

## CLIENT ALERT

### Landmark EU Judgment Extends Range of Entities Liable for Antitrust Damages

Mar.21.2019

**In a ruling on March 14, the European Court of Justice has held that liability in damages for violations of EU antitrust rules extends to all the legal entities making up the infringing undertaking. Undertaking is a broad EU law concept under which all companies within a corporate group – up to and including the ultimate parent – may be treated as one. This judgment will increase the range of companies that can be successfully sued for damages in Europe, and means that parent companies can be held liable for the damages caused by target entities that they have acquired and absorbed.**

The case relates to a cartel that took place in the Finnish asphalt market between 1994 and 2002. A number of the companies that participated in the cartel were acquired, during or after the cartel period. The acquirers liquidated the legal entities involved in the cartel and absorbed their assets and activities. The Finnish competition authority subsequently fined the acquirers, relying on the established principle of ‘economic continuity’ under EU fining rules – that if an infringing company ceases to exist and its activities have been acquired by another entity, liability for fines transfers to the acquirer.

The question referred to the Court of Justice was whether liability for damages should be treated in the same way. The Court ruled that, as a matter of EU law, it should. It reasoned as follows. The basis for the economic continuity principle is that fines are an integral part of the system of EU antitrust rules. If companies could escape fines simply through restructuring, sale or other legal/organisational changes, their effectiveness and deterrent effect would be undermined. Like fines, actions for damages are also an integral part of the EU antitrust enforcement system. In the course of its reasoning, the Court held that the concept of undertaking cannot have a different scope in the context of actions for damages than it does in the context of fines. As a result, national courts in the EU were bound to respect the economic continuity principle when assessing actions for damages.

It is interesting to note that the European Commission had argued that it was for national law – and therefore the courts of each Member State – to determine which entities are liable to compensate victims for the harm caused by antitrust infringements. The Court specifically referred to, and dismissed, the Commission’s reasoning, in a rare instance of an EU Court declining to follow the Commission on antitrust enforcement policy.

The judgment potentially has far-reaching consequences. First, it will increase the number of corporate entities – particularly larger parent entities – that claimants can target in damages actions. Courts in the Netherlands had, for example, already held that parent companies could not be sued in relation to cartels in which only their subsidiaries had been active – even where the parent formed part of the infringing entity for EU law purposes and had been fined by the European Commission on that basis. English courts have similarly been wary of adopting the full implications of the EU concept of undertaking to pierce the corporate veil. It will also increase the need for acquirers in M&A transactions to keep in mind the potentially hidden liabilities when buying and restructuring targets.

The full text of the judgment can be found [here](#).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Sean-Paul Brankin**

Partner – Brussels

Phone: +32.2.282.1830

Email: [sbrankin@crowell.com](mailto:sbrankin@crowell.com)

**Marieke Van Nieuwenborgh**

Associate – Brussels

Phone: +32.2.282.4083

Email: [mvannieuwenborgh@crowell.com](mailto:mvannieuwenborgh@crowell.com)