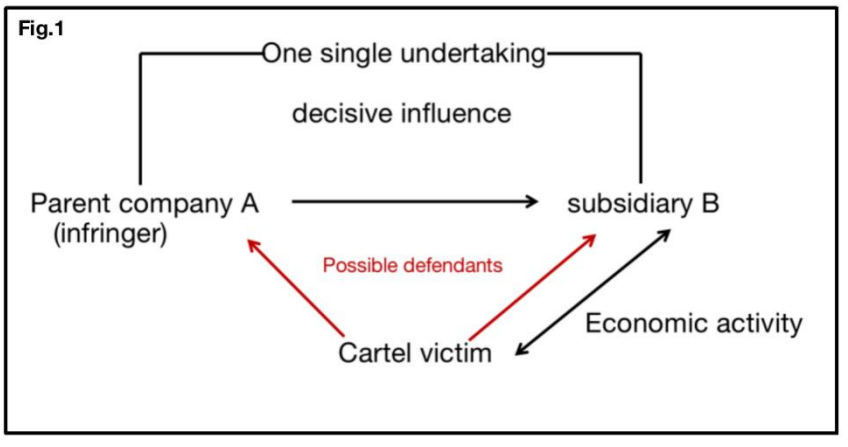
[46] Clifford Chance LLP, Upside down liability in Antitrust: the Sumal case puts subsidiaries of antitrust infringers in the spotligh,nº 21 October 2021, published in https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2021/10/client-br

[47] Opinion of AG Pitruzzella, Case C-882/19, Sumal v. Mercedes Benz Trucks España, EU:C:2021:293, at para 57

profoundly, since the definition of "undertaking" has new development within the specific scope of the economic unit, whether essentially the connection between parent and subsidiary has evolved or completely has changed?.

3.2 The "Special Link" between parent and subsidiary

Pre *Sumal*, with reference to liability of a subsidiary for its infringing parent, generally, the parent company is to be blame for an infringement of EU competition law of its subsidiary. For example, one of the most common scenarios which is, parent company A controls subsidiary B and has a decisive influence on its subsidiary. If the parent company A participates in anti-competitive economic activity by selling the goods object of the cartel that affect the product market on which subsidiary B is active, cartel victims, which have bought the product from subsidiary B, can in principle bring an action for damages against parent company A as well as against subsidiary B. As regards subsidiary B, firstly, the decisive influence of its parent company to form part of the same economic unit, and secondly, a material contribution to the infringements which is the specific link, thus in this situation this case can be fit in upward liability for infringement. Both parent and subsidiary companies can be considered as possible defendants (Fig.1).



When an economic unit violates competition rules, the economic unit must be held responsible for the violation. Thus, when a subsidiary does not independently determine its own market conduct, but executes the instructions of the parent company, and taking into account the economic, organizational and legal link between the two entities, these entities form part of the same economic unit and form one. When a company is responsible

for anti-competitive conduct, the conduct of that subsidiary is attributable to the parent company. The concept of "undertaking" and “economic unit” automatically require joint and several liabilities among the entities constituting the economic unit at the time of the infringement.[48]

