

## Parental Liability For the Conduct of A Subsidiary

Article By:

Teresa Charatjan

Hans Urlus

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On Sept. 3, 2014, the Commission announced that it fined four smart card chip producers a total of EUR 138 million (\$210 million) for breaching article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA) through a number of bilateral contacts during a two year period in which they discussed prices, price trends, and production capacity.<sup>1</sup> The Commission found that the contacts affected the parties' responses to customer requests to lower prices.<sup>2</sup> According to the Commission, the contacts reduced uncertainty as to each party's behavior in the market and therefore violated article 101.

A cartel member that had revealed the existence of the cartel to the Commission was rewarded with full immunity from the imposed fine pursuant to the Commission's Leniency Notice.<sup>3</sup> However, even though one of the parties had divested its smart card chips subsidiary after the infringement period, the Commission nevertheless held the parent company liable. By doing so, the Commission once again underlined the principle that a leniency application by the acquirer of a business can immunize the infringer (and its new parent), but it does not shelter the former parent from its parental liability for the infringement.<sup>4</sup>

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<sup>1</sup> European Commission press release Sept. 3, 2014.

<sup>2</sup> Commission Decision of Sept. 3, 2014 Case AT.39574 Smart Card Chips, not yet public [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39574/39574\\_2237\\_5.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/39574/39574_2237_5.pdf).

<sup>3</sup> Commission notice of Dec. 8, 2006 on immunity from fines and reduction of fines in cartel cases OJ C 298.

<sup>4</sup> See also the decision of the Dutch Court of Justice Arnhem-Leeuwarden of Sept. 2, 2014 ECLI:NL:GHARL:2014:6766.

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