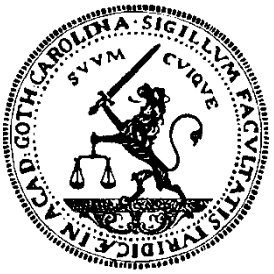

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One Undertaking, Multiple Entities: The Evolving Legal Framework of Corporate Group Liability in EU Competition Law

JAEM03 Master Thesis

European Business Law

30 higher education credits

Supervisor: Xavier Groussot

Term of graduation: Spring 2025

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Summary

This thesis investigates the evolving framework of corporate group liability in EU competition law, with a focus on the economic unit doctrine under Article 101 TFEU. It analyses how competition liability can extend beyond traditional parent-subsidiary relationships to include various entities within a corporate group. Central to this analysis is the *Akzo Nobel* presumption, which assumes that a parent company owning nearly all of a subsidiary's shares exerts decisive influence and can thus be held jointly liable for competition infringements.

The study outlines the legal, structural, and functional mechanisms through which decisive influence is established and examines the evidentiary challenges of rebutting the presumption of decisive influence. It also considers situations where liability is based not on formal ownership but on actual control, such as in joint ventures or minority shareholdings.

Two landmark cases, *Sumal* and *Athenian Brewery*, are analysed in depth. *Sumal* introduced the concept of downward liability, allowing victims to bring claims against subsidiaries for infringements committed by parent companies, provided they form part of the same economic unit. *Athenian Brewery* further extended the doctrine's procedural reach by confirming that jurisdiction under the Brussels I *bis* Regulation can be grounded in the presumption of decisive influence.

The thesis explores the broader implications of these developments for both public and private enforcement, including strengthened deterrence, expanded access to private damages, and emerging jurisdictional challenges. However, it also identifies unresolved issues, particularly concerning the liability of sister companies and the jurisdictional issues that arise in such contexts.

In sum, this research underscores the economic unit doctrine’s critical role in modern antitrust enforcement, its practical challenges, and its potential future evolution in an increasingly interconnected corporate world.

Sammanfattning

Denna avhandling analyserar utvecklingen av det rättsliga ramverket för företagsgruppers ansvar inom Europeiska unionens konkurrensrätt, med fokus på doktrinen om den ekonomiska enheten enligt artikel 101 i fördraget om Europeiska unionens funktionssätt. Studien undersöker hur ansvar för konkurrensöverträdelser kan sträcka sig bortom det traditionella moder- och dotterbolagsförhållandet till att omfatta fler enheter inom en företagsgrupp. En central del av analysen är *Akzo Nobel* presumtionen, enligt vilken ett moderbolag som innehar hela eller nästan hela aktiekapitalet i ett dotterbolag antas utöva avgörande inflytande och därmed kan hållas solidariskt ansvarigt.

Avhandlingen redogör för de rättsliga, strukturella och funktionella kriterier genom vilka sådant inflytande fastställs och behandlar de bevismässiga svårigheter som är förknippade med att motbevisa presumtionen. Den belyser även situationer där ansvar grundas på faktisk kontroll snarare än formellt ägande, såsom vid samriskföretag eller minoritetsinnehav.

Två vägledande rättsfall analyseras, *Sumal* och *Athenian Brewery*. *Sumal* introducerade nedåtriktat ansvar, vilket möjliggör att talan riktas mot ett dotterbolag för överträdelser begångna av moderbolaget, under förutsättning att de utgör en och samma ekonomiska enhet. *Athenian Brewery* fastslog att domsrätt enligt Bryssel I-förordningen kan grundas på denna enhet, vilket underlättar gränsöverskridande prövning.

Avhandlingen belyser rättsliga och praktiska följder av denna utveckling, inklusive ökad avskräckning, utvidgad tillgång till privata skadestånd och nya jurisdiktionella frågeställningar. Samtidigt kvarstår rättsosäkerhet, särskilt vad gäller systerbolags ansvar och de jurisdiktionsfrågor som uppstår i sådana konstellationer.

Sammanfattningsvis visar avhandlingen den ekonomiska enhetens centrala betydelse i modern konkurrenstillsyn, dess tillämpningssvårigheter och behovet av fortsatt rättsutveckling i takt med förändrade företagsstrukturer.

Preface

Writing this thesis has been a challenging and rewarding process. It has deepened my understanding of EU competition law and allowed me to engage with questions that I find both intricate and important. I am grateful for the chance to work on a topic that has held my interest throughout.

I would like to thank my supervisor, Professor Xavier Groussot, for his guidance, thoughtful feedback, and steady support. His introduction to the European Law Moot Court sparked my interest in the issues explored here and played a key role in shaping the direction of this thesis.

To my family and friends, thank you for your constant support, and your belief in me. Your patience and encouragement have helped me stay focused and grounded along the way.

Finally, I leave with a reminder of the enduring truth:

Et ipsa scientia potestas est.

Dalila Osmanovic

22 May 2025

Abbreviations

AG	Advocate General
CJEU	Court of Justice of the European Union
EC, Commission	European Commission
ECJ	European Court of Justice
EU	European Union
GC	General Court (formerly the Court of First Instance)
OJ	Official Journal
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of European Union

1. Introduction

1.1 Background and Relevance of the Study

The boundaries of corporate liability in European union (EU) competition law have been significantly redrawn by recent jurisprudence of the European Court of Justice (ECJ), and in particular the *Sumal* judgement.[1] *Sumal* marks a shift in the development of the economic unit doctrine, extending the circumstances in which subsidiaries, parent, and potentially sister companies can be held jointly and severally responsible for antitrust violations. The developing understanding of corporate liability exposes concerns about the balance between enforcement and legal certainty. While competition authorities are increasingly focused on making multinational companies answerable for anti-competitive practices, businesses still need guidance on the scope to which liability reaches across their corporate structures. The increasing complexity of worldwide corporate arrangements, such as joint ventures, franchise networks, and foreign direct investment, further obscures liability attribution under Article 101 of the Treaty on the Functioning of the European Union (TFEU), [2] necessitating therefore clear boundaries on when distinct entities are regarded as a single undertaking.[3]

On that foundation, the present research analyses the legal and functional consequences of the economic unit doctrine in light of recent advancements, with particular emphasis on how they influence liability attribution within corporate groups. To those ends, it reflects upon the impact of the advancements on competition law enforcement, public fines, private damages actions, and compliance on the part of corporate groups. By an analysis of the origin and development of the economic unit doctrine, this thesis contributes to the ongoing debate on the limits of corporate responsibility in the context of EU competition law. It also considers parallel procedural trends - such as

[1] Case C-882/19 *Sumal S.L. vs Mercedes Benz Trucks España, S.L* (*Sumal*), EU:C:2021:800.
[2] Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/26.
[3] Marc-Philippe Weller and others, 'Liability of the Economic Unit-a General Principle of EU Law?' [2023] 20 European Company and Financial Law Review 759.

the rise of private damages litigation and jurisdictional issues under the Brussels I recast Regulation, no 1215/2012 (hereafter Brussels I *bis* Regulation), [4] to the extent they interact with the widening scope of corporate liability. This approach underscores the importance of the research, as the period is marked by rapid doctrinal changes. Understanding how liability borders evolve is critical to both enforcement policy-making and corporate risk management in the internal market.

1.2 Research Questions and Objectives

The thesis seeks to address the following research questions:

(1) How has the economic unit doctrine evolved in EU competition law, both in its historical development and in the most recent case law?

(2) What are the implications of this evolution for the attribution of liability within corporate groups under EU competition law? That is to say, how and to what extent can different entities of the same corporate group be held liable as one undertaking?

(3) How do these developments affect the enforcement of competition law, both public and private? The implications extend to the pursuit of fines by authorities, the ability of victims to claim damages, and the jurisdictional challenges that emerge when corporate group liability crosses national borders.

The overall objective of this research is to provide a doctrinal analysis of EU competition law on group liability of corporations, with focus on recent developments in case law. Thus, the thesis aims to identify major trends, unpack new challenges, and suggest potential opportunities of future development for the economic unit doctrine. A further objective is to examine the interaction between these liability principles and procedural frameworks in related areas. For example, the thesis explores the jurisdictional implications of the *Sumal*[5] judgment under Article 8(1) of the Brussels I *bis*

[4] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L351/1 (Brussels I *bis* Regulation).
[5] Case C-882/19 *Sumal*, EU:C:2021:800.

Regulation, analysing whether a subsidiary can be sued in the same forum as its parent company by forming one undertaking and vice versa. By focusing on these problems, the present research analyses the relationship between substantive competition law and private international law in the context of cross-border antitrust litigation. In summary, this thesis outlines the boundaries and extent of the economic unit doctrine through the years and explores its applicability in the overall enforcement framework.

1.3 Methodology and Sources

The thesis employs a legal dogmatic and EU methodology. It focuses on the systematic analysis and interpretation of *de lege lata* - the law as it is, [6] and in this context, EU law as interpreted by the Court of Justice of the European Union (CJEU).[7] The research is rooted in primary legal sources: the TFEU, particularly Articles 101 and 102, the Brussels I *bis* Regulation, the Damages Directive, [8] and, centrally, the case law of the EU Courts. Key judicial decisions, including foundational cases like *Akzo Nobel*,[9] recent rulings such as *Sumal* and *Athenian Brewery*,[10] and a line of cases on parental liability and its rebuttal, are analysed in depth to distil the criteria and rationale for attributing liability within corporate groups. The thesis carefully examines the Court's reasoning in these judgments and Opinions of Advocates General where relevant, to extract doctrinal principles and understand their evolution.

Apart from primary sources, the study incorporates secondary ones, encompassing scholarly commentary and practitioner literature on EU competition law. Pieces written by eminent scholars and authoritative treatises offer required insights and various viewpoints on the doctrine of the single economic unit and corporate responsibility. Furthermore, policy

[6] Aleksander Peczenik, *Juridikens teori och metod: En introduktion till allmän rättslära* (Fritze 1995) 9, 33–34; Jan Kleinman, 'Rättsdogmatisk metod' in Maria Nääv and Mauro Zamboni (eds) *Juridisk metodlära* (2nd edn, Studentlittertur 2018) 21–22, 36–38.
[7] Jörgen Hettne and Ida Otken Eriksson, *EU-rättslig metod: teori och genomslag i svensk rättstillämpning* (Norstedts juridik 2011) 168–170.
[8] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union [2014] OJ L349/1 (Damages Directive).
[9] Case C-97/08 P *Akzo Nobel NV and Others v Commission* (*Akzo Nobel*), EU:C:2009:536.
[10] Case C-882/19 *Sumal*, EU:C:2021:800; Case C-393/23 *Athenian Brewery SA, Heineken NV v Macedonian Thrace Brewery SA* (*Athenian Brewery*), EU:C:2025:85.

guidelines and enforcement policies, i.e., European Commission (EC) guidelines or decisions, are taken into account with a view to establish the application of these principles in practice. This combination of sources allows for an advanced level of descriptive and analytical discussion. Hence, both descriptive and analytical analysis illustrate the state of the law and ascertain its coherence, effectiveness, and implications. [11] Adopting this approach, the thesis develops a consistent idea of the manner in which liability is attributed in intricate corporate structures under EU competition law, and the potential effect of recent cases thereon.

1.4 Limitations

The scope of the thesis is confined primarily to doctrinal developments at the EU level. The focus is on the jurisprudence of the CJEU in interpreting and expanding the economic unit doctrine. National court decisions and diverging Member State approaches to corporate liability in competition law are not examined in detail. This choice demonstrates the intention of exploring uniform EU principles rather than cataloguing them in opposition to national divergences. National courts have a significant role, particularly in the private enforcement of EU competition laws. However, their inputs would add unnecessary complexity and detract from the thesis's central focus.

Substantively, the thesis concentrates on Article 101 TFEU, as the context in which the economic unit doctrine has been most actively developed. While analogous issues can arise under Article 102 TFEU, for example, determining whether a group of companies holds a collective dominant position, those issues are only touched upon where directly relevant. The distinct legal and economic considerations of single undertaking conduct under Article 102 fall outside the core scope here, which is centred on the attribution of liability for concerted conduct under Article 101.

Procedurally, the discussion of the Brussels I *bis* Regulation and private international law is limited to jurisdiction in competition damages claims

[11] Aleksander Peczenik and others, *Juridisk argumentation: En lärobok i allmän rättslära* (Nordsteds 1995) 171–172; Claes Sandgren, 'ÄR rättsdogmatiken dogmatisk?' [2006] 118 Tidsskrift for Rettsvitenskap 648, 648–656.

involving corporate groups, notably, how the economic unit doctrine might allow a claimant to anchor jurisdiction over a foreign parent or subsidiary. Broader private international law issues are not addressed, such as conflict of laws or the recognition and enforcement of judgments across jurisdictions. While necessary for enforcement, those matters go beyond the intersection of competition law and corporate liability, which this thesis aims to explore.

Finally, it should be noted that the conclusions drawn are based on the legal framework and case law as of May 2025. EU competition law is continually evolving, and new case law or legislation might further develop, or depart from, the principles discussed. The discussion is designed to give a conceptual foundation that retains usefulness as matters unfold going forward, emphasizing the overall rationale and direction of the case law thus far.

1.5 Structure

The thesis is structured in six comprehensive sections, with each part having a worthy contribution to make in the form of an extensive examination of group liability of corporations within the sphere of EU competition law, following the evolution and consequences of the economic unit doctrine.

The first section establishes the context by way of an explanation of the background, relevance, and aims of the research. It formulates the key research questions, delineates the legal dogmatic method applied, and establishes the parameters and boundaries of the research, thereby placing the research in its wider EU competition enforcement context.

Section two lays the substantive foundation by examining the legal framework of corporate liability under Article 101 TFEU. It discusses the reach of the provision, the principles behind attributing liability, and the implications for public and private enforcement, calling for a doctrinal solution such as the concept of economic unit to ensure that responsible actors are held accountable in sophisticated corporate structures.

Section three defines the concept of an undertaking within EU competition law. It addresses the criteria for definition and the significance of economic activity, as well as establishing the theoretical and practical foundations of the economic unit doctrine.

Section four discusses the development of legal standards of parental liability. It traces the transition from initial, fact-dependent determinations of actual control to the establishment and extension of a rebuttable presumption of decisive influence. Through leading cases, it examines closely the various mechanisms of control and procedural and evidentiary burdens of disproving liability on the part of business organizations.

Section five reflects on recent developments through an in-depth analysis of the *Sumal* and *Athenian Brewery* judgments.[12] It presents the facts and legal findings in both cases, discusses the reasonings of the Advocate Generals, and examines their implications for the substantive and procedural dimensions of corporate group liability. The chapter pulls together comparative conclusions that identify the general doctrinal trends and jurisdictional issues exposed by these judgments.

Section six concludes the thesis by summarizing the most significant findings of the preceding chapters. It looks back over the changing function of the economic unit doctrine, the balance between effective enforcement and legal certainty, and the future direction of corporate liability in the context of both public and private competition law enforcement.

2. Substantive Framework of Corporate Liability in EU Competition Law

Article 101 TFEU prohibits agreements, decisions, and concerted practices that restrict trade between Member States and prevent or distort competition within the internal market. The provision's scope is broad, covering a wide variety of collusive behaviour and potentially involving multiple parties.[13] This section first explains the reach of Article 101, distinguishing types of unlawful agreements and then discussing how liability for a breach of competition can be spread across multiple entities. Finally, it highlights how

[12] Case C-882/19 *Sumal*, EU:C:2021:800; Case C-393/23 *Athenian Brewery*, EU:C:2025:85.
[13] Alison Jones, Brenda Sufrin and Niamh Dunne, *EU Competition Law: Text, Cases, and Materials* (8th edn, Oxford University Press 2023) 242–245.

these rules of substance underpin both public and private enforcement, i.e., both Commission decisions and fines and damages actions by victims, foreshadowing the need for such doctrines as the single economic unit in order to pin responsibility on those responsible.

2.1 The Scope and Reach of Article 101 TFEU

Article 101(1) TFEU addresses collusion of every kind. It addresses horizontal agreements between competitors, vertical agreements between firms at different stages of the chain of supply, and even decisions by associations of undertakings. The article is functionally interpreted, and therefore it encompasses formal agreements and more subtle forms of coordination.[14]

Horizontal agreements are the centrepiece of Article 101(1) TFEU, given that cooperation among competitors may have the potential to eradicate competition altogether. Classic examples are price-fixing cartels, market sharing agreements, and output limitations. Even an informal coordination or concerted practice, such as the sharing of sensitive information with a view to coordinate behaviour, can infringe Article 101(1) where it leads to reduced competition.[15] For instance, the ECJ in *T-Mobile Netherlands* held that a single meeting between competitors to discuss future price intentions could amount to a violation provided that it is liable to result in the prevention, restriction or distortion of competition.[16] Similarly, in the *Dyestuffs* case, parallel price increases by producers, unexplained by market forces, were presumed to be the result of a concerted practice.[17]

Vertical agreements, i.e., agreements between undertakings at different levels of the market, also fall under Article 101(1) TFEU if they restrict competition. Though vertical restraints are often seen as less damaging than horizontal conspiracy, EU law does consider arrangements like exclusive distribution,

[14] Article 101 TFEU; Jones et.al (n 13) 724–732.
[15] Jones et.al (n 13) 658–665, 670–680.
[16] Case C-8/08 *T-Mobile Netherlands and Others* (*T-Mobile Netherlands*), EU:C:2009:343, paras 32–43, 59–62.
[17] Case 48/69 *Imperial Chemical Industries Ltd. v Commission* (*Dyestuffs*), EU:C:1972:70, paras 64–65.

territorial supply limitations, or resale price maintenance.[18] In *Delimitis*, for example, an exclusive purchasing agreement in the beer industry was found capable of infringing Article 101 since a sequence of such agreements had the effect of excluding new entrants from the market.[19] Likewise, in *Pierre Fabre*, a ban on all internet sales within a selective distribution agreement infringed Article 101(1) since it excessively restricted a method of retailing and thus competition.[20] These cases illustrate that vertical agreements are not excluded. Where they restrict competition substantially and do not meet exemption criteria, they too breach Article 101(1).[21] In short, Article 101(1) targets any form of collusion between independent businesses which distort the competitive process by prevention, restriction or distortion.[22]

Decisions by associations of undertakings, such as trade associations, professional bodies or other collective groupings, are explicitly mentioned in Article 101(1) TFEU. Suppose an association's rules or recommendations coordinate the conduct of its members in an anti-competitive manner. In that case, they are treated as cartel-like conduct.[23] For example, in *Wouters*, the Dutch Bar Association's rule prohibiting partnerships between lawyers and accountants was considered a decision by an association of undertakings.[24] The rule restricted competition by preventing multidisciplinary firms and therefore fell within the scope of Article 101(1), although the ECJ later examined whether it could be justified.[25] The essential point is that industry or professional associations cannot rely on their regulatory or standard-setting role to suppress competition. Any collective decision influencing how members compete among themselves or with others is subject to Article 101.[26]

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[18] Jones et.al (n 13) 207, 780–784.
[19] Case C-234/89 *Stergios Delimitis v Henninger Bräu AG* (*Delimitis*), EU:C:1991:91.
[20] Case C-439/09 *Pierre Fabre Dermo-Cosmétique SAS v Président de l'Autorité de la concurrence and Ministre de l'Économie, de l'Industrie et de l'Emploi* (*Pierre Fabre*), EU:C:2011:649, para. 46.
[21] See also Case T-65/98 *Van den Bergh Foods v Commission*, EU:T:2003:281, para. 98.
[22] Jones et.al (n 13) 242–243.
[23] Jones et.al (n 13) 207–209.
[24] Case C-309/99 *Wouters v Algemene Raad van de Nederlandse Orde van Advocaten* (*Wouters*), EU:C:2002:98; Jones et.al (n 13) 160–161.
[25] Case C-309/99. *Wouters*, para. 97.
[26] Jones et.al (n 13) 184–185.

