The corporate group and EU competition law

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Structure

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- Corporate group in EU competition law: the undertaking
- The undertaking: entities and/or enterprise?!
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Entities & Enterprise

- Entity
  - Boundaries
  - Corrections
    - Piercing the corporate veil, alter ego, instrumentality
Entities & Enterprise

• Enterprise
  o Boundaries
  
  o Corrections
    • “Piercing”?
Entities & Enterprise
Corporate group in EU competition law: the undertaking

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Corporate group in EU competition law: the undertaking

• “the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed”

  Höfner

• “Designating an economic unit even if in law that economic unit consists of several persons, natural or legal”

  Akzo
Corporate group in EU competition law: the undertaking

Applicability
101 – 102 TFEU

Imputability
Corporate group in EU competition law: the undertaking

- “the conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent, having regard in particular to the economic, organisational and legal links between those two legal entities.”

  Akzo
Undertaking: entities and/or enterprise?!

- In such a situation, since the parent company and its subsidiary form a single economic unit and therefore form a single undertaking for the purposes of Article 81 EC, the Commission may address a decision imposing fines to the parent company, without having to establish the personal involvement of the parent company in the infringement.

Alliance one
Undertaking: entities and/or enterprise

- Object or effect an impediment to competition (*Béguelin*)
- Alter ego (*Orkem, Metsa*)
- the instructions given to it by the parent,

... having regard in particular to the economic, organisational and legal links between those two legal entities
Undertaking: entities and/or enterprise

• “The Court of First Instance was wrong to rule [...] that it is possible to impute to a company all of the acts of a group even though that company has not been identified as the legal person at the head of that group with responsibility for coordinating the group's activities.

• The simple fact that the share capital of two separate commercial companies is held by the same person or the same family is insufficient, in itself, to establish that those two companies are an economic unit with the result that, under Community competition law, the actions of one company can be attributed to the other and that one can be held liable to pay a fine for the other.”

Siderurgica Aristrain
Undertaking: entities and/or enterprise

- One concept?

![Diagram]

- Applicability
- Imputability
Undertaking: entities and/or enterprise

• Cfr. “Companies that form part of the same ‘undertaking’ within the meaning of Article 101(1) are not considered to be competitors for the purposes of these guidelines. Article 101 only applies to agreements between independent undertakings. When a company exercises decisive influence over another company they form a single economic entity and, hence, are part of the same undertaking. The same is true for sister companies, that is to say, companies over which decisive influence is exercised by the same parent company. They are consequently not considered to be competitors even if they are both active on the same relevant product and geographic markets”. Guidelines on the applicability of art. 101 TFEU
Concluding remarks

Applicability
101 – 102 TFEU

Imputability