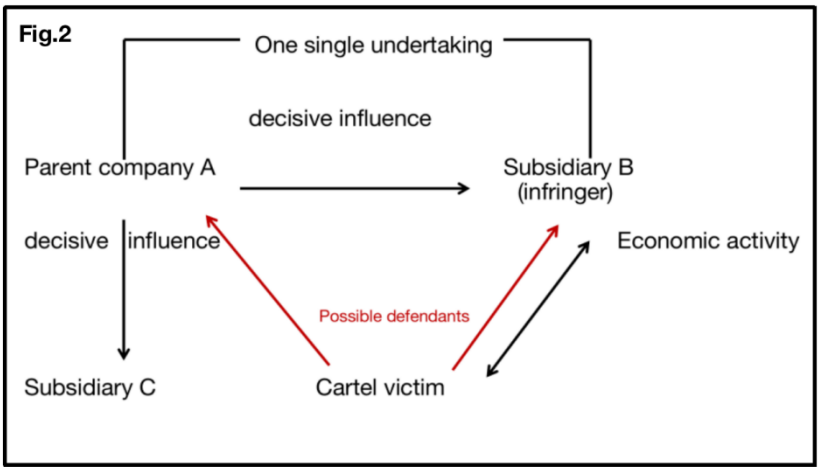
However, within an economic unit, where there may not be any connection between one company and another, the situation is different. There is another scenario of liability of a subsidiary for infringements of other group companies which is, the subsidiary company B enters into an anti-competitive agreement instead of parent company A that also exerts a decisive influence on its subsidiary C, however Subsidiary B's infringement does not affect the product market of subsidiary C. Since parent company A has a decisive influence on its infringement of Subsidiary B, wherefore, having considering the “upward liability” in *Sumal*, cartel victims can also seek damages from parent company A. Under this case, parent company A and subsidiary company B belong to the same economic unit. In spite of that, what we have to pay attention to is, that unit does not include every entity controlled by Parent A. To be specific, there is no specific link between the economic activities of Subsidiary C and the infringement. Therefore, cartel victims may not seek compensation from Subsidiary C because it is not involved in the infringement and therefore is not an economic unit (Fig.2).

The victim of infringement has to seek all indispensable avenues for the effective exercise to prove that the subsidiary does form part of the undertaking, the victim may bring an action for damages against the subsidiary company only if it has successfully demonstrated that firstly the economic, organizational and legal connection between the two entities, and secondly there is a specific connection between the economic activities of the subsidiary company and the infringing subject of the parent company, and the subsidiary company together with its parent company constitutes an economic unit.[49] In other words, there must exist economic, organizational, and legal links among the entities and a specific link which have established by the Court in the *case Sumal*.

---

[48] Laura AQUILINA, Liability of subsidiaries where parent companies infringe EU competition law,December 2, 2021, published in the website https://ganado.com/insights/publications/liability-of-subsidiaries-where-parent-companies-infringe-eu-competition-law/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration

[49] CJEU, Case C-882/19, Sumal v. Mercedes Benz Trucks España, EU:C:2021:800, at para. 51.



Original figure

In general, the answers given by the courts adequately address the question of upward or downward liability consistently that is firmly grounded in the notion of undertaking. Therefore, let us suppose that the CJEU more likely is going to develop the definition of the undertaking instead of changing it.

4. POTENTIAL EFFECTS OF THE JUDGMENT SUMAL

4.1. Impacts of future damages claims between parent and subsidiary in cartel cases

In the Opinion of AG, in a claim for damages before a national court, the legal entity may be held liable, even though only its parent company is sanctioned by the Commission, when it is proved that the economic, organizational and legal links at the time of the violation are established and the conduct of the controlled entity indeed has contributed substantially to the unlawful act and the effects of said violation. The answer given by the Court adequately resolves the problem of inverse or downward liability consistently, which is firmly anchored on the notion of the undertaking.

The ruling contributes to the full effectiveness of EU competition law rules by allowing individuals to bring an action against a subsidiary when claiming damages for losses caused by the illegal conduct of the parent company. The judgment is a step forward in guaranteeing the right of individuals to seek compensation and in dissuading and discouraging anti-competitive agreements or practices. This binding effect of the EC's decisions considerably facilitates damage claims brought by victims of infringements of EU competition law. There is a realistic possibility that this judgment will therefore make sure that private enforcement is an important avenue for victims of competition law

infringements and, also plays an important role alongside the existing public enforcement by competition authorities, thus creating a strong system to combat violations of EU competition rules.