Article 101 TFEU has a broad scope but it also contains an important safeguard. Paragraph three allows for agreements, decisions, or practices that restrict competition to be exempted if they produce offsetting benefits.[27] To qualify, the agreement must lead to gains such as improved production, distribution, or technical progress, and consumers must receive a fair share of those benefits.[28] The restriction must be indispensable to attaining these benefits and should not eliminate competition. The burden of providing evidence rests on the requesting party.[29] For instance, in the *GlaxoSmithKline* case, the General Court (GC) held that companies invoking Article 101(3) need to present arguments and evidence of the objective advantages and the indispensability of the imposed restrictions.[30] In practice, the Commission has issued block exemptions for specific categories of agreements, for example, vertical relationships or research and development, in order to define when the criteria are considered to be met.[31] Overall, while Article 101(1) covers a wide range of anti-competitive conduct, Article 101(3) allows exemptions where the overall impact promotes efficiency and is beneficial to consumers.

2.2 Attribution of Liability under Article 101 TFEU

Identifying a breach of Article 101 TFEU is only part of the equation. Determining who is liable for a violation can be complicated, especially in cartel or corporate group scenarios. EU law adopts a broad approach to liability to ensure effective enforcement, meaning that any undertaking that participates in or contributes to the restriction of competition can be held responsible, even if its role is peripheral or purely facilitative.[32]

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[27] Jones et.al (n 13) 287–298.
[28] Case C-501/06 P *GlaxoSmithKline Services and Others v Commission and Others*, Opinion of AG Trstenjak, EU:C:2009:409, para. 121.
[29] Article 101(3) TFEU; Jones et.al (n 13) 289–295.
[30] Case T-168/01 *GlaxoSmithKline Services v Commission* (*GlaxoSmithKline*), EU:T:2006:265 paras 233–236.
[31] Jones et.al (n 13) 298–302; see for example Commission Regulation (EU) 2023/1066 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements [2014] OJ L93/17; Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices [2022] OJ L134/4.
[32] Jones et.al (n 13) 170, 219.

Procedurally, liability under Article 101 TFEU is joint and several among participants. All cartel members will therefore be fully liable for the entire infringement and subsequent damages. The motive is to prevent cartel members from escaping full responsibility.[33] The ECJ's ruling in *CDC Hydrogen Peroxide* confirmed that cartel victims may pursue any cartel member for full compensation of damage.[34] This enhances private enforcement by insuring that victims can recover damages from at least one liable party. Additionally, it encourages the companies to cooperate and settle, knowing that they could be left bearing all the damages if co-cartelists become unreachable or insolvent.[35]

Actors who do not directly sign on to an anti-competitive agreement can likewise be held liable if they in some way facilitate the restriction of competition. In *AC-Treuhand*, a consulting firm that organised cartel meetings and acted as a cartel secretary, without being a cartel supplier or customer itself, was found liable for infringement.[36] The ECJ reasoned that any entity which contributes by conduct, even a third-party facilitator, falls within the scope of Article 101 TFEU if its actions contribute to the effectiveness of the infringement.[37]

A core concept in attributing liability, and the primary focus of this thesis, is treating a corporate group as a single undertaking. Under EU competition law, an "undertaking" refers to an economic unit, not a specific legal entity.[38] This means that a parent company and its subsidiary can be treated as one undertaking and held jointly liable for a competition infringement if the parent exerts decisive influence over the subsidiary's conduct. In practice, this has led to a presumption - when a parent owns all or nearly all of a

[33] See Article 11 Damages Directive; Jones et.al (n 13) 1057.
[34] Case C-352/13 *Cartel Damage Claims Hydrogen Peroxide SA v Evonik Degussa GmbH and Others* (*CDC Hydrogen Peroxide*), EU:C:2015:335, para. 29.
[35] Jones et.al (n 13) 1035; Assimakis P Komninos, 'Public and Private Antitrust Enforcement in Europe: Complement? Overlap?'[2006] 3 Competition Law Review 1, 9.
[36] Case C-194/14 P *AC-Treuhand v Commission* (*AC-Treuhand)*, EU:C:2015:717, paras 36–37.
[37] ibid para. 36; Jones et.al (n 13) 190.
[38] Case C-294/98 P *Metsä-Serla Oyj and Others v Commission* (*Metsä-Serla*), EU:C:2000:632, para. 27; Jones et.al (n 13) 167–170; Richard Whish and David Bailey, *Competition Law* (10th edn, Oxford University Press 2021) 86, 95.

subsidiary's shares, it is presumed to exercise such influence.[39] As a result, the parent is held liable for the subsidiary's infringement unless it can rebut the presumption. This is generally referred to as parental or upward liability, where responsibility flows from subsidiary to the parent company.[40]

EU case law long recognised only upward liability, attributing a subsidiary's infringement to its parent. This changed with *Sumal*, where the ECJ for the first time allowed liability to flow from parent to subsidiary. A cartel victim was allowed to claim damages not from the cartel member but from one of its subsidiaries.[41] The ECJ held that if the subsidiary formed part of the same economic unit as the parent, and the infringement related to the products marketed by the subsidiary, then it could be held liable for the parent's conduct.[42] This marked an expansion of the doctrine, supporting that any company within a corporate group that constitutes an economic unit responsible, may itself bear responsibility for a competition law infringement, regardless of which specific entity had committed the infringement.[43]

These recent joint and facilitator liability extensions have expanded the single economic unit doctrine and are accompanied by wide-ranging implications. They aim to ensure the effectiveness of competition law and prevent evasions by company structuring or fragmentation of activities.[44]

2.3 Implications for Public and Private Enforcement

The way liability is attributed under Article 101 TFEU directly affects both public enforcement, where the EC or national competition authorities impose fines, and private enforcement through damages actions in national courts. A

[39] Case C-97/08 P *Akzo Nobel*, EU:C:2009:536, para. 61; Jones et.al (n 13) 175–176; Whish et.al (n 38) 97.
[40] Pauline Kuipers and Joost van Roosmalen, 'The Sumal-judgement: reshaping the notion of 'undertaking' in EU competition law' (Bird&Bird, 16 November 2021) <The Sumal-judgement: reshaping the notion of 'undertaking' in EU competition law - Bird & Bird > accessed 9 May 2025; Ana Mogollon 'Blood is Thicker Than Water: Sister Liability as Part of the Single Economic Unit Doctrine in Light of the *Sumal* Case' [2023] SSRN Electronic Journal.
[41] Case C-882/19 *Sumal*, EU:C:2021:800.
[42] ibid para. 52.
[43] Jones et.al (n 13) 173–174.
[44] Jones et.al (n 13) 1065, 1069; Whish et.al (n 38) 100–102.

broad approach to attribution can strengthen the position of both enforcers and victims, but it also brings procedural and evidentiary challenges.[45]

In the context of public enforcement, treating a parent company and its subsidiary as a single undertaking allows competition authorities to issue one decision and impose one fine on the parent company for infringements committed within its group. This is important for deterrence because large corporate groups cannot shift blame onto an operational subsidiary that may have limited financial resources.[46] The parent company, which controls the group, remains responsible. It also prevents companies from avoiding penalties through restructuring. For example, even if a subsidiary involved in a cartel is dissolved, the parent can still be held liable by the Commission.[47] In accordance with the Commission's fining guidelines, the overall group turnover can be utilized to determine the fines, with the aim of ensuring penalties are appropriate to the size of the economic entity.[48]

On the private enforcement side, EU measures such as the Damages Directive, support claimants by easing access to evidence and establishing that a prior infringement finding by a competition authority serves as either binding or *prima facie* evidence in follow-on claims.[49] These tools, together with the principle of joint liability, improve the chances for victims to recover their losses since they may bring a claim against any undertaking involved in the cartel.[50]

[45] Jones et.al (n 13) 885, 1044; Whish et.al (n 38) 267–270, 323–331; Marcos Araujo Boyd, 'Should Children Pay for Their Parent's Sins? The Sumal Preliminary Reference' [2021] 12(1) Journal of European Competition Law & Practice 25, 25–27.
[46] Whish et.al (n 38) 269; In relation to importance of deterrence see Kai Hüschelrath and Sebastian Peyer, 'Public and Private Enforcement of Competition Law - a Differentiated Approach' [2013] ZEW - Centre for European Economic Research Discussion Paper 29.
[47] Whish et.al (n 38) 102–103; see also Case C-724/17 *Skanska Industrial Solutions and Others* (*Skanska*), *EU*:C:2019:204.
[48] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 [2006] OJ C210/2.
[49] Recital 34 and Article 9 Damages Directive; see also Whish et.al (n 38) 52, 331–332; Miguel Sousa Ferro, 'Binding Effect of Public Enforcement Decisions' in Barry Rodger, Miguel Sousa Ferro and Francisco Marcos (eds.), *Research Handbook on Competition Law Private Enforcement in the EU* (Edward Elgar, 2022).
[50] Whish et.al (n 38) 52, 331–332; Ferro (n 49).

The ECJ held in *Skanska* that the concept of "undertaking" applies identically in private and public contexts.[51] Liability attaches to the economic unit involved in the infringement, regardless of any subsequent legal restructuring. The court confirmed that Article 101 TFEU must be fully effective in civil damages claims, allowing claimants to pursue entities forming part of the infringing undertaking.[52]

A key outcome of the economic unit doctrine is that victims can claim damages from any entity within a corporate group. After *Sumal*, this includes suing a local subsidiary directly involved with the victim, even if the parent committed the infringement.[53] This improves access to justice by allowing claims against more accessible or financially viable group members.

Despite this doctrine's advantages for enforcement, private litigation in competition cases continues to face obstacles. One of the main challenges is quantifying and proving the harm, particularly in intricate markets or when the claimant did not purchase directly from a cartel member. This is known as the problem of indirect purchasers.[54] The ECJ addressed one aspect of this in the *Kone* judgment, which dealt with umbrella pricing.[55] The Court ruled that victims who bought from firms outside the cartel could still claim damages if the cartel enabled those other firms to raise prices. In doing so, the Court established a pricing umbrella across the market.[56] The decision highlights the broad scope of liability, as cartelists may be held responsible for effects on transactions in which they were not directly involved. It reflects the understanding that a cartel can distort the entire market. While *Kone* enhances protection for indirect purchasers, it also shows the difficulty of establishing causation in such cases. Courts often require economic analysis

[51] Case C-724/17 *Skanska*, EU:C:2019:204; see also Lena Hornkohl, 'The Economic Continuity Test in Private Enforcement of Competition Law - the ECJ's Judgment in Skanska Industrial Solutions C-724/17' [2019] European Competition Law Review 339.
[52] Case C-724/17 *Skanska*, EU:C:2019:204, paras 28–34; Jones et.al (n 13) 174, 1065.
[53] Case C-882/19 *Sumal*, EU:C:2021:800; Whish et.al (n 38) 101, 326–327.
[54] Chris S. Coutroulis and D. Matthew Allen, 'Pass-on Problem in Indirect Purchaser Class Litigation.' [1999] 44 The Antitrust Bulletin 1, 179.
[55] Case C-557/12 *Kone AG and Others v ÖBB-Infrastruktur AG* (*Kone*), EU:C:2014:1317.
[56] ibid paras 33–34; Whish et.al (n 38) 326–328.

to demonstrate that the cartel had a measurable impact on broader market prices.[57]

Another critical area of implications involves jurisdiction and cross-border enforcement. A key question arises when all companies in a corporate group are considered part of a single undertaking. If a victim brings a claim against one group entity in an EU court, can other group entities be joined to that lawsuit under the rules of the Brussels I *bis* Regulation, particularly those concerning related claims?[58] The Regulation generally permits a defendant based in one Member State to be sued alongside a co-defendant based in another Member State if the claims are so closely connected that it is appropriate to hear them together. Article 8(1) of the Brussels I *bis* Regulation addresses this situation. The economic unit doctrine may support the view that claims against a parent company and its subsidiary are closely connected, as they relate to the same antitrust infringement by a single economic unit.[59]

In summary, by perceiving facilitators as infringers and corporate groups as a unit, the integrated approach of assigning responsibility in EU competition law tries to render punishment of anti-competitive behaviour more enforceable. This approach provides that anti-competitive behaviour should not be shielded because of intricate corporate structures or intricate business arrangements. However, this strategy demands a well-defined legal framework to provide fairness, such as the capacity to scrutinize presumptions as well as pragmatic enforcement issues. The following section examines the definition of the undertaking and the concept of the single economic unit. Understanding what constitutes an undertaking, and under what conditions multiple companies are treated as one, is essential to all of the issues discussed above.

[57] See, for example Communication from the Commission on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union [2013] OJ C167/19.
[58] Article 8 Brussels I *bis* Regulation; Whish et.al (n 38) 336–338.
[59] Whish et.al (n 38) 337–338; Jones et.al (n 13) 173–174.

3. The Concept of an Undertaking in EU Competition Law

At its core, law is determined by the economic activity the entity carries out and not by legal form or designation. This flexible and pragmatic definition enables competition law to extend to a wide array of participants such as corporations, individuals, partnerships, and state-owned enterprises, so long as they are engaged in market activities. The concept is broad, as it includes many types of market participants, and cohesive, as it allows related entities to be treated as one for legal purposes.[60] This section begins by discussing the definition of an undertaking and the key criterion of economic activity. It then explores the rationale behind the economic unit doctrine. Finally, it looks at how this theory developed in early case law, first as a means of shielding internal arrangements and later as a tool for enforcement, anticipating the issues examined in the next chapter.

3.1 Defining the "Undertaking"

The CJEU has long held that an undertaking includes "any entity engaged in economic activity, regardless of its legal status or how it is financed".[61] This definition, clearly set out in cases such as *Höfner and Elser*, rests on two key elements.[62] First, there must be an entity, which can be a company, individual, or organisation. Second, that entity must engage in economic activity.[63] The emphasis is on the activity's nature rather than the actor's legal form. As a result, a wide range of entities, including sole proprietors, charitable foundations, professional associations, and public bodies, can be considered undertakings if they are involved in economic activity.[64]

[60] Whish et.al (n 38) 84, 95–100; Jones et.al (n 13) 169–170.
[61] Case C-41/90 *Höfner and Elser,* EU:C:1991:161, para. 21; See also Case T-513/93 *Consiglio Nazionale degli Spedizionieri Doganali v Commission,* EU:T:2000:91, para. 36.
[62] ibid; Jones et.al (n 13) 160–162; Alison Jones, 'The Boundaries of an Undertaking in EU Competition Law' [2012] 8 European Competition Journal 301.
[63] Case C-41/90 *Höfner and Elser*, EU:C:1991:161, para. 21.
[64] ibid; Jones et.al (n 13) 159–160; Jones, 'The Boundaries of an Undertaking in EU Competition Law' (n 60).

This functional approach is a reflection of the fact that it is not only companies, or institutions under public law, that can be covered by competition rules if they engage in activities on the market. For example, a state corporation or a state-owned enterprise may be considered an undertaking when it provides goods or services in competition with others.[65] Of particular interest is *MOTOE* case, in which a non-profit organization vested with regulatory powers over motorcycle racing in Greece was found to be an undertaking since it did organize sporting events in return for payment.[66] The entity therefore, performed in a dual role. On one hand, it had a regulatory role through the issuance of approvals for events, a public function. On the other hand, it conducted market functions through the organisation of races and securing sponsorships, an economic function. The Court reasoned that through the provision of the second-mentioned services, the association qualified as an undertaking regardless of its legal status and public responsibilities.[67] This case shows that an entity may be considered an undertaking in relation to its commercial activities, even if it also performs public functions in other areas.[68]

3.2 Economic Activity as a Core Element

Not every activity carried out by an entity qualifies as economic. In general terms, economic activity refers to the offering of goods or services in a market, typically in exchange for payment, and in a manner that could, at least in principle, be performed by a private operator for profit.[69] This means that whenever an organisation is operating in a commercial context, whether by

[65] Jones et.al (n 13) 167–168.
[66] Case C-49/07 *Motosykletistiki Omospondia Ellados NPID v Elliniko Dimosio* (*MOTOE*), EU:C:2008:376, para. 53.
[67] ibid paras 51–53; see where a court reached a different conclusion because the activities in question were inseparable from exercise of public power in Case C-113/07 P *SELEX Sistemi Integrati v Commission*, EU:C:2009:191.
[68] Jones et.al (n 13) 167–168.
[69] Case C-41/90 *Höfner and Elser*, EU:C:1991:161, para. 21; Case C-67/96 *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie*, Opinion of AG Jacobs, EU:C:1999:28, para. 311; Case C-222/04 *Cassa di Risparmio di Firenze and Others*, Opinion of AG Jacobs, EU:C:2005:655; see also in connection to when state actors perform economic activities Case T-319/99 *Federación Nacional de Empresas de Instrumentación Científica, Médica, Técnica y Dental v Commission* (*Fenin*), EU:T:2003:50, para. 18.

selling goods, providing services, or competing, it is engaging in an economic activity and is therefore covered by the application of competition law.[70]

Conversely, purely non-economic activities, often linked to the exercise of official authority or obligations based on solidarity, do not bring an entity within the scope of competition law.[71] A key distinction is made between functions carried out as part of public authority, which are considered non-economic, and those of a commercial nature, which are economic. For example, in the *Diego Cali* case, a company was appointed by the Italian state to perform anti-pollution surveillance at an oil port and charged vessels for this service.[72] The ECJ held that this was not an economic activity. Although the company appeared to be providing a service in exchange for payment, the nature of the service, which involved monitoring pollution and enforcing environmental rules, was essentially a public function carried out under legal authority. The fees resembled charges or levies used to fund a public duty, rather than prices set in a competitive market.[73] The *Diego Cali* judgment confirmed that tasks closely tied to the exercise of official authority, such as policing, security, or other sovereign responsibilities, are not economic in nature even if they are performed by entities that resemble companies.[74]

