

# Parent companies may pay for subsidiary's time-barred wrongs

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It should be no surprise to companies that they may be held liable for their subsidiaries' cartel wrongdoings. However, what is probably not on every company's radar is that the parent company is deemed personally liable, even if its liability merely derives from its subsidiary's liability. As a result, a parent company may remain liable for its subsidiary's unlawful cartel conduct, even if the limitation period has expired for the subsidiary, because the parent company is considered to have committed the cartel infringement itself. Companies should therefore keep in mind that their liability for a subsidiary's unlawful cartel conduct may have an even bigger impact than expected. All the more reason to have an effective compliance programme in place at all levels of the company organisation to mitigate the risk of liability for subsidiaries' anti-competitive conduct.

In 2009, the Commission imposed a fine on Akzo Nobel and a number of its subsidiaries for their participation in a [heat stabiliser cartel](#). In its fining decision, the Commission distinguished between three separate infringement periods: (i) before 1993, (ii) from 1993 to 1998, and (iii) from 1998 to 2000. Akzo Nobel, as the parent company, was held liable for the entire infringement period. Its subsidiaries were held liable for those infringement periods during which they were directly involved in the cartel.

In 2015, the [General Court](#) annulled the Commission's decision for the fines imposed on two of Akzo Nobel's subsidiaries for the first infringement period because the limitation period had expired. However, according to the General Court, this did not affect Akzo Nobel's liability as a parent company. On appeal before the [ECJ](#), Akzo Nobel argued that the annulment of the fines imposed on its two subsidiaries for the first infringement period should have led to the annulment of the fine imposed on Akzo Nobel, since that fine was imposed only because of its subsidiaries' direct participation in the infringements. Akzo Nobel's liability therefore derived solely from the liability of its subsidiaries.

The ECJ did not agree with Akzo Nobel's argument. According to [settled EU case law](#), a subsidiary's conduct may be imputed to a parent company where that subsidiary is a separate legal entity that does not independently decide on its own market conduct, but carries out the instructions given to it by the parent. In such a situation, the parent company and its subsidiary form a single economic unit and therefore constitute a single undertaking for the purposes of EU competition law. As a result, the parent company to which the subsidiary's unlawful conduct is attributed is held individually liable for the infringement and is deemed to have itself infringed the competition rules. For Akzo Nobel, this meant that its subsidiaries' cartel conduct during the first infringement period should be regarded as having been carried

out by Akzo Nobel itself. In addition, Akzo Nobel, as parent company, was involved in the cartel beyond the first infringement period, because it had been held liable for the entire infringement period. The ECJ concluded that the fact that the Commission's power to impose penalties on Akzo Nobel's subsidiaries was time-barred did not preclude Akzo Nobel from being held liable in respect of the first infringement period, particularly since the limitation period had only expired in relation to the subsidiaries, but not in relation to the parent.