However, still some problems remain to be seen. For instance, in the interest of uniformity in the application of EU competition law, this possibility applies only if the European Commission does not find conduct amounting to infringement in a decision adopted pursuant to Article 101 TFEU.101 This possibility applies if no conduct constituting infringement is found in a decision adopted by the TFEU. Only in this case is the subsidiary of the alleged parent company entitled to challenge not only its belonging to the same economic unit as the parent company, but also the existence of the alleged infringement.[50]

Other issues which will need to be clarified in future cases will put emphasis on what criteria are used to distinguish one activity from another. *Sumal* has been cautious in presenting the case of enterprise groups because these legal entities have no connection in several economic areas. When an economic unit violates competition rules, the economic unit must be held responsible for the violation. Thus, when a subsidiary does not independently determine its own market behavior, but executes the instructions of the parent company, and taking into account the economic, organizational and legal links between the two entities, these entities form part of the same economic unit. When a company is responsible for anti-competitive conduct, the conduct of that subsidiary is attributable to the parent company. As a matter of fact that the concept of "undertaking" and "economic unit" automatically require joint and several liabilities among the entities that constitute the economic unit at the time of the infringement, nonetheless, as in the following, the CJEU opinions whether the Court requires that the companies that form a group have not only economic links but also that their related activities still remain to be seen. If so, since there may not have connection between one company and another within an economic unit, a subsidiary company will not always be liable for the conduct of a parent company targeted by a Commission decision finding infringing conduct. Besides, what it is need to be clarified in future cases will fall on what standards may be used to tell an activity from another and what intensity of "connection" is relevant for the Court

[50] CJEU, Case C-882/19, Sumal v. Mercedes Benz Trucks España, EU:C:2021:800, at para. 60

to need it. Over time, it will need to make further clarification of the requirements that affiliates must meet as a means to be held accountable in these situations.

In addition, from "upward" liability to "downward" liability for damages claims, this development can ensure the effective enforcement of competition law on a larger scale. Taking into account economic units outside the legal structure can prevent companies from evading justice, especially through restructuring.

4.2. Implications for private and public enforcement in compensation for damages

In *Skanska,* the infringer was dissolved before or after the acquisition, but because the acquirer did not seize the economic activities of the infringing company. The biggest problem in *Skanska* is that the CJEU has to determine whether the scope of persons liable for damages caused by anti-competitive conduct is determined on the basis of national provisions, i.e. Finnish law, or on the basis of the concept of undertaking under the EU Treaty. It is natural that two sets of rules on the right to compensation are distinguished. The first set of rules relates to the rules introduced by EU law, while the second set of rules relates to the domestic rules of the Member states. But the Court via the result of the economic continuity test, which reveals that the infringer forms part of the concept of the undertaking, confirms that the acquiring companies were to be held civilly liable.

Therefore, since the *Skanska decision*, we have learned that the concept of the undertaking must be interpreted uniformly in the context of public and private law enforcement. While the obligation to compensate victims can have a deterrent effect, the legal systems of most Member states do not recognize this effect as the true purpose of cartel damages. This effect may carry over from the *Skanska case* to the *Sumal decision*.

AG Pitruzzella recalls that the determination of the liable entity is directly governed by EU law and notably that it may not have a different elucidation in public and private enforcement, which it can be concluded that downward liability is as acceptable in private as it is in public enforcement. The *judgment Sumal* allows the victims to sue the subsidiary that it is located in their States. By way of illustration, multiple debtors may open new courts in different jurisdictions in which defendants can be sued. Instead of asking for damages to the parent company, which is located in a different state, the victim can sue the subsidiary —despite not having directly done the detrimental behavior— at home. Unsurprisingly, the parent company will not be pleased with these developments. In this context, we have to consider the result that the parent company may be more

cautious in giving orders to its subsidiaries or shrinking its control, that is, by suppressing them to a greater extent, to reach a reduction of cartel violations. But it must be affirmed that private enforcement and the ensuing damages actions are inevitably an integral part of the enforcement of EU competition law. Moreover, a multi-branched enforcement system has deterrence as its primary goal. Thus, both branches of the enforcement system, public and private enforcement, pursue a common goal of deterrence of anti-competitive conduct.