Similarly, in the *SAT Fluggesellschaft*, the air traffic control activities of Eurocontrol, an international agency, were considered non-economic because they involved airspace management and safety assurance.[75] These were regarded as core functions of public authority. Although Eurocontrol carried out various tasks, some of which could be seen as commercial, the air traffic

[70] Case C-41/90 *Höfner and Elser*, EU:C:1991:161, para. 21; Case C-67/96 *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie*, Opinion of AG Jacobs, EU:C:1999:28, para. 311–312.
[71] Jones et.al (n 13) 163–164; Amir Ibrahim, 'A Re-Evaluation of the Concept of Economic Activity for the Purpose of EU Competition Rules: The Need For Modernisation' [2015] 11 European Competition Journal 265, 273–279.
[72] Case C-343/95 *Diego Calì & Figli Srl v Servizi ecologici porto di Genova SpA* (*Diego Cali*), EU:C:1997:160, paras 16, 18.
[73] Case C-343/95 *Diego Calì*, EU:C:1997:160, paras 15, 18, 22–23; Erik Kloosterhuis, 'Defining Non-Economic Activities in Competition Law' [2017] 13 European Competition Journal 117, 129–134; Whish et.al (n 38) 89–90.
[74] Ariel Ezrachi, *EU Competition Law: An Analytical Guide to the Leading Cases* (8th edn, Hart Publishing 2024) 8; Christine Denys, 'European Court of Justice: Case Report Case C-343195: *Diego Cali & Figli Srl and Servizi Ecologici Porto di Genova SPA*; Judgment of 18 March 1997' [1997] 6 European Energy and Environmental Law Review, 220.
[75] Case C-364/92 *SAT Fluggesellschaft mbH v Eurocontrol* (*SAT Fluggesellschaft*), EU:C:1994:7, paras 30–31.

control operation was found to be governmental in nature. The ECJ explained that an entity may be considered an undertaking for certain aspects of its operations if it offers economic services, but not for those activities where it exercises public powers.[76]

Another example of non-economic activity arises in the context of social security systems based on solidarity. In the *Poucet and Pistre*, the ECJ held that organisations responsible for managing France's statutory social security schemes, including health insurance and old-age pensions, were not undertakings.[77] These systems involved compulsory contributions, operated based on solidarity where benefits were not directly linked to individual contributions, and offered state guaranteed minimum coverage. They were viewed as extensions of state social policy. Since there was no element of economic competition in the administration of these funds and no profit motive, competition law did not apply.[78] By contrast, in *Albany*, the ECJ considered a pension fund managing sectoral pensions to be an undertaking.[79] However, it excluded the collective agreement that created the fund from the scope of Article 101 TFEU, recognising the social policy exception that applies to collective bargaining.[80] These cases demonstrate that the context and purpose of an activity are decisive. When the primary aim is social or regulatory rather than commercial, the activity may fall outside the definition of an undertaking.[81]

The conclusion is that in order to determine whether an entity qualifies as an undertaking, the key question is whether it engages in economic activity by offering goods or services in a market. If the answer is yes, competition law applies. If not, competition law does not come into play. This functional approach avoids formal loopholes. An entity cannot escape the reach of competition law simply by presenting itself as a nonprofit organisation or by performing certain public functions if, in substance, it is also competing in

[76] Case C-364/92 *SAT Fluggesellschaft*, EU:C:1994:7, para. 30; Jones et.al (n 13) 163, 167.
[77] Case C-159/91 *Christian Poucet v Assurances Générales de France and Caisse Mutuelle Régionale du Languedoc-Roussillon* (*Poucet och Pistre*), EU:C:1993:63, paras 18–19.
[78] ibid; Jones et.al (n 13) 164–165; Kloosterhuis (n 74) 128–129, 133–134.
[79] Case C-67/96 *Albany*, EU:C:1999:430, paras 77–86.
[80] ibid paras 78–79.
[81] Denys (n 73) 273; Jones et.al (n 13) 190–191; Whish et.al (n 38) 89–90.

the market. It is also possible for a single entity to be treated differently depending on the nature of its activities. In the previously mentioned *MOTOE* case, the entity was not acting as an undertaking when it authorised races as part of its regulatory role.[82] However, it was considered an undertaking when it organised races for its own commercial purposes.[83] The CJEU has therefore adopted a flexible and fact specific approach to ensure that the concept of undertaking captures all profit-driven activities while excluding genuine exercises of public authority or social solidarity.

The concept of an undertaking is fundamental to the attribution of liability. In the next section, the reasoning and consequences of treating multiple legal entities as one undertaking will be examined.

3.3 Rationale and Implications of the Economic Unit Theory

Under EU competition law, companies that form a single economic unit are treated as one undertaking. This has two main consequences. First, agreements between them do not fall under Article 101 TFEU because there is no agreement between parts of the same entity.[84] Second, liability for competition infringements can extend across the group so that any part of the undertaking can be held responsible for another's conduct.[85]

The logic is that competition rules apply to independent market operators. When a parent and subsidiary act under common control their coordination is seen as internal conduct of one entity. [86] In the *Viho* case the CJEU confirmed this by holding that Parker Pen and its subsidiaries formed a single undertaking. [87] Parker Pen owned all the shares and directed their activities so the internal sales restrictions were not unlawful agreements but part of the

[82] Case C-49/07 *MOTOE*, EU:C:2008:376, para. 53; Whish et.al (n 38) 85–86.
[83] ibid.
[84] Jones et.al (n 13) 170–172; Bernardo Cortese, *EU Competition Law: Between Public and Private Enforcement* (Kluwer Law International 2014).
[85] Jones et-al (n 13) 172–173; Jones, 'The Boundaries of an Undertaking in EU Competition Law' (n 60).
[86] Jones et.al (n 13) 50–51; Cortese (n 84) 79–80.
[87] Case C-73/95 P *Viho Europe BV v Commission* (*Viho*), EU:C:1996:405.

group's internal organisation.[88] The subsidiaries were not autonomous but acted in pursuit of the group's common interest.[89] What appeared to be a restrictive arrangement, namely the prohibition of cross-border sales, was in legal terms simply an internal allocation of functions within one undertaking and thus fell outside the scope of Article 101 TFEU.

However, conduct that escapes Article 101 TFEU on the basis that it is internal to a single undertaking may still be caught by Article 102. The concept of the single economic unit also plays a key role in cases involving abuse of dominance. When evaluating whether a company holds a dominant position, EU authorities may consider the combined market share of a group of companies that function together. In cases of collective dominance, where firms are bound by strong structural links such as ownership ties or cooperation agreements, they may be treated as a single undertaking. If such a group engages in abusive conduct, the parent company may be liable, provided the group functions as one undertaking. In this way, a dominant firm cannot avoid the reach of Article 102 simply by splitting up its operations into different legal entities.[90]

Most relevant to this discussion is how the economic unit doctrine forms the legal foundation for attributing liability within a corporate group under Article 101 TFEU. The decision of the ECJ in the *Akzo Nobel* illustrates this clearly.[91] The Court held that when a parent company owns the entirety or nearly all of a subsidiary's shares, it is presumed to exercise decisive influence over the subsidiary's conduct.[92] As a result, the parent company and the subsidiary are considered one undertaking, making the parent jointly liable for the subsidiary's involvement in the cartel. The logic behind this presumption is straightforward. A parent company does not typically acquire a subsidiary to allow it to act with complete independence. Instead, the parent

[88] See also Case C-48/69 *Dyestuffs*, paras 133–134; Case 15/74 *Centrafarm v Sterling Drug*, EU:C:1974:114, para. 41; Case 16/74 *Centrafarm v Winthrop*, EU:C:1974:115, para. 32.
[89] Case C-73/95 P *Viho*, EU:C:1996:405, para 17; Whish et.al (n 38) 96.
[90] Jones et.al (n 13) 170; Whish et.al (n 38) 696.
[91] Case C-97/08 P *Akzo Nobel*, EU:C:2009:536.
[92] ibid para. 61; see also Case C-90/09 *General Quimica SA v Commission*, EU:C:2011:21, paras 86–88; Case T-343/06 *Shell Petroleum and Others v Commission*, EU:T:2012:478, para. 52.

is expected to direct and shape the commercial strategy of the subsidiary. If the parent company can demonstrate that the subsidiary acted independently, the presumption can be rebutted.[93] Otherwise, both companies are held liable as a single unit. This presumption of decisive influence is a powerful enforcement tool. It spares the EC from having to prove the existence of actual control in every case involving a wholly owned subsidiary. The simple fact of ownership is taken to imply control under normal circumstances.

While the theory initially shielded intra-group coordination from Article 101 TFEU, as seen in the *Viho* case, it now supports group-wide liability, as confirmed in *Akzo Nobel*. Where there is control, it also applies to joint ventures or franchise networks that may be part of one undertaking.[94] Where there is autonomy, they may not. The key question is whether the entities act independently on the market. If they do not, they are treated as one.

Another important implication of the economic unit doctrine is how fines are calculated and imposed. Since the undertaking is considered the responsible entity, the entire group's turnover may be taken into account when determining the amount of the fine.[95] This approach ensures that larger corporate groups face penalties proportionate to their economic strength. When a parent company and its subsidiary are jointly liable, the EC may impose a fine on either or both. The parent company must cover the full amount if the subsidiary cannot pay.[96] This principle was reaffirmed in cases such as *Alliance One International*, where EU courts allowed the Commission to determine the ceiling of the fine on the basis of a group of

[93] Case C-97/08 P *Akzo Nobel*, EU:C:2009:536, para. 62.
[94] See for example Case 161/84 *Pronuptia de Paris GmbH v Pronuptia de Paris Irmgard Schillgallis*, EU:C:1986:41; Case C-180/98 *Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten*, EU:C:2000:428; Case C-279/06 *CEPSA Estaciones de Servicio SA v LV Tobar e Hijos*, EU:C:2008:485.
[95] Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty OJ L1/1 (Regulation 1/2003); Whish et.al (n 38) 101.
[96] Jones et.al (n 13) 182–183, 982.

companies' collective turnover.[97] This reinforced the idea that penalties should correspond to the size and capacity of the undertaking as a whole.[98]

In summary, companies that form a single economic unit are treated as one undertaking, meaning internal agreements fall outside Article 101 TFEU and liability for infringements may extend across the group. This doctrine presumes that a parent company exercises decisive influence over its wholly owned subsidiary, making both jointly liable unless proven otherwise. When setting penalties, enforcers consider the turnover of the entire corporate group. They can compel the parent to pay if the subsidiary lacks the means, thereby keeping enforcement fair and effective.

4. Decisive Influence, Control, and the Rebuttable Presumption

In EU competition law, decisive influence is the legal standard used to determine whether two companies form a single undertaking. Where one company is able to influence the commercial strategy and conduct of another, they are not considered independent market actors but part of the same economic unit. The capacity to effectively influence the strategic or operational choices made by another business is known as decisive influence.[99] A number of things, such as majority ownership,[100] voting and veto rights, [101] shared directors or management, [102] certain contractual

[97] Case C-628/10 P *Alliance One International and Standard Commercial Tobacco v Commission and Commission* (*Alliance One International*), EU:C:2012:479, para. 42.
[98] Jones et.al (n 13) 981; note Case C-637/13 P *Laufen Austria v Commission*, EU:C:2017:51, paras 44–51, limiting the maximum amount that can be attributed to a subsidiary before acquisition.
[99] Case C-48/69 *Dyestuffs*, para. 134; Case C-294/98 P *Metsä-Serla*, para. 27; Case C-172/12 P *EI du Pont de Nemours v Commission*, EU:C:2013:601, paras 41–42; Whish et.al (n 38) 97.
[100] Case C-97/08 P *Akzo Nobel*, EU:C:2009:536
[101] Case C-595/18 P *The Goldman Sachs Group v Commission* (*Goldman Sachs*), EU:C:2021:73; Case C-293/13 P *Fresh Del Monte Produce v Commission* (*Del Monte*), EU:C:2015:416.
[102] Case T-132/07 *Fuji Electric Co. Ltd v Commission* (*Fuji Electric*), EU:T:2011:344; Case T-146/09 RENV *Parker Hannifin Manufacturing and Parker-Hannifin v Commission*; EU:T:2016:411.

agreements,[103] or real economic dependency,[104] might give rise to this control. The focus is on the economic substance of the relationship and whether the companies operate in practice as a unified entity.

In the early stages, the Courts initially took a cautious and fact specific approach to assessing existence of decisive influence, requiring concrete evidence that the parent company was involved in the subsidiary's commercial decisions. However, a rebuttable presumption evolved throughout time as a result of the necessity to guarantee effective enforcement. Unless proven otherwise, it is assumed that a parent firm has decisive influence when it holds all or almost all of a subsidiary's shares.[105]

4.1 Conceptual and Doctrinal Framework of Corporate Control

The CJEU has consistently held that it is the economic reality of the relationship, rather than its formal legal structure, that is decisive. This approach reflects the functional character of EU competition law, which prioritises substance over form to ensure that those with real power over market behaviour are held accountable for competition infringements.[106] The theoretical underpinning of the doctrine is that firms acting under common control operate as a single economic entity and should therefore be jointly liable where one of them breaches Article 101 TFEU.[107]

To operationalise this principle, the doctrine recognises two main pathways to establishing decisive influence.[108] The first route concentrates on structural indicators like complete or almost complete shareholding and voting rights. In that case, the legal framework follows a rebuttable presumption that the

[103] Case C-623/15 P *Toshiba Corporation v Commission* (*Toshiba*), EU:C:2017:21.
[104] Case C-508/11 *P Eni SpA v Commission* (*Eni*), EU:C:2013:289; Case T-77/08 *Dow Chemical v Commission*, EU:T:2012:47; Case C-179/12 P *The Dow Chemical Company v Commission*, EU:C:2013:605.
[105] Case C-97/08 P *Akzo Nobel*, EU:C:2009:536; Ezrachi (n 74) 24.
[106] Case C-73/95 P *Viho Europe*, EU:C:1996:405, para. 16; Johan W. Van de Gronden and Catalin S. Rusu, *Competition Law in the EU: Principles, Substance, Enforcement* (Edward Elgar Publishing 2021) 20.
[107] See Case C-41/90 *Höfner and Elser*, EU:C:1991:161, para. 21; Van de Gronden et.al (n 106) 20–23.
[108] Lukas Solek and Stefan Wartinger, 'Parental Liability: Rebutting the Presumption of Decisive Influence' [2014] 6 Journal of European Competition Law&Practice 73.

parent company exercises decisive influence over the conduct of its subsidiary and thereby shifts the onus to the parent company to prove independence in the subsidiary. This assumption enhances the efficacy of enforcement by not requiring far-reaching factual evidence in matters where control is inherently integrated. [109] The second approach depends on functional and contextual evidence. Courts have determined that control may be significant even in the absence of complete ownership or voting power, as expressed in managerial integration, strategic direction, contractual requirements, or other means of *de facto* control. These indications are viewed comprehensively to ascertain if the firms operate as a single unit in the marketplace.[110]

This development is clarified by the following analysis. Initially, It begins with initial judgments involving close factual scrutiny and progresses to cases building and developing the legal presumption of control, and possible ways to rebut it. The analysis considers decisions in cases involving partial ownership, joint ventures, or minority positions of equity, where influence was deduced from extensive operational and contractual connections. This framework highlights the law's increasing focus on actual economic influence over formal separation, ensuring that the entity controlling market behaviour is the one held accountable.

4.2 The Early Emphasis on Actual Control

In the earlier years of EU competition enforcement, cases involving a parent company being penalized for a subsidiary's infringement tended to follow a thorough factual analysis that demonstrated the involvement or influence of the parent. The judiciary took care not to attribute liability based solely on the percentage of ownership without additional evidence. For example, in the *KNP* case, KNP owned 100 and 95 per cent respectively, of two subsidiaries implicated in a price-fixing cartel.[111] Despite the very high ownership, the GC examined whether KNP actually influenced their conduct. In its analysis the

[109] Whish et.al (n 38) 97–98.
[110] ibid 97–99; Jones et.al (n 13) 159–84.
[111] Case T-309/94 NV *Koninklijke KNP BT v Commission* (*KNP*), EU:T:1998:91, paras 42–48; judgement was appealed in relation to other points of the judgement in Case C-248/98 P NV *Koninklijke KNP BT v Commission* (*KNP*), EU:C:2000:625.

Court noted that KNP's representatives had participated in meetings concerning the subsidiaries' commercial strategy. The GC was reassured that KNP played an active role, and attributing liability was appropriate. Essentially, the court looked for signs that KNP did exercise control, rather than assuming it purely from 95 per cent ownership.[112]

In *Stora Kopparbergs*, Stora held all the shares in a subsidiary that had been found to have participated in a cartel.[113] The EC imposed a fine on Stora, which contested the decision because the Commission had not demonstrated actual control over the subsidiary's conduct. The ECJ upheld the fine, recognising that full ownership creates an inference of control. Nevertheless, the Court's decision was not founded solely on ownership. It also reflected on the behaviour of Stora throughout the administrative procedure, specifically its responses to questions from the Commission acting on its own behalf and behalf of the subsidiary. This suggested Stora was directing the activities of the group. The Court further noted that Stora had not disputed its ability to direct the subsidiary.[114] Although the judgment contributed to the evolution of the presumption later confirmed in *Akzo Nobel*, it was still grounded in a factual assessment. At that time, the determination of decisive influence continued to depend on the specific circumstances of the case.

The *Aristrain* judgement highlighted the boundaries of parental responsibility where control is not sufficiently established. [115] Aristrain owned substantial equity in two steel companies but not the entire ownership. The EC tried to consider the companies as constituting a single entity on the premise that Mr. Aristrain exercised considerable control over their conduct. The ECJ, unlike the GC, shared Commission's reasoning regarding liability imposed on the parent company. It was established that common shareholding per se, even a majority shareholding, was not enough by itself to prove decisive

[112] Case T-309/94 *KNP*, EU:T:1998:91; Cortese (n 84) 83–84.
[113] Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission* (*Stora Kopparbergs*), EU:C:2000:630 - the case supports GC's judgement Case T-354/94 *Stora Kopparbergs*, EU:T:1998:104.
[114] Case C-286/98 P *Stora Kopparbergs*, EU:C:2000:630, para. 29; Jones et.al (n 13) 175–176.
[115] Case C-196/99 P *Siderúrgica Aristrain Madrid SL v Commission* (*Aristrain*), EU:C:2003:529; see also GC's case T-156/94 *Aristrain*, EU:T:2004:261; Richard Burnley, 'Group Liability for Antitrust Infringements: Responsibility and Accountability' [2010] 33 World Competition 595, 597.

influence.[116] The ECJ made it clear that some additional factor must be present in order to demonstrate that the parent company effectively controlled or directed the actions of the subsidiary. These factors could be participation in the management, involvement in policy decisions, or other methods of control. Then the case established precedent that minority ownership interests must be backed by concrete evidence of control to warrant liability.

