European Court of Justice: Liability for damages follows the economic activity

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In a Finnish cartel case, the Court of Justice has established that the purchaser of a company may be held liable for damages for breach of the competition rules if the acquired undertaking is found to have participated in a cartel prior to the transaction, even if the purchaser was not involved directly in the violation.

Judgment of the Court of 14 March 2019 in case C-724/17 – Vantaan kaupunki versus Skanska Industrial Solutions and others

By senior intern Anders Petersen

Background

The case involved a cartel on the Finnish asphalt market in the period from 1994 to 2002. Some of the cartel companies were subsequently wound up following a voluntary insolvency, and their business activities were continued by their parent companies. In 2009, a number of the participating companies were fined for having breached the prohibition of anti-competitive agreements. Among these companies were some of the parent companies that had taken over activities from the liquidated cartel participants.
Following the judgment, the Finnish city Vantaa, which had suffered a loss because it had contracted with the cartel companies, brought an action for damages against the companies, claiming compensation. The parent companies that had taken over the cartel participants’ business activities denied liability, however, arguing that the cartel participants were independent legal entities. The decision was appealed to the Finnish supreme court, which referred it to the European Court of Justice for a preliminary ruling. The question was whether a company that has taken over business activities from a cartel participant can be held liable for harm caused by the cartel.

The Court’s decision

According to the Court of Justice, the question should be decided under EU rules – not national rules – since “undertaking” is an EU law concept within the meaning of Article 101 TFEU.

The Court further held that the “concept of undertaking” is to be interpreted in the same way in private actions for damages and in public enforcement proceedings.

In these circumstances, the Court found, in accordance with its established case law, that the concept of “undertaking” involves an assessment as to whether the companies belong to the same economic entity. It means that liability for breach of the competition rules can attach to the economic activity of the business. Consequently, a company that takes over a business activity can be held liable notwithstanding any restructuring whereby the legal entity has been effectively dissolved.

Thus, the Court confirmed in its landmark decision that the principle of successor liability also applies in civil actions for damages.
Implications of the judgment

The Court’s decision may have far-reaching consequences for purchasers of businesses. In future, a company that acquires another company can be held liable for the target company’s competition law breaches even if the purchaser has never known about or been directly involved in the breach. This applies also where the purchaser only takes over the target company’s assets.

The judgement makes it clear that compensation for breach of the competition rules is not only a national matter, but may be influenced by EU law as well.

Read the judgment.