Nevertheless, *Sumal* does not account for how to make a balance between European Union law and national law because the Court does not contemplate downward liability should be regarded as not conforming with EU law. For the purpose of making sure the effectiveness of the enforcement of EU competition law, the interpretation of persons (legal or natural) liable for damages must be the same in each Member state jurisdiction. What is more, in *Sumal* we can infer that the national courts have the right to choose any legal entity within an "economic unit" as liable in a follow-on claim, which implies that the national court can put aside national rules that might hinder the prosecution process. But what if the national court chose the different path, it is possible that EU law would stand in the way of such national rules.

But how *Sumal case* favor private enforcement without undermining the unity of the concept of undertaking? The Court establishes that the victim must prove that the subsidiary belongs to the one undertaking and that there is a specific link between the economic activity of the subsidiary and the object of the crime, which is welcome as it will help to limit the different application of the solution at the national level. In this case, the plaintiff only has to prove that the truck it purchased from the subsidiary is the same as the object of the cartel in which the parent company is involved. In evidence, the proof is not tough because the victim does not need to prove that the subsidiary is aware of the infringement by its parent company. The core idea is that the undertaking is able to defend itself in the name of all the legal entities making up the undertaking. However, it is easy to find out that this development is a double-edged sword because it increases the burden of proof on victims.

In conclusion, it is worth establishing that, with this judgment, the CJEU has expanded the possibilities for effective private enforcement of EU competition law and has thus contributed to the further strengthening of EU competition law.

5. CONCLUSION

First and foremost, the concept of an undertaking lacks of a legal definition because it is not defined in the Treaty, nor in other EU legislation. Over these years, the ECJ has not retained to provide extensive grounds to refer to the notion of "undertaking" as an economic concept. Nevertheless, the two core provisions attributed to the notion of "undertaking" are Article. 101, which prohibits anti-competitive coordinated practices, and Article. 102, which prohibits abusing a dominant position in the market.

Indeed, the concept of undertaking determines which certain behavior is attributable. When it refers to upward liability, the Court's reasoning is frequently built on the idea that the parent and the subsidiary constitute a single undertaking and therefore can be held jointly and separately liable for the anti-competitive violation in its subject of matter and imposed fines. A decisive influence is, in general, presumed to have been exercised when the parent company is fully owning subsidiaries. Except if it can be proven by the parent company that the subsidiary independently has decided its own conduct on the market.

In *Sumal*, however, the Court explains that the single economic unit doctrine as formulated could justify the extension of liability from the parent to the subsidiary, and it could be applied for the purpose of extending liability from the subsidiary to the parent. More importantly, in the context of intergroup relationships, the concept of a single economic unit can be expanded based on control issues and other criteria, including the possibility of subsidiaries benefiting from abuses.

Moreover, in the *pre-Sumal case,* the general concept and conditions have to be satisfied in order to attribute parental liability contains two conditions which are as followed, firstly it must have a decisive influence as a notion and secondly the parent company exercises the decisive influence on its subsidiary. In *Sumal*, the Court has made an explanation of which conditions should be required with focus on considering a subsidiary liable for civil damages caused by an infringement of Article. 101 TFEU while extending liability from the parent company to the subsidiary, which is, on the basis of the economic, organizational and legal links that exist between these companies, the subsidiary and the parent company, at the time of the infringement, form a single undertaking within the classification of the Article. 101 EU Treaty. The subsidiary companies' conduct on the affected market has contributed substantially to the objective of the infringement and the materialization of the effects of such infringement.

Consequently, it can be forecasted the potential consequences of *case Sumal*, if the Grand Chamber agrees to certain conditions so as to reach downward liability, this will promote the full effectiveness of EU competition law rules by allowing individuals to bring actions against subsidiaries when claiming damages caused by the illegal conduct of the parent company. The decision makes a positive change or improvement in safeguarding the rights of individuals to seek compensation and in dissuading and discouraging anti-competitive agreements or practices. There is no doubt that this binding nature of the European Commission's decision has greatly facilitated claims for damages by victims of EU competition law infringements.