The judgment in *Dansk Rørindustri* addressed a distinct variation of the economic unit doctrine.[117] In that case, Mr Henss held virtually all the shares in several companies involved in a cartel, through both direct and indirect ownership. The companies argued that they did not form a single undertaking because Mr Henss was an individual rather than a legal entity. The ECJ rejected that argument and concluded that Mr Henss and the companies he controlled constituted a single economic unit by relying on factual evidence. It was noted that Mr Henss actively managed the companies and played a direct role in implementing the cartel, including coordinating a shared quota system among them.[118] The judgment confirmed that common control by an individual can form the basis for treating multiple entities as one undertaking. However, it also emphasised that the conclusion depended on factual elements such as unified management and coordinated commercial conduct.[119] The result was the functional equivalent of parent company liability, with the parent in this instance being a private individual.

In *Bolloré*, despite this full ownership, the GC annulled the fine imposed on Bolloré, holding that the EC had not sufficiently demonstrated that Bolloré had actually exercised influence over the subsidiary.[120] The Court emphasised the need to show that Bolloré acted as more than a passive holding company. Although the Commission had submitted some evidence, including the presence of common directors, it was not considered detailed enough. The decision in *Bolloré* stands apart from the direction later case law

[116] Case C-196/99 P *Aristrain*, EU:C:2003:529, para. 99.
[117] Case C-189/02 P *Dansk Rørindustri and Others v Commission* (*Dansk Rørindustri*), EU:C:2005:408.
[118] ibid paras 117–122.
[119] ibid paras 119–120; Ezrachi (n 74) 23.
[120] Case T-109/02 *Bolloré and Others v Commission* (*Bolloré*), EU:T:2007:115, para. 132; note that the findings in these aspects were not questioned on appeal in Case C-322/07 P *Papierfabrik August Koehler and Others v Commission*, EU:C:2009:500.

would take. It illustrates that before the presumption of decisive influence became firmly established, courts still required specific proof of actual control, even where the parent owned all of subsidiary's shares.[121]

The early case law on the single economic entity doctrine reflected a cautious, evidence-based approach. Ownership, even at 100 per cent, was treated as a strong indicator of control. Yet, it was not considered per se sufficient. The Commission was expected to support its findings with contextual evidence such as management overlap, internal correspondence, or the parent company's involvement in regulatory proceedings. This reflected a legal culture rooted in the principle of personal responsibility,[122] whereby parental liability required some demonstration of fault or involvement.

Gradually, the courts developed this perspective, embracing the fact that Article 101 TFEU is applicable to businesses as single economic units rather than single firms. As the enforcement difficulties mounted, particularly in revealing internal corporate conduct, the legal test evolved. Material ownership stakes were eventually linked to a presumption of control, thereby placing the burden on corporations to rebut such a presumption. This change is the change from an evidentiary model to a presumptive model, which will be explained fully in the next section through the creation of the *Akzo Nobel* presumption and its subsequent implementation.

4.3 Establishing Decisive Influence Through Legal, Structural, and Functional Mechanisms

4.3.1 Establishing the Presumption of Decisive Influence and Extending It to Indirect Ownership

The *Akzo Nobel* judgement established a formal rebuttable presumption that a parent company owning all or nearly all of a subsidiary's shares is presumed

[121] Case C-97/08 P *Akzo Nobel*, Opinion of AG Kokott, EU:C:2009:262, points 68–69.
[122] Principle of personal responsibility entails that only the legal entity responsible for the infringement should be liable for its actions; Alison Jones and Stephen Daly, 'The Undertaking and Single Economic Entity Concepts in EU and UK Competition Law: Proposals for a Refined Approach' [2023] in F. Thepot and A. Tzanaki (eds), *Research Handbook on Competition and Corporate Law* (Edward Elgar, 2025); See also Case C-97/08 P *Akzo Nobel*, Opinion of AG Kokott, EU:C:2009:262, points 95–97.

to exercise decisive influence over subsidiary's conduct.[123] Akzo Nobel argued that holding a parent liable solely based on complete ownership amounted to unlawful strict liability and maintained that earlier case law required proof of actual influence.[124] The CJEU rejected these arguments, confirming that when a parent company owns all or nearly all of the shares in its subsidiary, it is presumed in law to exercise decisive influence over that subsidiary's commercial policy. The burden of proof thus shifts to the parent company to rebut the presumption by proving that the subsidiary acted independently.[125]

When this presumption applies, the Commission is not required to submit additional evidence of control at the infringement stage. It is sufficient that the parent has the ability to exercise control through its ownership.[126] The ECJ also took a broad view of what constitutes the subsidiary's commercial policy in the context of control. While Akzo Nobel argued that it should be limited to specific decisions such as pricing or output,[127] the Court rejected that view and supported a broader interpretation. Decisive influence may be expressed through a range of mechanisms including, organisational structures, financial oversight, and legal arrangements, and not merely through daily commercial decisions. If the parent company can guide the overall business strategy or major operational choices of the subsidiary, that is considered part of commercial policy.[128] Under this broad understanding, rebutting the presumption becomes more difficult. A parent cannot avoid liability by claiming it only approved budgets or appointed executives without setting prices, as those actions still form part of commercial oversight.

Akzo Nobel had contended that imposing liability on a parent with no direct involvement in the cartel violated the principle of personal responsibility.[129] However, the ECJ rejected this contention, clarifying that EU competition law assigns responsibility to the undertaking. Where a parent and a subsidiary

[123] Case C-97/08 P *Akzo Nobel*, EU:C:2009:536, para. 60.
[124] ibid paras 46, 69–70.
[125] ibid paras 76–78.
[126] ibid para. 64.
[127] ibid paras 67–69
[128] ibid paras 72–78.
[129] Case C-97/08 P *Akzo Nobel*, Opinion of AG Kokott, EU:C:2009:536, point 75, footnote 67.

constitute a single undertaking, ergo an economic unit, it does not offend legal principles to hold the parent liable. It is just a reflection of economic reality of an undertaking which constitutes an economic unit responsible for the infringement.[130] The ruling in *Akzo Nobel* firmly established that a parent company with full ownership will usually be held liable for its subsidiary's infringement unless it proves that the subsidiary acted entirely on its own.[131] In the *Arkema* case, the GC held that even holding 'almost entirety of the capital of the subsidiary' will likewise give rise to rebuttable presumption of decisive influence.[132] These judgements effectively transferred the burden onto companies in situations of complete or almost complete control.

Building on *Akzo Nobel,* the CJEU went to extend the presumption to indirect ownership structures. Subsequently, in *Eni*, the ECJ confirmed that the presumption of decisive influence applies even where a parent company holds its subsidiaries through a chain of wholly owned intermediate entities.[133] Eni contested its liability on the ground that it was separated from its subsidiaries by multiple layers of ownerships, arguing that indirect ownership should not trigger the presumption.[134] The Court rejected this argument, holding that indirect but complete control through each level of the corporate chain is sufficient to establish the presumption.[135] A parent cannot avoid liability by inserting holding companies between itself and the infringing entity.

The ECJ also upheld the finding that Eni had failed to rebut the presumption. Although Eni characterised itself as a financial holding company uninvolved in the operational decisions of its chemical subsidiaries, the Court considered its power to appoint directors and coordinate investments as evidence of decisive influence.[136] The Commission had assessed and rejected Eni's rebuttal arguments. The Court found no error in this conclusion. It clarified that the Commission does not need to show that the parent influenced the

[130] Case C-97/08 P *Akzo Nobel*, EU:C:2009:536, paras 54–56.
[131] ibid paras 60–63; see also Ezrachi (n 74) 24.
[132] Case T-168/05 *Arkema v Commission* (*Arkema*), EU:T:2009:367, para. 70; The judgement was upheld by ECJ in Case C-520/09 P *Arkema*, EU:C:2011:619.
[133] Case C-508/11 P *Eni*, EU:C:2013:289, paras 16, 49; confirming GC's jugement in case T-39/07 *Eni v Commission*, EU:T:2011:356, paras 62–63.
[134] Case C-508/11 P *Eni*, EU:C:2013:289, paras 53–56.
[135] ibid paras 62–66.
[136] ibid paras 66–68; Whish et.al (n 38) 97–98; Maria Troberg, 'Parental Liability in EU Competition Law - A Fair Presumption?' [2015] 8 Int'l In-House Counsel J 1.

specific commercial activity in which the infringement occurred. It is sufficient to demonstrate a general ability to influence the subsidiary's market conduct.[137] The judgment thus reinforces that the existence of an economic unit depends on effective control, not on the formal structure or operational involvement of the parent.

4.3.2 Control Without Full Ownership

The *Del Monte* case dealt with the scenario of less than 100 per cent ownership coupled with substantial contractual control. [138] Del Monte owned an 80 per cent controlling stake in a banana importing joint venture, Weichert. Since Del Monte lacked full ownership, the *Akzo Nobel* presumption was not triggered.[139] Instead, the Commission undertook a detailed factual analysis to prove Del Monte's decisive influence. The evidence showed Del Monte effectively controlled Weichert's commercial conduct through contractual rights and actual interventions. Del Monte had veto power over key decisions under the terms of the partnership agreement. Weichert was economically reliant on Del Monte for bananas, while Del Monte obtained weekly internal reports that exceeded the contract formally required. There was also evidence of Del Monte's executives pressuring Weichert on important business decisions.[140] Thus, the ECJ confirmed the judgment of the GC, adding that a decisive influence can be established by a series of consistent facts, despite the lack of complete ownership. The Court clarified that the integration of contractual rights, economic dependence, and factual inputs of Del Monte were adequate to establish its decisive influence over Weichert. [141] This precedent illustrates that a significant majority stake, coupled with special rights or actual exercise of power, may lead to parental liability even absent the formal presumption.

[137] Case C-508/11 P *Eni*, EU:C:2013:289, para. 67; Jones et.al (n 13) 175.
[138] Case C-293/13 *P Del Monte*, EU:C:2015:416.
[139] ibid para. 77; see also case T-587/08 *Del Monte*, EU:T:2013:129, para. 79.
[140] Case C-293/13 P *Del Monte*, EU:C:2015:416, para. 88; Case T-587/*08 Fresh Del Monte Produce v Commission* (*Del Monte)*, EU:T:2013:129, paras 79–86.
[141] Case C-293/13 P *Del Monte*, EU:C:2015:416, paras 77, 98–99.

4.3.3 The Threshold for Presumption vs. Proof

The *FLS Plast* case explored the boundary between situations where the presumption applies and those where actual proof of control is required. The case involved a parent company's ownership increasing from a majority stake to full ownership in the middle of the infringement period. [142] In the first period, FLS Plast owned a controlling stake of 60 per cent in the subsidiary, while Saint Gobain held the other 40 per cent. [143] During the period of joint control, the GC held that the Commission should not rely on any assumption of decisive influence. Although the Commission attempted to prove that FLS Plast had control, the GC held that the evidence presented was not sufficient.[144] There were no special agreements granting FLS Plast exclusive decision-making power. Saint Gobain's continuing stake indicated that the subsidiary retained a degree of autonomy. Without a clear majority of voting rights or other indicators of dominance, 60 per cent ownership did not, in itself, establish that the parent and subsidiary formed a single undertaking. The GC therefore annulled the finding of liability for this period, concluding that the Commission had failed to show that the subsidiary's independence had been eliminated. [145]

In the second period, after FLS Plast acquired the balance 40 per cent and became the sole owner of the subsidiary, the legal situation changed. Thereafter, the presumption of decisive influence was applicable as set out in *Akzo Nobel*.[146] FLS Plast attempted to rebut the presumption by arguing that it took a passive role in the subsidiary's affairs. [147] Nevertheless, the GC referred to indications of dual managerial and reporting lines, which reflected the parent's interest in strategic and operational decisions.[148]

[142] Case T-64/06 *FLS Plast A/S v Commission* (*FLS Plast*), EU:T:2012:102 - GC's reasoning in these aspects was not appealed in Case C-243/12 P *FLS Plast A/S v Commission (FLS Plast),* EU:C:2014:2006.
[143] Case T-64/06 *FLS Plast,* EU:T:2012:102, paras 36–38; Whish et.al (n 38) 98.
[144] Case T-64/06 *FLS Plast,* EU:T:2012:102, paras 42–46.
[145] ibid para. 46.
[146] ibid para. 52.
[147] ibid paras 47–49.
[148] ibid para. 54–61.

The *FLS Plast* case illustrates the sliding scale of control. With complete ownership, the law presumes the parent exercises decisive influence. There is no such presumption with partial ownership, especially in joint ventures, and the Commission must present convincing factual evidence. In the first period, the Commission did not meet that threshold, and liability could not be imposed. Accordingly, where there is shareholding falling short of complete ownership, the burden remains on the Commission to establish that the parent company actually controlled the conduct of the subsidiary.[149] The case therefore delineates the boundaries of structural presumptions in attributing liability and the ongoing applicability of context and evidence in shared ownership cases.

4.3.4 Presumption Based on Full Voting Control

The *Goldman Sachs* case further clarified the scope of the presumption of decisive influence by examining a situation where the parent company did not hold full ownership but exercised complete voting control.[150] During the period of the infringement, Goldman Sachs indirectly acquired a substantial stake in Prysmian, a company involved in a cartel. Although it did not own the entirety of the shares, initially holding approximately 91 and later 84 per cent, Goldman Sachs controlled all of the voting rights in Prysmian throughout the relevant period.[151] The remaining shares, floated to outside investors, carried no voting power while Goldman retained special voting shares, effectively giving Goldman the same control as a sole owner.[152]

Goldman Sachs argued that it acted merely as a financial investor and lacked operational involvement.[153] However, both the GC and the ECJ rejected this characterization. The courts held that the decisive factor was not the exact proportion of shares but the extent of control those shares conferred. By having all the voting rights, Goldman Sachs was placed in a position

[149] Case T-64/06 *FLS Plast,* EU:T:2012:102, para. 46.
[150] Case C-595/18 P *Goldman Sachs,* EU:C:2021:73; see also GC Case T-419/14 The *Goldman Sachs Group v Commission (Goldman Sachs)*, EU:T:2018:445.
[151] Case C-595/18 P *Goldman Sachs,* EU:C:2021:73, para. 5.
[152] ibid para. 4.
[153] ibid para. 45; Case T-419/14 *Goldman Sachs*, EU:T:2018:445, para. 145; Ezrachi (n 74) 35.

comparable to that of a sole owner.[154] It could appoint board members, approve strategic business decisions, and operate without the need to consult minority shareholders. This degree of control was treated as functionally equivalent to full ownership and was sufficient to trigger the presumption of decisive influence.[155]

Goldman Sachs attempted to rebut the presumption by claiming that Prysmian acted independently and that Goldman did not intervene in its daily management. These arguments were dismissed. The ECJ pointed to internal documents showing that Goldman acknowledged its control over Prysmian and found no credible evidence that the company operated independently of that control. Public assurances by Goldman that it would refrain from interfering in day-to-day decisions were not considered sufficient to prove the existence of autonomy.[156]

The *Goldman Sachs* case confirms that the presumption of decisive influence is not limited to formal ownership thresholds. What matters is whether the parent company can effectively control the subsidiary's commercial policy. Where voting rights grant that level of authority, the legal presumption applies even if some shares are held by outside investors. The ruling affirms the principle that the legal assessment turns on the practical ability to steer strategic decisions rather than on formal shareholding percentages.[157]

4.3.5 Minority Shareholding and Autonomy

While many judgments have broadened the scope of liability under the single economic unit doctrine, the *Trefileurope* serves as a clear reminder of the doctrine's limits in situations involving minority shareholding.[158] In that case, Arbed held a 25 per cent stake in BStG, a company which had participated in a cartel. The remaining shares were held by other shareholders, none of whom

[154] Case C-595/18 P *Goldman Sachs,* EU:C:2021:73, para. 35; Case T-419/14 *Goldman Sachs*, EU:T:2018:445, para. 48.
[155] Case C-595/18 P *Goldman Sachs,* EU:C:2021:73, para. 36; Whish et.al (n 38) 97–98.
[156] Case C-595/18 P *Goldman Sachs,* EU:C:2021:73, paras 89–102; Case T-419/14 *Goldman Sachs,* EU:T:2018:445, paras 145–157.
[157] Clio Angeli and Rebecca Williams, 'Parental Liability, the Expansion of the Presumption of Decisive Influence to Full Ownership of Voting Rights: Case C-595/18 P *Goldman Sachs Group*' [2021] 12 Journal of European Competition Law & Practice 9, 691.
[158] Case T-141/89 *Tréfileurope,* EU:T:1995:62.

held a controlling interest. Arbed attempted to argue that BStG was part of its own undertaking, asserting that the agreements should be treated as internal to a economic unit and therefore not subject to Article 101 TFEU.[159] The GC firmly rejected this argument. It held that a 25 per cent shareholding did not suffice to establish decisive influence.[160] It emphasised that BStG retained independent market conduct and that there was no indication Arbed directed its strategy or controlled its decision-making. The governance arrangements in place between the companies were aimed at financial coordination, such as profit pooling. Still, they did not amount to a surrender of strategic control by BStG.[161] Arbed's minority stake did not give it sufficient leverage to override the autonomy of BStG's management. The GC therefore concluded that Arbed and BStG did not form a single undertaking.[162]

The *Trefileurope* judgment, together with similar reasoning applied in the later *Baustahlgewebe* case, makes clear that when shareholding falls below a controlling threshold and other shareholders are active, the Commission cannot rely on structure alone and must provide evidence that the subsidiary's autonomy has been eliminated.[163] The entities in those instances continue to bear the character of distinct undertakings, and their coordination falls within Article 101 TFEU limits.

4.3.6 Liability in Joint Ventures and Minority Shareholdings

Not all cases of "less than majority" ownership result in no liability. Two cases, *Fuji Electric* and *Toshiba*, demonstrate how even minority stakes or control in joint ventures can lead to parental liability when evidence shows the parent effectively exercised decisive influence in practice.

