

# A subsidiary's disobedience no reason to let parent company off the hook

July 13, 2016

According to settled case law, there is a rebuttable presumption that a parent company exercises decisive influence over its wholly-owned subsidiary and can be held responsible for the subsidiary's cartel conduct. Two recent rulings clarify that a disobedient subsidiary going against its parent's instructions is not sufficient proof to rebut this presumption. We advise parent companies to prevent anti-competitive conduct by their subsidiaries at all costs, for instance, by closely monitoring their actions and implementing compliance programmes.

In their appeal against a fine [imposed](#) by the European Commission for participation in a calcium and magnesium reagents cartel, chemical makers *Evonik Degussa* and *AlzChem* argued that they could not be held responsible for the anti-competitive actions of their wholly-owned subsidiary, because the subsidiary had acted in *blatant disregard* of its parents' explicit instructions. The EU Court of Justice [ruled](#) that the fact that a subsidiary does not comply with an instruction given by its parent company is not sufficient, by itself, to establish the absence of actual exercise of decisive influence by the parent over the subsidiary. According to the ECJ, it is not necessary for the subsidiary to carry out all the parent company's instructions to demonstrate decisive influence. Only when the failure to carry out those instructions is the norm could this lead to rebutting the presumption of decisive influence.

Similarly, a parent company that is unaware of its wholly-owned subsidiary's actions against the parent company's internal code of conduct is insufficient proof for rebutting this presumption. The Rotterdam [District Court](#) ruled that this did not result in a shift of the burden of proof away from the presumption of innocence, since the burden of proof for the cartel infringement and the subsidiary's guilt rested with, and was established by, the Authority for Markets and Consumers. According to the district court, the presumption of innocence does not come into play when establishing whether the subsidiary's violation can be attributed to the parent company.

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