



# CJEU rules on economic succession in the Finnish asphalt cartel case



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In October 2016, the Appeal Court of Helsinki, altering the judgment of the Helsinki District Court, held that certain companies which had acquired the business or equity of asphalt cartel companies after an infringement had taken place were not liable for damages towards the claimants. The Appeal Court argued that the EU competition law principle of economic succession, which applies to administrative fines, is not applicable in private enforcement and that liability for damages is a matter that has to be examined under national law. The Appeal Court concluded that under national law there are no rules that would establish liability based on economic succession alone.

The tides have now turned. On March 14, 2019, in C-724/17, responding to the request for a preliminary ruling from the Supreme Court of Finland, the CJEU ruled that:

“Article 101 TFEU must be interpreted as meaning that, in a case such as that in the main proceedings, in which all the shares in the companies which participated in a cartel prohibited by that article were acquired by other companies which have dissolved the former companies and continued their commercial activities, the acquiring companies may be held liable for the damage caused by the cartel in question.”

With this decision, the CJEU continues to strengthen plaintiffs’ rights in antitrust damages matters. The ruling also suggests that the concept of “undertaking” may also be widely applied in follow-up antitrust damage claims. The CJEU argued that:

“The concept of ‘undertaking,’ within the meaning of Article 101 TFEU, which constitutes an autonomous concept of EU law, cannot have a different scope with regard to the imposition of fines by the Commission under Article

23(2) of Regulation No 1/2003 as compared with actions for damages for infringement of EU competition rules.”

This ruling will affect businesses’ ability to avoid liability through corporate restructuring and should also be noted in M&A transactions when assessing possible liabilities.

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