In contrast to the *Trefileurope* case, in which it was held that a minority shareholder lacked controlling influence, the *Fuji Electric* case demonstrates

[159] Case T-141/89 *Tréfileurope*, EU:T:1995:62, para. 124.
[160] ibid para. 131.
[161] ibid para. 129.
[162] ibid paras 127–132.
[163] Case T-145/89 *Baustahlgewebe GmbH v Commission* (*Baustahlgewebe)*, EU:T:1995:66, paras 107–108; see also Joined Cases 6 and 7/73 *Istituto Chemioterapico Italiano and Commercial Solvents v Commission*, EU:C:1974:18, paras 36–41, where 51 per cent shareholding (supported by further indicia) amounted to parent and subsidiary constituting an economic unit.

that liability may still be incurred by a minority holding if there is adequate evidence of actual control.[164] In that case, Fuji Electric Holdings and Fuji Electric Systems indirectly held 30 per cent of a joint venture called JAEPS, which had participated in a cartel.[165] The EC did not apply any presumption, as the ownership level was too low, but instead built a factual case to establish that Fuji exercised decisive influence over the joint venture's conduct.[166]

The GC emphasized that decisive influence can be proven without full ownership if specific legal or economic indicators show control. In particular, it pointed to managerial overlap and Fuji's integration into the operational and strategic management of JAEPS. Notably, the Court accepted that Fuji's executives occupied key roles in JAEPS and were in a position to ensure alignment with the parent company's commercial strategy.[167]

The judgment clarified that there is no need to show that the parent was aware of the specific infringement or directly involved in it. What matters is whether the parent and the subsidiary formed part of the same economic unit at the time of the infringement. The GC concluded that Fuji and JAEPS adopted the same course of conduct on the market, which justified attributing liability to the parent company despite its minority stake.[168]

This case confirms that even minority shareholders can be held liable under the single economic unit doctrine where they exercise control in practice, primarily through managerial power, integration, or financial dependence. However, it also shows that the standard of proof in such cases remains high and must be supported by a consistent body of factual evidence.

The *Toshiba* case likewise exemplifies how joint venture arrangements with shared control can give rise to liability under the economic unit doctrine.[169] Toshiba held 35,5 per cent and Panasonic held the remaining 64,6 per cent of the shares in the joint venture MTPD, which participated in the cathode ray

[164] Case T-141/89 *Tréfileurope*, EU:T:1995:62; Case T-132/07 *Fuji Electric*, EU:T:2011:344.
[165] Case T-132/07 *Fuji Electric*, EU:T:2011:344, paras 7, 29.
[166] ibid paras 30–34.
[167] ibid paras 180–183.
[168] ibid para. 184, 196.
[169] Case C-623/15 P *Toshiba*, EU:C:2017:21; T-104/13 *Toshiba*, EU:T:2015:610.

tubes cartel. The Commission held both companies jointly and severally liable, and the GC upheld that conclusion.[170]

The GC confirmed that Toshiba exercised decisive influence over the joint venture MTPD by analysing the complete set of legal, organisational, and economic links between them. The Basic Incorporation Agreement gave Toshiba and Panasonic the power to veto every important decision including, annual budgets, business plans, major investments and, the choice of senior managers. These powers go well beyond the standard protections granted to minority shareholders and establish that control was shared at the top level.[171] The agreement kept the business plan and therefore the budget under Toshiba's veto for the entire life of the venture. Possession of this veto on its own was enough to show the real ability to direct MTPD conduct.[172] Additional shareholder rights relating to new share issues and dividends added further proof of influence.[173] Personal links supported this structural control. A Toshiba executive sat on the MTPD member board, and Toshiba chose one of the two representative directors who also served as vice president. Both vice presidents had already held high posts at Toshiba and returned to Toshiba afterward. This ensured that MTPD strategy would align with Toshiba's objectives.[174] Operational facts confirmed the influence. MTPD could not shut down factories without Toshiba's consent.[175] These arrangements showed tight economic integration.[176]

Taking all these points together, the GC held that Toshiba and Panasonic jointly decided MTPD market conduct and formed a single economic unit with it.[177] Toshiba was rightly held jointly and severally liable for the cartel fine. The ECJ upheld that reasoning and repeated that decisive influence can be inferred from consistent evidence, that all links between entities must be

[170] Case T-104/13 *Toshiba*, EU:T:2015:610.
[171] Case T-104/13 *Toshiba*, EU:T:2015:610, paras 106–108.
[172] ibid paras 109–112.
[173] ibid para. 113.
[174] ibid paras 115–116.
[175] ibid para. 120.
[176] ibid para. 119.
[177] ibid para. 122.

assessed and that joint control by two parents does not prevent each from being liable once their power to steer the venture is established.[178]

4.4 Analytical Overview of the Modern Standards Governing Parental Liability

The evolution of the economic unit doctrine in EU competition law shows a steady shift from an evidence-heavy inquiry into day-to-day direction toward a more structural assessment of control. In early judgments such as *Stora Kopparbergs* and the GC's ruling in *Bolloré* the courts considered a parent's concrete involvement in commercial policy even where share ownership was complete or virtually complete.[179] In *Bolloré*, for instance, the parent's liability for its wholly own subsidiary's conduct was established only after the Court considered concrete evidence of actual control.[180] That caution eroded with ECJs later judgement in *Akzo Nobel*, which formally announced a rebuttable presumption that a parent holding all or almost all of the shares in its subsidiary exerts decisive influence.[181] The burden of proof inverted, compelling groups to show genuine autonomy if they wished to avoid liability.

Subsequent judgments broadened the reach of this presumption in ways that emphasise functional power rather than formal share numbers. *Eni* confirmed the presumption travels up the ownership chain, so intermediate companies cannot shield an ultimate parent.[182] *Goldman Sachs* made clear that complete voting control, even without full equity, suffices.[183] At the same time, majority stakes just below 100 per cent continue to invite close scrutiny. In *Fresh Del Monte* an 80 per cent holding coupled with board and strategy

[178] C-623/15 P *Toshiba*, EU:C:2017:21, paras 45–49, 50–57.
[179] Case C-286/98 P *Stora Kopparbergs*, EU:C:2000:630; Case T-109/02 *Bolloré*, EU:T:2007:115; Cortese (n 84) 83–85; Stephen Hurley & Adam Scott, 'The Concept of an Undertaking and the Responsibility of Parent Companies for the Actions of Subsidiaries in the EU and UK' [2008] 7 Competititon Law Journal 301, 313–317.
[180] Case T-109/02 *Bolloré*, EU:T:2007:115.
[181] Case C-97/08 P *Akzo Nobel*, EU:C:2009:536; Hurley et.al (n 179) 316.
[182] Case C-508/11 P *Eni*, EU:C:2013:289; Jones et.al (n 13) 97–98.
[183] Case C-595/18 P *Goldman Sachs*, EU:C:2021:73; Case T-419/14 *Goldman Sachs*, EU:T:2018:445; Vasiliki Fasoula, 'Extending the Presumption of Decisive Influence to Impute Parental Liability to Private Equity Firms for the Anticompetitive Conduct of Portfolio Companies' [2021] 4 Nordic Journal of European Law 101.

control was enough to establish liability,[184] whereas in *FLS Plast* a 60 per cent stake was not.[185] There the Commission's evidence of influence fell short and the parent was absolved.[186] These cases show that the evidentiary threshold slides downward as the shareholding climbs, but proof of control remains indispensable when the presumption does not apply.

Joint ventures sharpened the analysis. *Fuji Electric* and the later *Toshiba* illustrate that decisive influence may arise from veto rights, integrated management, and personnel overlap even when parents hold only a minority share.[187] In the latter case both parents were held jointly and severally liable because each could block or dictate strategic direction, refuting the notion that equal shareholdings create a liability void.[188] By contrast *Trefileurope* marks the boundary of the doctrine, when a parent owns an actual minority stake and lacks special rights, the subsidiary retains autonomy and the entities remain separate undertakings.[189]

Taken together, these judgments reveal a nuanced framework. Total ownership or its voting equivalent triggers an automatic presumption of control. High majority holdings generate a strong inference that can usually be confirmed by modest additional evidence. Equal joint control leads to liability if the legal instruments show shared strategic power. Finally, significant minority holdings require the Commission to prove substitute mechanisms of influence and diffuse share ownership preserves independence. The present jurisprudence therefore focuses less on immediate managerial engagement and more on the structural ability to shape policy, thus bringing enforcement into conformity with economic reality. At the same time, it is offering a formally contestable, if practically difficult, route for parents who can demonstrate a real absence of influence.[190]

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[184] Case C-293/13 P *Del Monte*, EU:C:2015:416; Petre Alexandu Biolan, 'The Court of Justice's Rulings in the Bathroom Fittings Cartel Cases: Single/Continuous Infringement and Fines for "Minor" Participants' [2017] 8 Journal of European Competition Law 385.
[185] Case T-64/06 *FLS Plast*, EU:T:2012:102.
[186] ibid; Whish et.al (n 38) 98.
[187] Case T-132/07 *Fuji Electric*, EU:T:2011:344; Case C-623/15 P *Toshiba*, EU:C:2017:21; Case T-104/13 *Toshiba*, EU:T:2015:610.
[188] Case C-623/15 P *Toshiba*, EU:C:2017:21; Case T-104/13 *Toshiba*, EU:T:2015:610.
[189] Case T-141/89 *Tréfileurope*, EU:T:1995:62.
[190] Van de Gronden et.al (n 106) 20–23; Jones et.al (n 13) 167–184.

4.5 Rebutting the Presumption of Parental Liability

Where there are fully owned subsidiaries or ones that are under effective control, the rebuttable presumption of controlling influence places on the parent entity the burden to demonstrate that the subsidiary has exercised true independence on the market.[191] In theory, this safeguard should prevent unjust liability because a parent who can demonstrate non-interference and the subsidiary's independent determination of commercial policy should not to be penalised. In practice, however, rebuttals are exceedingly rare. A series of cases have clarified what is not (and possibly could be) sufficient to overturn the presumption and what procedural obligations rest on the Commission when parents attempt a rebuttal.[192] The cases below show how repeated, mostly failed rebuttal attempts illustrate the evidentiary and procedural burdens placed on parties and the Commission.

4.5.1 Passive Ownership as Insufficient to Rebut Presumption

One instructive example is the *Portielje* case, which clarified the high bar for rebuttal when the parent claims to be a purely passive owner. There, the GC held that a Dutch family foundation owning all the shares in Gosselin had rebutted the *Akzo Nobel* presumption.[193] The judges relied on the finding that the foundation carried out no economic activity of its own and merely held the shares. It took no shareholder decisions or written resolutions during the infringement period, did not alter the board composition, and did not issue managerial directions to Gosselin. On that basis, the fine on the parent was annulled.[194] The ECJ later set that judgment aside. The Court held that a parent's legal form, even as a non-commercial foundation, does not preclude liability if it can control a subsidiary. [195] The key issue is not formal acts, but

[191] Antoine Winckler and Sophie Sahlin, 'Parent's Liability: New Case Attributing Exclusive Jurisdiction to the GC in Respect of Cases Raising Decisive Influence and Corporate Control Issues under EU Competition Law' [2012] 3 Journal of European Competition Law & Practice 547.
[192] Cortese (n 84) 85–89; Jones et.al (n 13) 97.
[193] Case T-208/08 *Commission v Stichting Administratiekantoor Portielje* (*Portielje*), EU:T:2011:287.
[194] ibid paras 51–59.
[195] Case C-440/11 P *Commission v Stichting Administratiekantoor Portielje* (*Portielje)*, EU:C:2013:514, paras 39–44; Jones et.al (n 13) 173.

whether the parent had the capacity to exert influence. The ECJ therefore held that the GC had erred in treating lack of formal resolutions as sufficient to rebut the presumption.[196] It stressed that all economic, organisational and legal links must be assessed and noted that personal links can demonstrate influence even without formal decisions.[197] Because Portielje owned 100 per cent of the shares and could appoint the entire board, it retained decisive influence throughout the infringement period.[198] The appeal was allowed and Portielje's liability reinstated.[199]

Portielje thus raises the evidentiary bar. A parent must demonstrate that the subsidiary was legally and practically free from any parental control. The ECJ stressed that the parent is best placed to provide such proof, thus the burden lies on the parent.[200] Passive ownership or silence is not enough. Only convincing evidence of complete autonomy will undo parental liability.

4.5.2 Procedural Duty to Address Rebuttal Evidence

The paired *Arkema* and *Elf Aquitaine* judgments delineate both the substantive rigour of the *Akzo Nobel* presumption and the procedural safeguards accompanying any attempt to rebut it. In *Arkema*, the ECJ confirmed that the presumption is legally rebuttable, yet practically demanding.[201] Arkema, an intermediate parent in the monochloroacetic-acid cartel, argued that the Commission and the GC had imposed a *probatio diabolica* by insisting on proof of total operational autonomy. The Court rejected that claim, holding that a parent is uniquely placed to supply internal documents showing real independence. Because Arkema produced only broad assertions and no concrete records demonstrating that the subsidiary shaped its own strategy and budget, the presumption remained intact and the appeal failed.[202]

[196] Case C-440/11 P *Portielje*, EU:C:2013:514, paras 65–67.
[197] ibid paras 60, 68.
[198] ibid para. 80.
[199] ibid para. 73.
[200] ibid para. 71.
[201] Case C-520/09 P *Arkema*, EU:C:2011:619.
[202] Case C-520/09 P *Arkema*,, EU:C:2011:619, paras 78–89; Case T-168/05 *Arkema*, EU:T:2009:367, paras 145–164.

A similar *probatio diabolica* argument was raised by the parent company in *Elf Aquitaine*.[203] The ECJ dismissed those substantive objections and affirmed that the presumption is legally rebuttable even if the evidential burden is heavy. It stressed that a parent is the party best placed to disclose internal material showing real autonomy and that difficulty in gathering proof does not convert the presumption into an absolute rule.[204] The Court nevertheless set aside both the GC judgment and the Commission decision because the decision had failed to engage with Elf's rebuttal dossier and thus breached the duty to state reasons under Article 296 TEU.[205]

This principle was further reinforced in *L'Air Liquide* where the GC annulled the Commission's decision against Air Liquide due to the Commission's failure to address the company's rebuttal evidence adequately.[206] Air Liquide had presented evidence demonstrating its subsidiary Chemoxal's operational independence, including separate management structures and autonomous commercial activities.[207] The GC held that the Commission's omission to engage with this evidence constituted a breach of its duty to state reasons, thereby justifying the annulment of the decision.[208]

Taken together, these rulings draw a sharp line. Substantively, overturning the *Akzo Nobel* presumption requires exceptional proof that the subsidiary conducts its commercial policy independently. Procedurally, however, the Commission must scrutinise that proof and give a transparent explanation if it still concludes that decisive influence exists. Courts will annul a fine whenever the Commission fails to perform that explanatory duty, even though a reasoned decision might ultimately uphold parental liability.[209] The upshot is that the Commission must engage with rebuttal arguments and cannot just invoke the presumption as a formula.

[203] Case C-521/09 P *Elf Aquitaine SA v Commission* (*Elf Aquitaine*), EU:C:2011:620.
[204] ibid paras 59–62, 70.
[205] ibid paras 177–181; Whish et.al (n 38) 101.
[206] Case T-185/06 *L'Air liquide v Commission* (*L'Air liquide*), EU:T:2011:27, para. 83.
[207] ibid para. 67.
[208] ibid paras 69–75; Ezrachi (n 74) 28.
[209] Ezrachi (n 74) 28.

4.5.3 Consistency in Applying Presumption vs. Evidence

The *Alliance One International* judgment illustrates the need for consistency in how the Commission applies the presumption, versus requiring proof, at different tiers of a corporate group.[210] In the Spanish raw-tobacco cartel, the Commission treated the chain unevenly. World Wide Tobacco España (WWTE) was the operating subsidiary. Its direct parent was TCLT, an intermediary that in turn was owned by SCC and SCTC under the ultimate parent Alliance One International.[211] In the decision, the Commission set itself a dual standard. Whenever a parent held all of its subsidiary's capital it would invoke the *Akzo Nobel* presumption and add concrete indicia showing that the parent actually steered the company. That approach was followed for Alliance One International and its immediate subsidiary, SCC. The decision quoted board minutes, regular reporting lines, and approvals of Spanish price proposals to show that the upper levels of the group shaped WWTE's strategy. The GC therefore confirmed liability for Alliance One International and SCC.[212]

For the intermediate vehicle TCLT, however, the Commission abandoned that factual inquiry. TCLT owned almost 90 per cent of WWTE, yet the decision treated it as a passive shell and relied only on the structural presumption to attribute liability. Because the Commission had just insisted on tangible proof for the entities above and below TCLT, the Court viewed the sudden shift in method as a breach of equal treatment. Finding no record evidence of TCLT's involvement and no explanation for the selective use of the presumption the GC annulled the fine against TCLT.[213]

The ECJ confirmed the annulment. It accepted that operational material supported the findings against Alliance One International and SCC and agreed that nothing in the file showed TCLT directing WWTE business. More importantly, it held that once the Commission chooses to complement the

[210] Case C-628/10 P *Alliance One International and Standard Commercial Tobacco v Commission and Commission* (*Alliance One International*), EU:C:2012:479.
[211] ibid paras 4–6; Case T-24/05 *Alliance One International*; EU:T:2010:453, paras 1–5.
[212] Case T-24/05 *Alliance One International*, EU:T:2010:453, paras 148–152.
[213] ibid paras 195–197.

presumption with a fact driven assessment, it must apply the same yardstick across the corporate hierarchy or explain why it departs from it.[214]

4.5.4 Rejection of the "Pure Financial Investor" Defence

The concept of a "pure financial investor", a parent that merely holds shares as an investment and does not involve itself in management, has been floated as a potential defence to parental liability. The idea was touched upon by AG Kokott in *Akzo Nobel* where she contrasted a passive investment fund with a parent that shapes its subsidiary's commercial policy.[215] In *Garantovaná*, the parent tried to rely on that passage when it challenged the calcium-carbide decision.[216]

The case illustrates how difficult it is for a 100 per cent parent company to persuade the European courts that it behaved like a completely passive financial investor.[217] The GC examined the holding fund's relationship with its portfolio company Novácke chemické závody (NCHZ) and concluded that the fund exercised decisive influence and therefore formed a single undertaking with the subsidiary under Article 101 TFEU.[218] The GC first noted that Garantovaná held every share in NCHZ and then reviewed all the economic, legal and organisational links between them.[219] It found that the fund had appointed all members of both the supervisory board and the management board of NCHZ.[220] It received detailed monthly management reports on turnover profitability production and sales. It had to give prior written approval for any transaction above a relatively modest value threshold including supply contracts and financing operations.[221] Those facts were held to be incompatible with the stance that the fund merely protected its financial investment. A similar conclusion was reached by the GC in *Goldman Sachs*,

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[214] Case C-628/10 P *Alliance One International*, EU:C:2012:479, paras 50–60; Ezrachi (n 74) 25.
[215] Case C-97/08 P *Akzo Nobel*, Opinion of AG Kokott, EU:C:2009:536, point 75, footnote 67.
[216] Case T-392/09 *1. garantovaná a.s. v Commission* (*Garantovaná*), EU:T:2012:674, para. 50.
[217] Case T-392/09 *Garantovaná*, EU:T:2012:674; GC dismissed the appeal which was upheld by ECJ in Case C-90/13 P *Garantovaná*, EU:C:2014:326.
[218] Case T-392/09 *Garantovaná*, EU:T:2012:674, para. 58.
[219] ibid paras 50–58.
[220] ibid paras 42–49.
[221] ibid para. 45.

noting that the label "pure financial investor" does not constitute a legal standard, but rather serves as an illustrative scenario in which a parent company might attempt to rebut the presumption of decisive influence.[222]

Garantovaná and *Goldman Sachs* illustrates how demanding the evidential threshold can be. Any element of governance oversight will usually suffice for a finding of decisive influence. Only a shareholder who confines itself to receiving dividends without any involvement in decision-making can hope to rebut the *Akzo Nobel* presumption.

