



Parent companies are liable for their subsidiaries when they exercise decisive influence over their conduct

Judgement of the Court of Justice of the European Union of 27 of January of 2021, Case C-595/18 Goldman Sachs

In this judgement, the Court of Justice of the European Union (CJEU) confirms the responsibility of a parent company for the participation of its subsidiary in a cartel constituting a single and continuous infringement of Article 101 TFEU in the submarine and underground power cables sector. The company was the indirect parent, it owned the subsidiary through an investment fund and other intermediate companies.

Decisive influence and indirect holdings

According to the doctrine of the CJEU, when it comes to deciding whether a parent company should be liable for infringements of competition law of a subsidiary, the essential thing is to determine whether the parent company effectively exercises a determining influence on its subsidiary or not.

If the parent company holds all or almost all the capital of the subsidiary, it is presumed that the parent company exercises said decisive influence. In the present case, the Court argues that it is not relevant that the ownership of the shares of the subsidiary is held through intermediate investment vehicles in which the parent company does not hold the majority. If the parent company, through whatever corporate structure, controls all voting rights associated with the subsidiary's shares, the presumption of actual exercise of decisive influence can be applied. The existence of these links is sufficient to presume the decisive influence, without the need for the Commission to provide additional evidence.

At this point, the parent company can rebut the presumption. For this, and in order to be exempted from liability for the actions of the subsidiary, the parent company must prove that the subsidiary operates autonomously in the market; and that it is not limited to applying the instructions given by the parent company.

De facto decisive influence

In cases like this one, in which it may be difficult to prove that the parent company controls the voting rights of the subsidiary, the Commission could also prove the existence of determining influence through other means; for example, proving that the parent company is able to determine the subsidiary's economic and commercial strategy. In this area, it will be especially important to jointly analyse the economic, organizational, and legal links that tie both entities. This is what, according to the CJEU, makes it possible to take account of the economic reality. In addition, according to the judgement, the existence of an economic unit constituted by the parent company and its subsidiary may arise not only from the formal relationships between them, but also informally, especially as a result of simple personal links existing between the members of the companies.

The judgment also recalls that in these cases an overall assessment of the situation is necessary, and that the effective exercise of decisive influence may be inferred from a body of consistent evidence, even if some of that evidence, taken in isolation, is insufficient to establish the existence of such influence.