To sum up, in the *Sumal case* the big question is whether we are faced with a deadlock when the parent company is the main perpetrator of the crime, and it is its subsidiary that is held liable. The answer is no. Foremost, we should recall two criteria for identifying a business: economic activity and autonomous behavior on the market. In an attempt to characterize an economic unit, it is only important to face a legal entity that does not act independently. In the present case, the subsidiary did not participate in the cartel, but implemented it by passing on the price increase caused by the infringement of its parent company. Therefore, it did not act independently, and it follows that it can be considered as part of the undertaking. Since it is established in case law that all legal entities that form part of an undertaking are jointly liable, there is no practical obstacle to recognizing that subsidiaries are also liable. In conclusion, this reasoning is not innovative. It simply applies to a new hypothesis.[51]

The decision allows individuals to sue subsidiaries for damages caused by the illegal conduct of the parent company, thus contributing to the full entry into force of EU competition law rules. The decision is an important step forward in safeguarding the rights of individuals to seek compensation and to deter and prevent anti-competitive agreements or practices. Thus, the ruling protects to a greater extent the victims of competition law violations in private enforcement. At the same time, in the future, the effective influence on private enforcement and the existing public enforcement by competition authorities

[51] CJEU, Case C-882/19, Sumal v. Mercedes Benz Trucks Espana, EU:C:2021:800, at para. 40

play a strong role as a way to create a strong system to fight against regular violations of EU competition law.

6. BIBLIOGRAPHY

Beveraggi DE LA SERNA WALTER. "The joint and several liability of the parent company on competition matters, a European approach."Cuadernos Derecho Transnacional nº 8, 2016,at para. 36.

Clifford Chance LLP, Upside down liability in Antitrust: the Sumal case puts subsidiaries of antitrust infringers in the spotligh, nº 21 October 2021, published in https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2021/10/client-br

De OLIVEIRA, Ana PERESTRELO, and Miguel SOUSA FERRO. "The sins of the son: Parent company liability for competition law infringements."Revista de Concorrência e Regulação nº 1,2010, at para. 3.

Dreyer-Mälzer SUSANNE, and Jesper SVENNINGSEN, "Important Judgements Delivered by the Court of Justice of the European Communities in the period 1 March to 15 May 1998."EIPASCOPE, nº 2, at paras 1-5.

Freund BENEDIKT, "Heralds of Change: In the Aftermath of Skanska (C-724/17) and Sumal (C-882/19)."IIC-International Review of Intellectual Property and Competition Law nº53, 2022, published in https://link.springer.com/article/10.1007/s40319-022-01150-5.pdf

Laura AQUILINA, Liability of subsidiaries where parent companies infringe EU competition law,December 2, 2021, published in the website https://ganado.com/insights/publications/liability-of-subsidiaries-where-parent-companies-infringe-eu-competition-law/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration

Sousa FERRO MIGUEL. "Binding Effect of Public Enforcement Decisions."Research Handbook on Competition Law Private Enforcement in the EU, Edward Elgar nº 13, 2022, at para.51.

7. OFFICIAL TEXTS

CJEU, C-453/99, Courage/Crehan, EU:C:2001:465

CJEU, C-295/04, Manfredi, EU:C:2006:461

CJEU, C-352/13, CDC Hydrogen Peroxid, EU:C:2015:335

CJEU, C-516/15 P, Akzo Nobel, EU:C:2017:314

CJEU, Case T-410/03, Hoechst GmbH v Commission of the European Communities, EU:T:2008:211.

CJEU, Case 48/69 Imperial Chemical Industries Ltd. v Commission, EU:C:1972:70

CJEU, Case C-73/95 P, Viho Europe BV v. Commission, EU:C:1996:405

CJEU, C-724/17, Vantaan kaupunki v. Skanska Industrial Solutions, EU:C:2019:204

CJEU, C-882/19, Sumal v. Mercedes Benz Trucks Espana, EU:C:2021:800

Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014

Opinion of AG Pitruzzella, C-882/19 – Sumal v. Mercedes Benz Trucks Espana, EU:C:2021:293