4.6 Analytical Overview of Rebuttal Possibilities

The case law on rebuttal clarifies that overturning the *Akzo Nobel* presumption remains an exceptional possibility rather than a realistic defence strategy. The CJEU continues to describe the presumption as rebuttable. Yet, the evidential threshold needed to disprove decisive influence has become so demanding that no wholly owned subsidiary case has succeeded on the merits.

First, the burden that rests on the parent is an affirmative burden. It is not enough to point to an absence of direct instructions. The parent must bring forward a coherent body of evidence showing that the subsidiary pursued its economic interest with genuine organisational and legal autonomy. *Portielje* illustrates the stringency of that burden.[223] The GC was initially persuaded that a family foundation had behaved passively, but the ECJ reversed that finding. It emphasised that the mere capacity to control flowing from full ownership is itself a strong indicator of influence and that silence or inaction during the infringement period does not meet the standard of proof required to break the economic unit link.[224]

Secondly, the cases underline a strict procedural discipline that compensates for the substantive severity of the rule. *Elf Aquitaine* and *L'Air Liquide* received relief not because the presumption was defeated but because the Commission failed to explain convincingly why their detailed evidence was

[222] Case T-419/14 *Goldman Sachs*, EU:T:2018:445, paras 145–157.
[223] Case T-208/08 *Portielje*, EU:T:2011:287; Case C-440/11 P *Portielje*, EU:C:2013:514.
[224] ibid; Whish et.al (n 38) 101; Mantas Stanevičius, 'Portielje: Bar Remains High for Rebutting Parental Liability Presumption' [2014] 5 Journal of European Competition Law & Practice 1, 24.

inadequate.[225] The CJEU held that when a parent submits documents suggesting independence, the Commission must engage with each material argument. Failure to do so breaches the duty to state reasons under Article 296 TFEU and exposes the decision to annulment.[226]

Third, the judgments make clear that the type of evidence capable of rebutting the presumption is mainly theoretical. Legal or regulatory barriers that deny a parent voting rights or situations in which a parent holds the stake for an extremely brief period purely for resale might suffice in principle. Yet, rulings in *Garantovaná* and *Goldman Sachs,* shows that even private equity investors who claim to be passive will usually fall short.[227] The GC stressed that placing representatives on boards receiving regular performance reports or approving major contracts is manifestly inconsistent with the conduct of a purely financial investor.[228] In other words any ordinary governance right that accompanies ownership will usually be viewed as evidence of potential influence and therefore undermines a passivity claim.

Fourth, the *Alliance One International* confirm the requirement of consistent reasoning when the Commission chooses between the presumption and a fact based approach within the same corporate chain.[229] The Commission had exonerated an intermediate holding company yet relied on the presumption against the ultimate parent. The GC and the ECJ agreed that once the Commission opted to test some entities through concrete evidence, it had to apply the same methodology to the others.[230] The ruling does not soften the presumption. Still, it cautions the Commission against arbitrary selective application and thereby reinforces equal treatment.

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[225] Case C-521/09 P *Elf Aquitaine*; EU:C:2011:620; Case T-185/06 *L'Air liquide*, EU:T:2011:27; Jones et.al (n 13) 176; Ezrachi (n 74) 28.
[226] Case C-521/09 P *Elf Aquitaine*; EU:C:2011:620, paras 147–150; Case T-185/06 *L'Air liquide*, EU:T:2011:27, paras 31–39; Alexandr Svetlicinii,, 'Parental Liability for the Antitrust Infringements of Subsidiaries: A Rebuttable Presumption or Probatio Diabolica?' [2011] 10 European Law Reporter, 288.
[227] Case T-392/09 *Garantovaná*, EU:T:2012:674; Case T-419/14 *Goldman Sachs*, EU:T:2018:445; Ezrachi (n 74) 35–36.
[228] ibid paras 95–101; Marco Pasqua, 'The Liability of Corporate Groups for Violation of EU Competition Law' [2023] 14 Journal of European Competition Law & Practice 4, 235.
[229] Case C-628/10 P *Alliance One International*, EU:C:2012:479.
[230] ibid paras 50–60.

These decisions shape a framework that balances robust enforcement with procedural fairness. On the one hand, the substantive hurdle is hard to overcome. Full ownership remains a proxy for control because that legal and economic reality best reflects where profits accumulate and deterrence should bite. On the other hand, parents retain the formal possibility to rebut and the right to a reasoned response. That dual structure serves two policy objectives. It prevents complex group architecture from shielding ultimate beneficiaries while compelling the Commission to respect due process and judicial review.

In practical terms, the presumption now functions as a near-automatic attribution mechanism. The possibility of rebuttal operates primarily as a procedural safeguard, ensuring that the Commission engages with any plausible defence. Cases like *Elf Aquitaine* and *Arkema* show that this safeguard is real.[231] However, the substantive path to exoneration is narrow.

5. Recent Developments in Corporate Liability

For several decades, EU competition case law channelled antitrust liability in an "upward" direction.[232] In other words, an infringing subsidiary's conduct could be imputed to its parent company on the basis that they formed a single undertaking within the meaning of Article 101 TFEU. The Court's approach rested on the notion of decisive influence, culminating in the landmark *Akzo Nobel* presumption.[233] In October 2021, the ECJ developed the understanding of economic unit in *Sumal*, allowing liability to flow downward onto a subsidiary that had not been an addressee of the Commission's decision.[234] This judgment did not merely adjust procedural standing in private damages actions, it fundamentally reshaped the scope of corporate group liability

[231] Case C-521/09 P *Elf Aquitaine*; EU:C:2011:620; Case C-520/09 P *Arkema*, EU:C:2011:619.
[232] With the exception of the *Jungbunzlauer* case, where the GC imputed liability between sister companies due to a specific internal reorganisation that gave one sister company decisive influence over the other, Case T-43/10 *Jungbunzlauer AG v Commission*, EU:T:2006:270.
[233] See Section 4.4.1.
[234] Case C-882/19 *Sumal*, EU:C:2021:800.

equipping claimants with new strategic options and raising fresh jurisdictional questions. The following sections present a detailed examination of *Sumal* and the subsequent *Athenian Brewery* ruling, discussing the facts of each case, the Court's key legal findings, including guidance from the AGs, and the broader implications of these decisions.

5.1 *Sumal*

5.1.1 Background and Factual Context

The *Sumal* case arose from the EC's 2016 *Trucks* cartel decision, which found that Daimler, among other truck manufacturers, participated in a long running price-fixing cartel in breach of Article 101 TFEU.[235] Sumal, a Spanish company that had purchased two Daimler-made trucks from Mercedes-Benz Trucks España (MBTE), sought damages in Spain for the cartel overcharge.[236] Crucially, Daimler, the parent, was an addressee of the Commission's infringement decision, while MBTE, the subsidiary that sold the trucks to Sumal, was not. MBTE argued that it could not be liable since it was a separate legal entity not named in the decision. The Commercial Court of Barcelona accepted that argument and dismissed Sumal's claim.[237] On appeal, the Provincial Court referred a question to the CJEU asking, in essence, whether a victim can claim antitrust damages from a subsidiary for an infringement committed by its parent company.[238] This question highlighted a gap in EU competition law. While it was settled that a parent can be held liable for its subsidiary's conduct under the economic unit doctrine, it was unclear if liability could also flow downward in private enforcement. Notably, Spanish competition law had explicitly allowed only upward parental liability, not the reverse. The stage was set for the CJEU's Grand Chamber to clarify whether the EU law concept of an undertaking, that is the economic unit, permits holding a subsidiary accountable for the anticompetitive conduct of its parent company.

[235] Trucks, (Case AT.39824), Commission Decision C(2016) 4673, 2016, OJ C108/6.
[236] Case C-882/19 *Sumal*, EU:C:2021:800, para. 11.
[237] ibid paras 10–12.
[238] ibid para. 15.

5.1.2 Key Findings of the Court and Opinion of the AG

5.1.2.1 AG Pitruzzella's Opinion

AG Pitruzzella framed the issue as a choice between two views of corporate liability under Article 101 TFEU, one based on the exercise of control which would confine liability to parent companies controlling the offender, and one based on the existence of a single economic unit regardless of control direction.[239] He advised the Court to embrace the second, broader economic unit foundation, arguing that civil liability could extend to a subsidiary for its parent's infringement where two conditions are met. First, that the parent and subsidiary constituted a single undertaking at the time of the infringement based on their economic, organisational and legal links, and second, that the subsidiary's own market conduct substantially contributed to the infringement's overall objectives or effects.[240]

Applying these criteria, the AG concluded that Sumal's action against MBTE was admissible, since MBTE and Daimler formed one economic unit and MBTE's truck sales were the vehicle through which the cartel's overcharges were implemented. He also noted that the mere fact that the Commission did not fine the subsidiary in its decision does not preclude a national court from finding that subsidiary liable based on the EU concept of "undertaking".[241]

5.1.2.2 Reasoning of the Court (Grand Chamber)

The ECJ mostly followed the AG's direction and delivered a landmark judgment confirming that the single economic unit doctrine can operate downward, not only "upward". First, it reaffirmed that the concept of undertaking in EU competition law is an autonomous concept that must be applied consistently in both public enforcement and private damages actions. [242] The Court emphasized that EU competition rules target undertakings even if, in law, such an economic unit consists of several legal persons. Thus, when an economic unit, here the Daimler corporate group,

[239] Case C-882/19 *Sumal*, Opinion of AG Pitruzzella, EU:C:2021:293, points 33–35.
[240] ibid paras 40, 57–59.
[241] ibid para. 76.
[242] Case C-882/19 *Sumal*, EU:C:2021:800, para. 38; see also case C-724/17 *Skanska*, EU:C:2019:204, para. 47.

infringes Article 101 TFEU, that undertaking as a whole is responsible.[243] It follows that any entity forming part of that economic unit can be held to account for the infringement, regardless of formal separation by distinct legal personality. In a key passage, the judgment states that an entity's joint and several liability for the breach stems not from its having directed or controlled the specific act, but from the fact that it belongs to the same economic unit as the infringer.[244] This rejects the idea that a subsidiary must control the infringer to be held liable, clearly going against the one-way logic and national rules, like those in Spain that limited liability to parent companies.[245]

After establishing that liability is grounded in the unity of the undertaking, the ECJ delineated two cumulative criteria to be satisfied in a damages action against a subsidiary.

1. The claimant must prove that the parent and subsidiary functioned as a single economic unit at the time of the infringement. This is essentially the same test as the one used to impute a subsidiary's conduct to a parent. It involves demonstrating the economic, organisational and legal links between the companies, such as that the subsidiary did not enjoy real autonomy in the relevant business.[246]
2. The claimant must establish a "specific link" between the subsidiary's economic activities and the subject matter of the parent's infringement.[247]

Regarding the first criteria, Daimler's 100 per cent ownership and control over MBTE was not in dispute.[248] As to the second criteria the Court gave the concrete example that a subsidiary must be engaged in selling the very goods or services that were the object of the cartel, in this case trucks, to be sued for the parent's price-fixing. Beyond that, the scope of the "specific link" requirement remains undefined. The judgment does not provide general

[243] Case C-882/19 *Sumal*, EU:C:2021:800, paras 42,44.
[244] Case C-882/19 *Sumal*, EU:C:2021:800, paras 42–44.
[245] ibid para. 75; Charlotte Reichow, 'The Court of Justice's Sumal Judgment: Civil Liability of a Subsidiary for its Parent's Infringement of EU Competition Law' [2022] 6 European Papers 3, 1325, 1326, 1331.
[246] Case C-882/19 *Sumal*, EU:C:2021:800, paras 41–47.
[247] ibid paras 51–52.
[248] ibid para. 13.

criteria for assessing that connection across different factual scenarios. It remains uncertain whether the subsidiary must operate in the same relevant market affected by the infringement, or whether a broader interpretation could include entities that merely benefit from the anti-competitive conduct through intragroup coordination or asset flows. Although the Court confirmed that marketing activities relating to the cartelised product may suffice, it did not clarify whether all forms of economic activity must directly involve the cartelised product or service, or whether functional proximity within the group structure might also be relevant. Further case law will be necessary to delineate the boundaries of this requirement, particularly in conglomerate settings where subsidiaries engage in distinct but potentially complementary lines of business.[249]

These two requirements largely mirror the AG's proposed criteria. However, the Court's formulation of the second prong is somewhat less stringent than the AG's "contributed substantially" test.[250] The Court did not demand a quantitative assessment of the subsidiary's contribution. It is sufficient that the subsidiary was active in the cartelized market by selling the products that are the object of the infringement. Applying its doctrine to the case at hand, the ECJ held that MBTE could indeed be liable to Sumal if the Spanish court finds that MBTE and Daimler formed one undertaking and that the cartel concerned the same trucks sold by MBTE.[251]

Furthermore, the ECJ addressed a final question on Spanish law, ruling that national law cannot restrict the extension of liability only to situations of "control" since the EU concept of an undertaking demands that liability be determined by unity of economic conduct, not the direction of shareholdings.[252] In sum, *Sumal* represents a significant development in the single economic entity doctrine as it confirms that a subsidiary may be held jointly liable for the antitrust violations of its corporate group.

[249] Reichow (n 245) 1330; Benedikt Freund, 'Heralds of Change: In the Aftermath of Skanska (C-724/17) and Sumal (C-882/19)' [2022] 53 IIC - International Review of Intellectual Property and Competition Law 246.
[250] Case C-882/19 *Sumal*, Opinion of AG Pitruzzella, EU:C:2021:293, paras 53, 77–78.
[251] Case C-882/19 *Sumal*, EU:C:2021:800, para. 52.
[252] ibid paras 74–75; Reichow (n 245) 1326, 1331.

5.3 Implications and Future Trajectories

The *Sumal* judgment marks a significant development in EU competition law by extending liability across corporate groups through the economic unit doctrine. The Court held that civil liability may attach to any entity forming part of the same economic unit responsible for an infringement, including subsidiaries not named in the original infringement decision. This represents a doctrinal shift from focusing on individual legal entities to treating the undertaking as the relevant actor under Article 101 TFEU.[253]

As a result, claimants harmed by a cartel can sue subsidiaries that sold cartelised goods, even if they were not directly involved in the infringement. Therefore, victims can choose defendants strategically based on jurisdiction or asset recovery prospects, such as suing locally domiciled affiliates. The ruling also raises the theoretical possibility of horizontal liability, where sister companies may be targeted if they were part of the same undertaking at the material time.[254]

At the same time, the requirements amount to two safeguards. First, the existence of economic, organisational and legal links must be shown, usually presumed under the *Akzo Nobel* logic for wholly owned subsidiaries. Second, there must be a specific link between the subsidiary's market activity and the subject matter of the infringement, such as selling cartelised products. In follow-on actions, these conditions are frequently satisfied due to the prior findings of a competition authority. In stand-alone claims, the claimant must also prove the infringement itself, and the subsidiary may challenge the entire basis of liability.[255]

Although *Sumal* arose in private enforcement, it may indirectly influence public enforcement. The Commission has traditionally fined parent companies and the entities directly involved, but *Sumal* could support

[253] Freund (n 249) 235–253; Ruben Elkerbout and Philine Wassenaar, 'Sumal three years on: a hint of Double Dutch and the Dutch courts lead the way…?' (The Thicke, 6 February 2025) <Sumal three years on: a hint of Double Dutch and the Dutch courts lead the way…? – The Thicket> accessed 8 May 2025.
[254] Fernando Diez Estella, 'In Search of a Workable Concept of "Undertaking" in Competition Law: ECJ's Sumal v. Mercedes Benz' [2022] 14 Cuadernos Derecho Transnacional 319, 329–333.
[255] Case C-882/19 *Sumal*, EU:C:2021:800, paras 52–53, 65–67.

including implementing subsidiaries in future decisions, particularly to ensure deterrence and recovery. The Commission acknowledged this possibility in its submissions, but practical concerns about fairness and proportionality make such moves unlikely to become routine.[256]

The judgment underscores that national courts must apply EU law even where it diverges from domestic principles of separate legal personality. It strengthens claimants' access to justice and promotes procedural efficiency by allowing consolidation of related claims in a single forum under Article 8(1) of the Brussels I *bis*.[257]

Sumal thus anchors the principle of downward liability in private enforcement and opens the door to broader applications across group structures, subject to judicial safeguards. Pending cases such as *Electricity and Water Authority/Smurfit* will likely clarify how the doctrine interacts with procedural tools like jurisdiction and the role of anchor defendants.[258] Whether this trajectory continues depends on how future courts balance effective enforcement with the need for legal certainty and corporate autonomy.

5.2 *Athenian Brewery*

5.2.1 Background and Factual Circumstances

The *Athenian Brewery* case arose from a dispute in the Greek beer market.[259] Athenian Brewery (AB) is part of the Heineken group. Its Dutch parent company, Heineken, indirectly held approximately 98.8 per cent of shares in AB during the relevant period.[260] In 2014, the Hellenic Competition Commission found that AB had abused its dominant position in the Greek beer market, in breach of Article 102 TFEU.[261] This conduct was deemed a single and continuous infringement of EU and Greek competition law. Notably, the Greek authority did not implicate Heineken in that decision,

[256] Reichow (n 245) 1327–1331, 1336–1337.
[257] Kuipers (n 40); Freund (n 249) 260–261; Ezrachi (n 74) 32.
[258] See Joined Cases C-672/23 and C-673/23 *Electricity and Water Authority/Smurfit,* Opinion of AG Kokott, EU:C:2025:243.
[259] Case C-393/23 *Athenian Brewery,* EU:C:2025:85.
[260] Case C-393/23 *Athenian Brewery,* EU:C:2025:85, para. 11.
[261] ibid para. 12.

citing a lack of evidence of the parent's direct involvement and insufficient indications that Heineken had exercised a decisive influence over the subsidiary's conduct. The authority therefore, did not rule on the usual EU law presumption that a parent holding almost all shares of an infringing subsidiary is presumed to exercise decisive influence and can be held liable for the infringement on the same basis.[262]

Following this finding, AB's smaller competitor, Macedonian Thrace Brewery (MTB), sought civil damages for the harm caused by AB's abuse. MTB initiated a follow-on action in the Netherlands against AB and Heineken, claiming the two companies were jointly and severally liable as part of a same undertaking.[263] Heineken, domiciled in Amsterdam, was sued in its home forum. AB was joined as a co-defendant under Article 8(1) of the Brussels I *bis* Regulation. That provision allows a defendant domiciled in another Member State to be sued together with an anchor defendant if the claims are "so closely connected" that it is expedient to hear them together to avoid irreconcilable judgments. AB and Heineken contested the Dutch court's jurisdiction over AB. The Amsterdam District Court agreed with the defendants' objection, finding the claims against the two companies not sufficiently connected under Article 8(1). On appeal, however, the Court of Appeal reversed, reasoning that AB and Heineken were in the "same factual situation" and that it *"*could not be excluded with sufficient certainty*"* that they formed one undertaking for competition law purposes.[264] This supported the view that the two claims were closely connected. AB and Heineken appealed to the Dutch Supreme Court, which referred two questions to the CJEU. First whether, in joint actions against a parent and subsidiary for a competition infringement, the court at the parent's domicile may rely on the presumption of decisive influence under Article 8(1), and second, whether the mere possibility of such influence suffices to establish jurisdiction. [265] These questions placed the CJEU at the intersection of competition law and private international law, with significant implications for private enforcement.

