

**European Court of Justice Confirms Presumption of Parent Company Liability
for Subsidiaries' Antitrust Violations in *Akzo***

September 11, 2009

The European Court of Justice (ECJ) confirmed September 9, 2009, in *Akzo Nobel and Others v. Commission* (Case C-97/08 P), that parent companies are presumed to be liable for cartel violations committed by their wholly owned subsidiaries.

The case relates to the European Commission's 2004 decision imposing a fine of €20.99 million (at that time, \$26.24 million) on Akzo Nobel N.V. (Akzo Nobel), jointly and severally with four of its subsidiaries, for participating in a global vitamins (choline chloride) cartel. Akzo Nobel appealed the Commission's decision to the Court of First Instance (CFI). In its appeal, Akzo argued that the Commission failed to demonstrate that Akzo Nobel itself was involved in the cartel or that it exercised decisive influence over the commercial policy of its subsidiaries. The CFI rejected the appeal, finding that EU competition law looks at economic rather than legal entities. The CFI held that it was for Akzo Nobel to prove that the subsidiaries did not form part of the same "single economic entity" as Akzo Nobel. The ECJ upheld the CFI's decision in its entirety.

In its ruling, the ECJ confirmed that EU competition law presumptively disregards the corporate form when attributing liability. This is particularly significant because it confirms that the maximum exposure to fines that companies face for their subsidiaries' antitrust violations is likely to be determined by the worldwide revenues of the entire corporate group, not just the specific subsidiaries involved. The ECJ did not give any specific guidance on the circumstances under which a company would actually be able to demonstrate that a parent and its wholly owned subsidiary did not form part of a single economic entity. However, based on the ECJ's, the CFI's and the Commission's past practice in applying the single economic entity doctrine, it is likely that very few companies will be successful in rebutting liability.

For more information on any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

Brussels

Jonathan N.T. Uphoff

+32 2 507 7543

juphoff@morganlewis.com

Izzet M. Sinan

+32 2 507 7543

isinan@morganlewis.com

Frankfurt

Jürgen Beninca

+49 69 71 40 07 19

jbeninca@morganlewis.com

Paris

Jean Leygonie

+33 1 53 30 44 10

jleygonie@morganlewis.com

About Morgan, Lewis & Bockius LLP

Morgan Lewis is an international law firm with more than 1,400 lawyers in 22 offices located in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis, please visit www.morganlewis.com.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2009 Morgan, Lewis & Bockius LLP. All Rights Reserved.

