Dentons Newsletter

Europe's top court holds that damages arising from a parent company's infringement of European competition law can also be claimed against its subsidiary

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On October 6, 2021, the Grand Chamber of the of the Court of Justice of the European Union (CJEU) delivered its decision in Case C-882/19 Sumal SL v Mercedes Benz Trucks España, clarifying certain issues related to the imputability of anticompetitive conduct within a group of companies and the related private law consequences.

Summary of the Sumal case

In a 2016 decision, the European Commission (EC) found that Daimler AG had infringed a provision of European competition law prohibiting cartels (Article 101 TEFU) by entering into several agreements with other European manufacturers to increase truck prices between January 1997 and January 2011.

Between 1997 and 1999, Sumal SL purchased two trucks from Mercedes-Benz Trucks España (MBTE), a subsidiary of the Daimler group, whose parent company is Daimler AG. Following the Commission's 2016 decision, Sumal SL sued MBTE before the Spanish courts for damages for the aforementioned anticompetitive conduct. The Spanish court first dismissed the action on the ground that MBTE could not be a defendant because the Commission's decision only applied to Daimler AG, and therefore only that company could be held liable for the infringement in question.

Sumal SL appealed against this decision, and the Spanish court subsequently referred the matter to the CJEU for a preliminary ruling. In its reply the Grand Chamber of the CJEU clearly defined the general conditions under which damages for breach of European competition law by a parent company may be claimed against a subsidiary before a national court.

Imputability? In the case there is an "undertaking" and if there is a specific link between the economic activity of the subsidiary and the subject matter of the infringement

According to the CJEU, in order for damages to be successfully recovered from a subsidiary before a national court, the claimant must prove that when considering

1) the economic, organizational, and legal links that unite the parent and the subsidiary, and

2) the link between the subsidiary's economic activity and the subject matter of the parent company's unlawful conduct

the parent company and the subsidiary form a single economic unit, i.e. an undertaking within the meaning of European law. The CJEU's decision is thus another important building block in the doctrine of "undertaking" or rather, "single economic unit," which is applied as an autonomous concept under European competition law. In national legislation, it is often the case that assignability of liability for anticompetitive conduct (or unlawful conduct in general) is only possible in the relationship between the controlled and the controlling person, namely, towards the controlling person. According to the CJEU, however, in cases with a European dimension, EU rules prevail—the above conclusions are therefore applicable in cases with a European dimension regardless of the wording of national regulations.

Moreover, the CJEU also concluded that if, at the time of the dispute before the national court, there is already a Commission decision finding the parent company's conduct to be contrary to Article 101(1) TFEU, the subsidiary cannot successfully challenge the existence

of the anticompetitive conduct in question[1]. On the other hand, in the absence of the above-mentioned Commission decision, the subsidiary can challenge both the finding that it and the parent company form a single undertaking and the existence of the anticompetitive conduct itself.

We will keep you informed about legislative developments in this area. If you have any questions, please do not hesitate to contact us.

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[1] Under Article 16 of Council Regulation (EC) No 1/2003 of December 16, 2002 on the implementation of the rules on competition, national courts may not rule contrary to a decision adopted by the Commission.