[262] Case C-393/23 *Athenian Brewery*, EU:C:2025:85, para. 12.
[263] ibid para. 13.
[264] ibid paras 13–14.
[265] ibid para. 17.

5.2.2 Key Findings of the ECJ

In its judgment, the ECJ answered both questions in a manner that reinforces the economic unit doctrine and facilitates private enforcement. The Court held that a national court may rely on the presumption of decisive influence to establish the "close connection" required by Article 8(1) of the Brussels I *bis* Regulation for joint litigation.[266] In other words, when a victim brings damages claims against a subsidiary, the direct infringer, and its parent company together, the court seised at the parent's domicile can assume jurisdiction over the foreign subsidiary based solely on the substantive competition law presumption that the parent and subsidiary formed one undertaking at the relevant time. The Court confirmed that under EU competition law, if a parent and subsidiary constitute one undertaking, *"*the very existence of that economic unit which committed the infringement" means either company may be held liable for the infringement.[267]

Given that premise, the ECJ found it logically consistent that the existence of an economic unit can also serve as a basis to join defendants in one forum. The judgment, aligning with AG Kokott's opinion, made several key points.[268] First, the Court emphasized that the lack of a prior decision establishing the parent's liability, for example the fact that in this case only the subsidiary had been penalized by the Greek authority, does not preclude treating the claims as closely connected under Article 8(1) of the Brussels I *bis* Regulation.[269] Indeed, the Court noted, it is precisely when the parent's joint liability has not been established beforehand that separate lawsuits in different jurisdictions would risk yielding inconsistent judgments on the same factual and legal situation.[270] This risk of irreconcilable outcomes justifies allowing a single consolidated forum. The Court observed that a final Commission decision finding an infringement is binding on all national courts.

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[266] Case C-393/23 *Athenian Brewery*, EU:C:2025:85, para. 45.
[267] ibid para. 29; see also Juan Ignacio Ruiz Peris, 'Single economic unit members liability. Commentary (…)' (Competition Training, 18 October 2021) <Single economic unit members liability. Commentary to the Judgement of the Court of Justice (Grand Chamber) of October 06, 2021 in the Judgment in Case C-882/19 Sumal (ECLI:EU:C:2021:800) by Prof. Dr. Juan Ignacio Ruiz Peris (UVEG) – Judicial Competition Training> accessed 5 May 2025.
[268] Case C-393/23 *Athenian Brewery*, Opinion of AG Kokott, EU:C:2024:798.
[269] ibid para. 51,56; Case C-393/23 *Athenian Brewery*, EU:C:2025:85, para. 31.
[270] Case C-393/23 *Athenian Brewery*, EU:C:2025:85, paras 30–31.

In contrast, a decision of another Member State's authority serves as at least *prima facie* evidence of an infringement under Article 9 of the Damages Directive.[271] Thus, had AB and Heineken been sued separately, for instance, AB in Greece and Heineken in the Netherlands, one court might find Heineken not liable (for lack of proof of decisive influence) while another court (relying on the Greek authority's findings against AB) finds an infringement by the undertaking. This would be a textbook case of irreconcilable judgments. Article 8(1) exists to prevent such a scenario.

Second, the ECJ elaborated on the threshold of proof required at the jurisdictional stage. It held that the national court may "confine itself to verifying that a decisive influence by the parent company over its subsidiary cannot be excluded *a priori* in order to assume jurisdiction.[272] In practice, this means that, at the preliminary stage of assessing jurisdiction, the court need not definitively prove that the parent actually exercised decisive influence. Given the structural links and near-total shareholding, it suffices that the parent's influence is plausible and not manifestly absent. The Court explicitly approved relying "exclusively" on the *Akzo Nobel* presumption to establish the close connection between the claims. However, to guard against abusive or contrived joinder of defendants, the ECJ added a safeguard. The defendants must not be deprived of the opportunity to rebut the presumption.[273] In other words, the parent, and subsidiary, can defeat the court's jurisdiction if they produce firm evidence showing that the parent did not in fact hold nearly all of the subsidiary's shares or that the presumption of decisive influence is nonetheless rebutted in that particular case. Absent such evidence, the court at the parent's domicile may proceed to hear both the case against the parent and subsidiary in one trial.

The CJEU effectively permits jurisdiction to be established *prima facie*, showing that the parent and subsidiary formed one undertaking, leaving any genuine contrary evidence to be raised by the defendants as an exception. AG Kokott's opinion closely foreshadowed the Court's approach on these points.

[271] Case C-393/23 *Athenian Brewery*, EU:C:2025:85, paras 32–33.
[272] ibid para. 45.
[273] ibid para. 46.

She advocated a flexible use of the economic unit doctrine to serve the aims of Article 8(1), suggesting that a parent's near-total shareholding in an infringing subsidiary should be regarded as a "strong indication" of a close connection between claims, ordinarily requiring no additional proof of connection.[274]

AG Kokott also addressed the risk of forum shopping.[275] She explained that the use of Article 8(1) of the Brussels I *bis* Regulation should only be considered abusive if the claim against the anchor defendant, in this case the parent company, is manifestly unfounded or artificially constructed with the sole aim of bringing another defendant before an inconvenient court.[276] The mere possibility that the parent may ultimately not be held liable is not sufficient to deny jurisdiction. Instead, the anchor claim must be clearly baseless from the outset. In the AG's assessment, such a situation would arise only in exceptional cases, particularly given the strength of the presumption of decisive influence in standard parent and subsidiary relationships. She further noted that when defendants are based in different Member States, the Brussels I framework permits claimants a degree of procedural choice. It is therefore natural that claimants will opt for the forum most favourable to their interests, provided there is a genuine and close connection to the claims.[277] The Court endorsed this reasoning and confirmed that a claimant such as MTB could sue the Greek subsidiary in the Netherlands, where the parent company is domiciled, reflecting the economic reality that both entities operated as a single undertaking during the infringement.

5.2.3 Implications and Future Trajectories

The *Athenian Brewery* judgment marks a significant development in the application of the economic unit doctrine to procedural matters in EU competition law.[278] Building on the principles established in *Skanska* and *Sumal*, the Court confirmed that where a parent company and a subsidiary

[274] Case C-393/23 *Athenian Brewery*, Opinion of AG Kokott, EU:C:2024:798, points 43–46.
[275] ibid points 58–61.
[276] ibid point 59.
[277] ibid points 60–61.
[278] Case C-393/23 *Athenian Brewery*, EU:C:2025:85.

form one undertaking, they may be jointly sued in the forum of either entity.[279] Crucially, this applies even if only one was identified in the initial infringement decision. The decision reinforces claimants' capacity to initiate coordinated actions across borders by enabling national courts to take jurisdiction over a foreign subsidiary where the parent is domiciled, thus facilitating improved access to remedies and diminishing procedural fragmentation.

Critically, the ECJ lowered the evidentiary threshold for invoking Article 8(1) of the Brussels I *bis* Regulation. It ruled that a national court may find a sufficient connection between claims brought against a parent and its subsidiary if it cannot be excluded that the parent exercised decisive influence over the subsidiary during the period of infringement.[280] This presumption, founded on the Court's settled case law on corporate control and economic unit doctrine, allows for jurisdiction without complete proof of actual influence at the first stage. Here, the ruling carries over the reasoning of *Sumal* into the field of procedure, holding that where two companies are one entity for purposes of substantive liability, jurisdiction over one company may logically be extended to reach the other. This protection blocks groups of companies from avoiding consolidated proceedings by taking advantage of formal legal distinctions or jurisdictional boundaries between affiliated companies.

The decision highlights again the increasing importance of jurisdictional issues in the overlap between private international law and competition law. The significance of this decision is also increased by the timing, which comes alongside a more general increase in follow-on damages actions throughout the EU and the arrival of new preliminary questions, such as in *Electricity and Water Authority/Smurfit*.[281] These pending cases present the Court with an opportunity to further define the procedural implications of the economic

[279] Case C-882/19 *Sumal*, EU:C:2021:800; Case C-724/17 *Skanska*, EU:C:2019:204.
[280] See also Case C-375/13 *Harald Kolassa v Barclays Bank plc*, EU:C:2015:37; Case C-12/15 *Universal Music International Holding BV v Michael Tétreault Schilling and Others*, EU:C:2016:449.
[281] Aren Goldsmith, 'Arbitration and EU Antitrust Follow-on Damages Actions' [2016] 34 ASA Bulletin 1, 10; See also Joined Cases C-672/23 and C-673/23 *Electricity and Water Authority/Smurfit*, Opinion of AG Kokott, EU:C:2025:243.

unit doctrine. In particular, they invite clarification on how the presumption of joint liability, based on structural and economic integration within a corporate group, can serve as a foundation for jurisdiction under Article 8(1) of the Brussels I *bis* Regulation. Depending on the Court's approach, the decisions could solidify or further delineate the framework *in Athenian Brewery*, with effective enforcement and procedural protection ramifications.

Together, *Athenian Brewery* and the forthcoming references illustrate that jurisdictional matters have become integral to enforcing EU competition law. No longer confined to substantive liability questions, the economic unit doctrine now also plays a decisive role in determining the procedural architecture of antitrust litigation.

5.3 Comparative Analysis of *Sumal* and *Athenian Brewery*

The judgments in *Sumal* and *Athenian Brewery* collectively represent a significant evolution in EU competition law concerning the liability of corporate groups under the economic unit doctrine. Both cases explore how the concept of a single undertaking, comprising a parent company and its subsidiaries, permits holding one entity accountable for competition law infringements committed by another within the same corporate group.

In *Sumal*, the ECJ established that a subsidiary can be held liable for its parent company's infringement if the parent and subsidiary form an economic unit, and there is a specific link between the subsidiary's economic activity and the subject matter of the infringement. This "downward" extension of liability also opens the possibility for "sister" company liability, where entities within the same corporate group may be held accountable for each other's competition law infringements, depending on their involvement in the relevant market.[282]

Athenian Brewery reconfirmed the more conventional "upward" liability, in which a parent company can be held responsible for the infringement of its subsidiary. Notably, the ECJ in this case also dealt with procedural matters, holding that the economic unit concept can affect jurisdictional elements. The

[282] Mogollon (n 40).

Court held that claims against a subsidiary and its parent company could be brought jointly in the jurisdiction where the parent is domiciled, under Article 8(1) of the Brussels I *bis* Regulation, due to the close connection arising from the entities likely constituting an economic unit.[283]

Building on these principles, pending cases such as *Electricity and Water/Smurfit* further explore the intersection of the economic unit doctrine with jurisdictional rules. AG Kokott´s reasoning in the said case indicated that the economic unit theory is not limited to the stage of merits. It also shapes jurisdiction under Article 8(1) of the Brussels I *bis*, as indicated by the *Athenian Brewery* case. Where claimants sue an "anchor" company domiciled in the forum State, the other companies in the same economic unit are, by definition, "closely connected" to the anchor, because the infringement is imputable to the undertaking as a whole.[284] On that logic, the national court may hear the entire claim, even against foreign co-defendants, without having to conduct a detailed, defendant by defendant comparison of factual overlap and evidential coherence. This means that the economic unit test is applied more leniently when a court simply decides whether it has jurisdiction. The judge need only be satisfied that it cannot be ruled out in advance that the defendants form one undertaking. Consequently, a court may validly assume jurisdiction on that basis. Yet, after a fuller merits examination, it can still conclude that no single economic unit exists to attribute liability. According to Kokott, that approach both preserves foreseeability, since corporate groups know that control entails joint liability and avoids the risk of irreconcilable judgments that Article 8(1) is meant to prevent.[285] She also confirms that the "downward" liability recognised in *Sumal* can operate symmetrically for jurisdictional purposes, so that a local subsidiary anchored in the forum can draw its parent into the same proceedings.[286] Because the Opinion treats the presumption of decisive influence as a single, horizontal standard valid for

[283] Robert Hardy,'Heineken's liability for the antitrust damages caused by its Greek subsidiary Athenian Brewery in Case C/13/701248 before the Amsterdam District Court (the Netherlands)' [2025] Journal of European Competition Law & Practice, 1.
[284] Joined Cases C-672/23 and C-673/23 *Electricity and Water Authority/Smurfit*, Opinion of AG Kokott, EU:C:2025:243, points 69–78.
[285] ibid point 79–86.
[286] ibid point 60–63.

both substance and procedure, it would significantly enlarge the practical reach of EU antitrust damages litigation if the Court follows AGs Opinion. For the moment, though, the final word belongs to the Grand Chamber of the CJEU, and it remains to be seen whether it will endorse Kokott's extension of the *Akzo* presumption into the field of private international law jurisdiction.

6. Conclusion

The research undertaken in this thesis set out to chart the emergence, consolidation, and policy consequences of the economic unit doctrine in EU competition law. It began by explaining why Article 101 TFEU, with its broad prohibitions on collusion and its principle of joint and several liability, cannot be enforced effectively if competition authorities and courts stop at the formal envelopes of separate legal personality.[287] It then examined the functional definition of an undertaking, showing that EU law looks to economic activity rather than company law status and is therefore able to treat all entities that operate under a single centre of economic decision making, as one actor.[288] On that foundation the thesis reconstructed the case law that identifies decisive influence as the factual and legal test for belonging to the same economic unit and traced how that test has been applied and refined over time.[289] Finally it analysed the most recent jurisprudence, which extends the doctrine beyond public fines into the realms of private damages actions and cross-border jurisdiction.[290]

Taken together, the analysis demonstrates that the doctrine has developed from a limited safeguard preventing intra-group agreements from being treated as cartels, into a cornerstone that now shapes all stages of competition law enforcement. The earliest decisions were cautious. They accepted that the parent and subsidiary could be one undertaking. Still, they considered concrete proof that the parent had steered the subsidiary's commercial

[287] See Section 2.
[288] See Section 3.
[289] See Section 4.
[290] See Section 5.

policy.[291] That evidential approach began to shift with the recognition that ownership of all or almost all shares typically confers the power to intervene whenever the parent wishes. The CJEU therefore created a rebuttable presumption that parents exercising such ownership also exercise decisive influence.[292] Parents remain free in theory to prove that a subsidiary acted with complete autonomy, yet in practice rebuttal has been rare because group reporting lines, common directors and consolidated accounts all point in the opposite direction.[293]

A second layer of evolution concerned reach. Once the presumption was accepted for wholly owned subsidiaries, the courts extended it up the ownership chain, outwards to indirect voting control, and sideways to situations of joint control through veto rights. This structural concept of control reflects a policy choice. By directing liability towards the entity that determines economic strategy, competition law ensures that sanctions affect the part of the group with actual decision-making power and discourages the practice of isolating legal risk in subsidiaries with limited assets.[294]

Recent judgments have pushed the doctrine further by aligning substantive liability with private enforcement and procedural jurisdiction. Under the logic now settled, every company that forms part of the economic unit can become a defendant in a follow-on damages claim so long as there is a concrete link between its own commercial operations and the infringement.[295] At the same time, courts assessing cross-border jurisdiction may use the very same concept of economic unit to aggregate claims in a single forum. The test for jurisdiction is deliberately framed in looser terms than the test for ultimate liability. The court may find it has the power to hear a claim against two related companies, yet later decide that the factual record does not justify attributing liability from one to the other. This staged use of the concept

[291] Hurley et.al (n 179).
[292] Winckler et.al (n 191) 547–549.
[293] Solek et.al (n 108) 73–84.
[294] Angeli et.al (n 157) 691–693.
[295] Freund (n 249) 246–263.

guards against artificial fragmentation of proceedings while preserving a meaningful inquiry into responsibility at the merits phase.[296]

The economic unit doctrine now fulfils three complementary functions from a policy perspective. First, it underwrites deterrence by guaranteeing that fines and damages can reach the parent who devised or tolerated the unlawful conduct. Second, it secures compensation by giving victims realistic targets, including local sales subsidiaries with assets in the claimant's jurisdiction. Third, it promotes procedural economy by allowing related claims to be heard together and reducing the risk of inconsistent outcomes. These benefits reflect a dynamic adaptation of EU competition law to economic realities, reaffirming that where companies operate as a single undertaking, they will be treated as one for both liability and jurisdictional purposes.

The widening of group liability is not without cost. A practically irrebuttable presumption risks drifting into strict liability, eroding the principle that sanctions should track control. Moreover, extending liability to entities that neither knew of, nor benefited from the infringement can raise proportionality questions, especially where ownership is partial or affiliates operate in distant markets. Case law has tried to answer these concerns by keeping the door to rebuttal nominally open and insisting on a specific link between the activities of the sued entity and the cartel or abuse in downward cases. How convincing these safeguards prove will depend on their application by the Commission and national courts.

Looking ahead, several issues remain open. The proper treatment of minority shareholdings that combine significant influence with legitimate counterweights has yet to be settled. The same is true of horizontal or "sister" liability, where two subsidiaries are controlled by the same parent but not by each other. Can a subsidiary be held liable for a violation committed by a corporate sibling, even absent direct control between them, merely because they share a common parent? The logic of the economic unit suggests it is possible, especially if both were active in the infringing conduct or market, but clear judicial guidance is lacking. Another frontier concerns global groups

[296] Elkerbout et.al (n 253) .

headquartered outside the Union. If a non-EU parent controls an EU subsidiary that participates in a worldwide cartel, can claimants anchor an action in the Union solely based on the economic unit? The recent case law implies that as long as an EU subsidiary is involved, the entire undertaking could be brought to answer before EU courts, but doing so may raise questions of international comity and enforcement that remain untested.[297]

For businesses, the message is clear. Corporate form offers far less shelter than before. Compliance programmes must reach every subsidiary because the misconduct of one can expose the finances of all. Group structures that grant operational freedom on paper but maintain tight financial or strategic control in practice will still be treated as a single undertaking. Where autonomy is both real and desired, it must be documented and respected, otherwise the presumption of decisive influence will stand.

