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In recent years, cartel infringements have led to fines and damage claims by injured parties running into billions. In view of that, the question of liability is of great significance. In European competition law, the undertaking is subject to both prohibitions of certain conduct (arts 101 et seq. TFEU) as well as sanctions for infringements of these prohibitions (art.23 of Regulation 1/2003). Article 1 para.1 of the Cartel Damages Directive (Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions (2014/104/EU)) also addresses the undertaking when imposing liability for damages. The Competition Appeal Tribunal ruled in its *MasterCard* decision that liability for damages extends to all legal entities that have exercised a decisive influence over the infringing persons, applying the notion of "undertaking" as developed by the ECJ. Furthermore, several other Member States of the EU have endorsed group liability or at least parental liability on this basis, including France, Spain, Portugal and Austria. Recently, the European Court of Justice (ECJ) has held in its *Skanska* decision (C-724/17) that the notion of "undertaking" determines the persons liable, both for the purpose of imposition of fines and for the purpose of civil liability. Hence, the decisive factor regarding liability is the notion of "undertaking". According to settled case law of the ECJ, an undertaking encompasses every entity engaged in an economic activity, which may consist of several legally independent entities, provided that these independent entities form an economic unit. Within the scope of this economic unit, an innocent parent company is generally liable for the cartel infringements of its subsidiaries. Whether an innocent subsidiary is vice versa liable for its parent company or whether sister companies are liable for each other has not yet been examined in detail. This article aims to close this gap—also with a view to the recent referral of this question to the ECJ (Audiencia Provincial de Barcelona, s.15a, order of 24 October 2019, Rollo no.775/2019—*Sumal v Mercedes Benz Trucks España*). A close examination of the ECJ's reasoning regarding group liability reveals that group liability under competition law, i.e. the joint liability of the parent company and its subsidiaries, derives from the unity of action of the undertaking ("joint action triggers joint liability"). In this respect, the existence of a decisive influence is not relevant; the criterion of decisive influence merely serves to determine whether there is an economic unit. If there is an economic unit, this leads to joint liability amongst all the constituent entities of this economic unit. As a result, an innocent subsidiary is also liable for the parent company or sister companies if they belong to the same economic unit.

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Liability of sister companies and subsidiaries in European competition law 125

National courts keep reaching different conclusions on the issue of liability in the context of group companies. Based on an analysis of the ECJ's case law, this article lays out why not only the parent but also its subsidiaries, as well as sister companies, are liable for an infringement committed from within the very economic unit of which they form part.

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Directive 104/2014 introduced the rebuttable presumption that cartel infringements cause harm. This provision, potentially determinative for successful claims, is in fact quite indeterminate. Also, its heterogeneous transposition by the Member States gives rise to remarkable differences across the jurisdictions, resulting in various levels of claimants' protection, which undermines the primary purpose of harmonisation and may encourage forum shopping.

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Abuse of a dominant position in the digital economy in the EU and the US: the Big Four and the War of the Worlds 144

The aim of this article is to assess the latest competition enforcement developments in the EU and in the US concerning the Big Four tech companies: Google, Amazon, Facebook and Apple, in what concerns potential abuses of dominant position/monopolisation. By the end of our analysis we expect to have reached relevant conclusions on the optimal level of competition law enforcement in digital markets.

CHENYING ZHANG

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Along with the further development of China's antitrust enforcement, commitment is considered beneficial to the public interest. This article analyses the current principle, legal system and practice of China's antitrust commitment. The discussion is also about the conflict among leniency systems, punishment and reconciliation, and the criteria to application of commitment. Finally, this article suggests that the pre-announcement mechanism for suspension application and multi-party supervision mechanism should be added.

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