



The victim of an infringement of EU competition law committed by a parent company may seek compensation from that company's subsidiary for the resulting loss

To do so, it must prove that the two companies constituted an economic unit at the time of the infringement

Between 1997 and 1999, the company Sumal SL acquired two trucks from Mercedes Benz Trucks España ('MBTE'), which is a subsidiary of the Daimler group, whose parent company is Daimler AG.

By a decision of 19 July 2016,¹ the European Commission found an infringement, by Daimler AG, of EU law rules prohibiting cartels² in that Daimler had concluded, between January 1997 and January 2011, arrangements with fourteen other European truck producers on pricing and gross price increases for trucks in the European Economic Area (EEA).

Following that decision, Sumal brought an action for damages against MBTE, seeking payment of the sum of EUR 22 204.35 for loss resulting from that cartel. Sumal's action was nevertheless rejected by the Juzgado de lo Mercantil no 07 de Barcelona (Commercial Court No 7 of Barcelona) on the ground that MBTE was not referred to in the Commission's decision.

Sumal brought an appeal against that judgment before **the Audiencia Provincial de Barcelona** (Provincial Court of Barcelona, Spain). In that context, that **court wonders whether and, if so, under what conditions, an action for damages may be brought against a subsidiary following a Commission decision finding anticompetitive practices by the parent company.** Thus, that court decided to stay the proceedings and refer that question to the Court by way of a reference for a preliminary ruling.

By its judgment delivered by the Grand Chamber, **the Court sets out the conditions under which victims of an anticompetitive practice by a company punished by the Commission are entitled to engage, by way of an action for damages brought before the national courts, the civil liability of the punished company's subsidiary companies, which are not referred to in the Commission decision.**

Findings of the Court

In accordance with settled case-law, **any person is entitled to claim compensation from 'undertakings' which have participated in a cartel or practices prohibited under Article 101 TFEU for the harm caused by those anticompetitive practices. Even if such actions for damages are brought before the national courts, the determination of which entity is required to provide compensation for the harm caused is governed directly by EU law.**

¹ Decision C(2016) 4673 final relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks), a summary of which was published in the Official Journal of the European Union of 6 April 2017 (OJ 2017 C 108, p.6).

² Article 101 TFEU and Article 53 of the EEA Agreement.

Given that such actions for damages are an integral part of the system for enforcement of EU competition rules, in the same way as their enforcement by public authorities, **the concept of an ‘undertaking’, within the meaning of Article 101 TFEU, cannot have a different meaning in the context of the imposition of fines by the Commission on ‘undertakings’ (public enforcement) and in actions for damages brought against those ‘undertakings’ before the national courts (private enforcement).**

According to the Court’s case-law, **the concept of an ‘undertaking’, within the meaning of Article 101 TFEU, covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed, and thus designates an economic unit even if in law that unit consists of several natural or legal persons.**

Where it is established that a company belonging to such an economic unit has infringed Article 101(1) TFEU such that the ‘undertaking’ of which it is part has committed an infringement of that provision, **the concept of an ‘undertaking’ and, through it, that of ‘economic unit’, that gives rise to the joint and several liability across the entities of which the economic unit is made up at the time that the infringement was committed.**

In that regard, the Court observes, moreover, that **the concept of an ‘undertaking’, used in Article 101 TFEU, is a functional concept, as the economic unit of which it is constituted must be identified having regard to the subject matter of the agreement at issue.**

Thus, **where the existence of an infringement of Article 101(1) TFEU has been established as regards a parent company, it is possible for the victim of that infringement to seek to engage the civil liability of a subsidiary of that parent company on the condition that the victim proves that, having regard to, first, the economic, organisational and legal links that unite the two legal entities and, second, the existence of a specific link between the economic activity of that subsidiary and the subject matter of the infringement for which the parent company was held to be responsible, that subsidiary, together with its parent company, constituted an economic unit.**

It follows that, in circumstances such as those at issue in the main proceedings, in order to bring an action for damages against MBTE as a subsidiary of Daimler AG, **Sumal must establish, in principle, that the anti-competitive agreement concluded by Daimler AG concerns the same products as those marketed by MBTE.** In so doing, Sumal would show that it is precisely the economic unit of which MBTE, together with its parent company, forms part that constitutes the undertaking which in fact committed the infringement found earlier by the Commission pursuant to Article 101(1) TFEU.

However, in the context of such an action for damages brought against a subsidiary company of a parent company which has been found to have infringed Article 101 TFEU, before the national court concerned, **that subsidiary company must dispose of all the means necessary for the effective exercise of its rights of the defence, in particular so as to be able to dispute that it belongs to the same undertaking as its parent company.**

That said, where an action for damages relies, as in the present case, on a finding by the Commission of an infringement of Article 101(1) TFEU in a decision addressed to a parent company of the defendant subsidiary company, the latter cannot challenge, before the national court, the existence of an infringement thus found by the Commission. Indeed, Article 16(1) of Regulation No 1/2003³ provides that national courts cannot take decisions running counter to the decision adopted by the Commission.

By contrast, in a situation where the Commission has not made a finding of conduct by the parent company amounting to an infringement in a decision adopted under Article 101 TFEU, the subsidiary company is naturally entitled to dispute not only that it belongs to the same ‘undertaking’

³ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102] TFEU (OJ 2003 L 1, p. 1).

as the parent company, but also the very existence of the infringement alleged against the parent company.

In that regard, **the Court states, moreover, that the possibility for a national court of making a finding of the subsidiary company's liability for the harm caused is not excluded merely because, as the case may be, the Commission has not adopted any decision or that the decision in which it found that there was an infringement did not impose an administrative penalty on that company.**

Therefore, Article 101(1) TFEU precludes a national law which provides for the possibility of imputing liability for one company's conduct to another company only in circumstances where the second company controls the first company.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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