For enforcers and courts the central challenge lies in achieving the right balance. They must continue to look beyond formal corporate boundaries where these obscure control relationships and undermine effective enforcement, while also avoiding overreach that draws in entities acting independently or discourages legitimate investment. Maintaining this balance requires clear and reasoned justification when attributing liability and a careful and thorough assessment of any evidence presented to rebut the presumption of unity.

In conclusion, the economic unit doctrine exemplifies the dynamic character of EU competition law. It adapts to economic reality, seeks to render enforcement practical and preserves room for fairness. Its trajectory over the past five decades shows a gradual yet unmistakable shift from formalism to substance. As corporate groups grow ever more intricate, the doctrine provides a coherent framework for ensuring that the economic actor which decides and benefits is also the one that answers. Whether the next phase brings further expansion or a measured consolidation will depend on how effectively courts and authorities apply the existing principles.

[297] Freund (n 249).

Bibliography

Primary Legislation

Consolidated version of the Treaty on European Union [2012] OJ C326/13

Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/26

Secondary Legislation

Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union [2014] OJ L349/1

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L351/1

Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices [2022] OJ L134/4

Commission Regulation (EU) 2023/1066 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements [2014] OJ L93/17

Guidelines and Notices

Communication from the Commission on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union [2013] OJ C167/19

Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 [2006] OJ C210/2

Books

Angeli C, and Williams R, 'Parental Liability, the Expansion of the Presumption of Decisive Influence to Full Ownership of Voting Rights: Case C-595/18 P *Goldman Sachs Group*' [2021] 12 Journal of European Competition Law & Practice 9

Cortese B, *EU Competition Law: Between Public and Private Enforcement* (Kluwer Law International 2014)

Ezrachi A, *EU Competition Law: An Analytical Guide to the Leading Cases* (8th edn, Hart Publishing 2024)

Hettne J, Otken E.I, (red.), *EU-rättslig metod - teori och genomslag*

i svensk rättstillämpning (2 edn, Nordstedts Juridik 2011)

Jones A, and Daly S, 'The Undertaking and Single Economic Entity Concepts in EU and UK Competition Law: Proposals for a Refined Approach' [2023] in F. Thepot and A. Tzanaki (eds), *Research Handbook on Competition and Corporate Law* (Edward Elgar, 2025)

Jones A, Sufrin B, and Dunne N, *EU Competition Law: Text, Cases, and Materials* (8th edn, Oxford University Press 2023)

Kleinman, J, 'Rättsdogmatisk metod' in Maria Nääv and Mauro Zamboni (eds) *Juridisk metodlära* (2nd edn, Studentlittertur 2018)

Peczenik A, *Essays in Legal Theory* (1970)

Peczenik A, and others, *Juridisk argumentation: En lärobok i allmän rättslära* (Nordsteds 1995)

Peczenik A, *Juridikens teori och metod: En introduktion till allmän rättslära* (Fritze 1995)

Sousa Ferro M, 'Binding Effect of Public Enforcement Decisions' in Rodger B, Sousa Ferro M, and Marcos F (eds.), *Research Handbook on Competition Law Private Enforcement in the EU* (Edward Elgar, 2022)

Van de Gronden WJ, and Rusu SC, *Competition Law in the EU: Principles, Substance, Enforcement* (Edward Elgar Publishing 2021) 20

Voss K, *Between Enforcement and Regulation: A Study of the System of Case Resolution Mechanisms Used by the European Commission in the Enforcement of Articles 101 and 102 TFEU* (Stockholm University 2019)

Whish R, and Bailey D, *Competition Law* (10th edn, Oxford University Press 2021)

Articles

Biolan PA, 'The Court of Justice's Rulings in the Bathroom Fittings Cartel Cases: Single/Continuous Infringement and Fines for "Minor" Participants' [2017] 8 Journal of European Competition Law 385

Boyd MA, 'Should Children Pay for Their Parent's Sins? The Sumal Preliminary Reference' [2021] 12(1) Journal of European Competition Law & Practice 25

Burnley R, 'Group Liability for Antitrust Infringements: Responsibility and Accountability' [2010] 33 World Competition 595

Coutroulis S.C, and Allen D.M, 'Pass-on Problem in Indirect Purchaser Class Litigation.' [1999] 44 The Antitrust Bulletin 1, 179

Denys C, 'European Court of Justice: Case Report Case C-343195: *Diego Cali & Figli Srl and Servizi Ecologici Porto di Genova SPA*; Judgment of 18 March 1997' [1997] 6 European Energy and Environmental Law Review 220

Estella FD, 'In Search of a Workable Concept of "Undertaking" in Competition Law: ECJ's Sumal v. Mercedes Benz' [2022] 14 Cuadernos Derecho Transnacional 319

Fasoula V, 'Extending the Presumption of Decisive Influence to Impute Parental Liability to Private Equity Firms for the Anticompetitive Conduct of Portfolio Companies' [2021] 4 Nordic Journal of European Law 101

Freund B, ‘Heralds of Change: In the Aftermath of Skanska (C-724/17) and Sumal (C-882/19)’ [2022] 53 IIC - International Review of Intellectual Property and Competition Law 246

Goldsmith A, ‘Arbitration and EU Antitrust Follow-on Damages Actions’ [2016] 34 ASA Bulletin 1

Hardy R, ‘Heineken’s liability for the antitrust damages caused by its Greek subsidiary Athenian Brewery in Case C/13/701248 before the Amsterdam District Court (the Netherlands)’ [2025] Journal of European Competition Law & Practice 1

Hornkohl L, ‘The Economic Continuity Test in Private Enforcement of Competition Law - the ECJ’s Judgment in Skanska Industrial Solutions C-724/17’ [2019] European Competition Law Review 339.

Hurley S, and Scott A, ‘The Concept of an Undertaking and the Responsibility of Parent Companies for the Actions of Subsidiaries in the EU and UK’ [2008] 7 Competititon Law Journal 301

Hüschelrath K, and Peyer S, ‘Public and Private Enforcement of Competition Law - a Differentiated Approach’ [2013] ZEW - Centre for European Economic Research Discussion Paper 29

Ibrahim A, ‘A Re-Evaluation of the Concept of Economic Activity for the Purpose of EU Competition Rules: The Need For Modernisation’ [2015] 11 European Competition Journal 265

Jones A, ‘The Boundaries of an Undertaking in EU Competition Law’ [2012] 8 European Competition Journal 301

Kalintiri, A, ‘Revisiting Parental Liability in EU Competition Law’ [2018] 43 European Law Review 2, 145

Kloosterhuis E, ‘Defining Non-Economic Activities in Competition Law’ [2017] 13 European Competition Journal 117

Koenig C, 'An Economic Analysis of the Single Economic Entity Doctrine in EU Competition Law' [2017] Journal of Competition Law and Economics 281

Komninos P.A, ‘Public and Private Antitrust Enforcement in Europe: Complement? Overlap?’ [2006] 3 Competition Law Review 1, 9

Mogollon A, ‘Blood is Thicker Than Water: Sister Liability as Part of the Single Economic Unit Doctrine in Light of the Sumal Case’ [2023] SSRN Electronic Journal

Pasqua M, ‘The Liability of Corporate Groups for Violation of EU Competition Law’ [2023] 14 Journal of European Competition Law & Practice 4, 235

Reichow C, ‘The Court of Justice’s Sumal Judgment: Civil Liability of a Subsidiary for its Parent’s Infringement of EU Competition Law’ [2022] 6 European Papers 3, 1325

Sandgren C, ‘ÄR rättsdogmatiken dogmatisk?’ [2006] 118 Tidsskrift for Rettsvitenskap 648

Solek L, and Wartinger S, ‘Parental Liability: Rebutting the Presumption of Decisive Influence’ [2014] 6 Journal of European Competition Law&Practice 73

Stanevičius M, ‘Portielje: Bar Remains High for Rebutting Parental Liability Presumption’ [2014] 5 Journal of European Competition Law & Practice 1, 24

Svetlicinii, A, ‘Parental Liability for the Antitrust Infringements of Subsidiaries: A Rebuttable Presumption or Probatio Diabolica?’ [2011] 10 European Law Reporter, 288

Troberg M, ‘Parental Liability in EU Competition Law - A Fair Presumption?’ [2015] 8 Int’l In-House Counsel J 1

Weller, MP and others, ‘Liability of the Economic Unit-a General Principle of EU Law?’ [2023] 20 European Company and Financial Law Review 759

Winckler A, and Sahlin S, ‘Parent’s Liability: New Case Attributing Exclusive Jurisdiction to the General Court in Respect of Cases Raising Decisive Influence and Corporate Control Issues under EU Competition Law’ [2012] 3 Journal of European Competition Law & Practice 547

Blog posts

Elkerbout R, and Wassenaar P, 'Sumal three years on: a hint of Double Dutch and the Dutch courts lead the way…?' (The Thicke, 6 February 2025) <Sumal three years on: a hint of Double Dutch and the Dutch courts lead the way…? – The Thicket > accessed 8 May 2025

Pauline Kuipers and Joost van Roosmalen, 'The Sumal-judgement: reshaping the notion of 'undertaking' in EU competition law' (Bird&Bird, 16 November 2021) <The Sumal-judgement: reshaping the notion of 'undertaking' in EU competition law - Bird & Bird > accessed 9 May 2025

Table of Cases

European Court of Justice

AC-Treuhand v Commission (Case C-194/14 P), EU:C:2015:717

AEG-Telefunken AG v Commission (Case 107/82), EU:C:1983:293

Akzo Nobel NV and Others v Commission (Case C-97/08 P), EU:C:2009:536

Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie (Case C-67/96), EU:C:1999:430

Alliance One International and Standard Commercial Tobacco v Commission and Commission (Case C-628/10 P), EU:C:2012:479

ArcelorMittal Luxembourg v Commission (Joined Cases 201/09 and 216/09 P) EU:C:2011:190

Arkema v Commission (Case C-520/09 P), EU:C:2011:619

Athenian Brewery SA, Heineken NV v Macedonian Thrace Brewery (Case C-393/23), EU:C:2025:85

Cartel Damage Claims Hydrogen Peroxide SA v Evonik Degussa GmbH and Others (Case C-352/13), EU:C:2015:335

Centrafarm BV v Sterling Drug (Case 15/74), EU:C:1974:114

Centrafarm v Winthrop (Case 16/74), EU:C:1974:115

CEPSA Estaciones de Servicio SA v LV Tobar e Hijos SL (Case C-279/06), EU:C:2008:485

Christian Poucet v Assurances Générales de France and Caisse Mutuelle Régionale du Languedoc-Roussillon (Case C-159/91), EU:C:1993:63

Commission v Anic Partecipazioni (Case C-49/92 P), EU:C:1999:356

Commission v Siemens AG Österreich and Others (Case C-231/11 P) EU:C:2014:256

Commission v Stichting Administratiekantoor Portielje (Case C-440/11 P), EU:C:2013:514

Commission v Versalis and Others (Joined Cases C-93/13 P, C-123/13 P) EU:C:2015:150

Compass-Datenbank GmbH v Republik Österreich (Case C-138/11), EU:C:2012:449

Dansk Rørindustri and Others v Commission (Case C-189/02 P), EU:C:2005:408

Diego Calì & Figli Srl v Servizi ecologici porto di Genova SpA (Case C-343/95), EU:C:1997:160

EI du Pont de Nemours v Commission (Case C-172/12 P), EU:C:2013:601

Elf Aquitaine SA v Commission (Case C-521/09 P), EU:C:2011:620

Eni SpA v Commission (Case C-508/11 P), EU:C:2013:289

Evonik Degussa and AlzChem v Commission (Case C-155/14 P), EU:C:2016:446

FLS Plast A/S v Commission (Case C-243/12 P), EU:C:2014:2006

Fresh Del Monte Produce v Commission (Case C-293/13 P), EU:C:2015:416

General Quimica SA v Commission (Case C-90/09), EU:C:2011:21

Harald Kolassa v Barclays Bank plc (Case C-375/13), EU:C:2015:37

Höfner and Elser (Case C-41/90), EU:C:1991:161

Hydrotherm Gerätebau GmbH v Compact del Dott. Ing. Mario Andreoli & C. Sas (Case C-170/83), EU:C:1984:271

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

Istituto Chemioterapico Italiano and Commercial Solvents v Commission (Joined Cases 6 and 7/73), EU:C:1974:18

Kone AG and Others v ÖBB-Infrastruktur AG (Case C-557/12), EU:C:2014:1317

Laufen Austria v Commission (Case C-637/13 P), EU:C:2017:51

Metsä-Serla Oyj and Others v Commission (Case C-294/98 P), EU:C:2000:632

MOL Magyar Olaj- és Gázipari Nyrt. v Mercedes-Benz Group AG (Case C-425/22) EU:C:2024:578

Motosykletistiki Omospondia Ellados NPID v Elliniko Dimosio (Case C-49/07), EU:C:2008:376

NV Koninklijke KNP BT v Commission (Case C-248/98 P), EU:C:2000:625

Papierfabrik August Koehler and Others v Commission (Case C-322/07 P), EU:C:2009:500

Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten (Case C-180/98), EU:C:2000:428

Pierre Fabre Dermo-Cosmétique SAS v Président de l'Autorité de la concurrence and Ministre de l'Économie, de l'Industrie et de l'Emploi (Case C-439/09), EU:C:2011:649

Pronuptia de Paris GmbH v Pronuptia de Paris Irmgard Schillgallis (Case 161/84), EU:C:1986:41

SAT Fluggesellschaft mbH v Eurocontrol (Case C-364/92), EU:C:1994:7

SELEX Sistemi Integrati v Commission (Case C-113/07 P), EU:C:2009:191

Šiaulių regiono atliekų tvarkymo centras and „Ecoservice projektai“ UAB (Case C-531/16) EU:C:2018:324

Siderúrgica Aristrain Madrid SL v Commission (Case C-196/99 P), EU:C:2003:529

Skanska Industrial Solutions and Others (Case C-724/17), EU:C:2019:204

Stergios Delimitis v Henninger Bräu AG (Case C-234/89), EU:C:1991:91.

Stora Kopparbergs Bergslags AB v Commission (Case C-286/98 P), EU:C:2000:630

Sumal S.L. vs Mercedes Benz Trucks España, S.L (Case C-882/19), EU:C:2021:800

The Dow Chemical Company v Commission (Case C-179/12 P), EU:C:2013:605

The Goldman Sachs Group v Commission (Case C-595/18 P), EU:C:2021:73

T-Mobile Netherlands and Others (Case C-8/08), EU:C:2009:343

Toshiba Corporation v Commission (Case C-623/15 P), EU:C:2017:21

Universal Music International Holding BV v Michael Tétreault Schilling and Others (Case C-12/15), EU:C:2016:449

Viho Europe BV v Commission of the European Communities (Case C-73/95 P), EU:C:1996:405

Wouters v Algemene Raad van de Nederlandse Orde van Advocaten (Case C-309/99), EU:C:2002:98

General Court

1. garantovaná a.s. v Commission (Case T-392/09), EU:T:2012:674

Alliance One International (Case T-24/05), EU:T:2010:453

Alstom v Commission (Case T-517/09) EU:T:2014:999

Arkema v Commission (Case T-168/05), EU:T:2009:367

Avebe v Commission (Case T-314/01) EU:T:2006:266

Baustahlgewebe GmbH v Commission (Case T-145/89), EU:T:1995:66

Bolloré and Others v Commission (Case T-109/02), EU:T:2007:115

Clearstream v Commission (Case T-301/04), EU:T:2009:317

Commission v Stichting Administratiekantoor Portielje (Case T-208/08), EU:T:2011:287

Consiglio Nazionale degli Spedizionieri Doganali v Commission (Case T-513/93), EU:T:2000:91

Deutsche Telekom v Commission (Case T-827/14), EU:T:2018:930

Dow Chemical v Commission (Case T-77/08), EU:T:2012:47

Eni v Commission (Case T-39/07), EU:T:2011:356

Federación Nacional de Empresas de Instrumentación Científica, Médica, Técnica y Dental v Commission (Case T-319/99), EU:T:2003:50

FLS Plast A/S v Commission (Case T-64/06), EU:T:2012:102

Fresh Del Monte Produce v Commission (Case T-587/08), EU:T:2013:129

Fuji Electric Co. Ltd v Commission (Case T-132/07), EU:T:2011:344

GlaxoSmithKline Services v Commission (Case T-168/01), EU:T:2006:265

Jungbunzlauer AG v Commission (Case T-43/10), EU:T:2006:270

L'Air liquide v Commission (Case T-185/06), EU:T:2011:27

NEC Corporation v Commission (Case T-341/18), EU:T:2021:634

NV Koninklijke KNP BT v Commission (Case T-309/94), EU:T:1998:91

Raiffeisen Zentralbank Österreich v Commission (Joined cases T-259/02 to T-264/02 and T-271/02) EU:T:2006:396

RENV Parker Hannifin Manufacturing and Parker-Hannifin v Commission (Case T-146/09), EU:T:2016:411

Shell International Chemical Company Ltd v Commission (Case T-11/89), EU:T:1992:33

Shell Petroleum and Others v Commission (Case T-343/06), EU:T:2012:478

Siderúrgica Aristrain Madrid SL v Commission (Case T-156/94), EU:T:2004:261

Società Italiana Vetro SpA and Others v Commission (Joined cases T-68/89, T-77/89 and T-78/89) EU:T:1992:38

The Goldman Sachs Group v Commission (Case T-419/14), EU:T:2018:445

Tréfileurope Sales SARL v Commission (Case T-141/89), EU:T:1995:62

Van den Bergh Foods v Commission (Case T-65/98), EU:T:2003:281

Advocate General Opinions

Akzo Nobel, Opinion of Advocate General Kokott (Case C-97/08 P), EU:C:2009:262

Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie (Case C-67/96), Opinion of Advocate General Jacobs, EU:C:1999:28

Cassa di Risparmio di Firenze and Others Case (Case C-222/04), Opinion of Advocate General Jacobs, EU:C:2005:655

*Electricity and Water Authority/Smurfit (*Joined Cases C-672/23 and C-673/23), Opinion of Advocate General Kokott, EU:C:2025:243

*GlaxoSmithKline Services and Others v Commission and Others (*Case C-501/06 P), Opinion of Advocate General Trstenjak, EU:C:2009:409

Sumal, Opinion of Advocate General Pitruzzella (Case C-882/19), EU:C:2021:293

Commission Decisions

Calcium carbide and magnesium based reagents for the steel and gas industries (Case COMP/39.396), Commission Decision C(2009) 5791, 2009, OJ C301/18

Trucks, (Case AT.39824), Commission Decision C(2016) 4673, 2016, OJ C108/6