und Nr. 7 ff. der Schlussanträge der GA *Kokott* vom 3. März 2011.

[3] EuGH Slg. 2010, I-1255 *Car Trim GmbH ⁄. KeySafety Systems Srl*.

[4] Dazu bereits *Wittwer*, Gerichtsstand des Erfüllungsorts beim internationalen Versendungskauf, European Law Reporter 2010, 151 ff.; und *derselbe*, EuGH-Rechtsprechung zur EuGVVO 2009 und 2010, ZEuP 2011, 636 (637 ff.).

[5] In ihren Schlussanträgen vom 3. März 2011, Nr. 40 ff.

[6] EuGH Slg. 1997, I-911 *Mainschiffahrtsgenossenschaft ⁄. Les Gravières Rhénanes*. In diesem Fall lagen alle Anknüpfungspunkte (Beklagtensitz und tatsächliche Erfüllungsorte [Beladungen und Entladungen] des vercharterten Schiffes) in Frankreich, die deutsche Klägerin hat jedoch nach mündlichem Vertragsschluss mit einem kaufmännischen Bestätigungsschreiben «Erfüllungsort und Gerichtsstand ist Würzburg» nach autonomem deutschen Recht wirksam vereinbart. In dieser Entscheidung hat der Gerichtshof die Festlegung eines Erfüllungsorts, der keinen Zusammenhang mit dem wirklichen Vertragsgegenstand aufweist, als fiktiven Gerichtsstand qualifiziert, der den Formerfordernissen des Art. 17 EuGVÜ (nunmehr Art. 23 EuGVVO) genügen muss (Rn. 33 des Urteils).

[7] Siehe Nachweise in Fn. 12 ff.

[8] EuGH (Fn. 6), Rn. 35.

[9] Siehe dazu aus der Literatur *Czernich*, in: *Czernich/Tiefenthaler/Kodek*, Europäisches Gerichtsstands- und Vollstreckungsrecht, 3. Aufl. (2009), Rz. 21 ff. zu Art. 5; *Leible*, in: *Rauscher*, EuZPR/EuIPR, 2011, Rz. 44a zu Art. 5 Brüssel I-VO; *Nagel/Gottwald*, Internationales Zivilprozessrecht, 6. Aufl. (2007), § 3, Rz. 54; und *Simotta*, in: *Fasching/Konecny*, Zivilprozessgesetze, 2. Aufl., Band V/1, 2008, Rz. 99 ff. zu Art. 5 EuGVVO.

[10] Fn. 3.

[11] Dazu bereits *Wittwer* (Fn. 4).

[12] Etwa 8 Ob 83/05x, SZ 2005/128 (abrufbar unter www.ris.bka.gv.at/jus): «Es ist Czernich (Anm: siehe Fn. 9) darin beizupflichten, dass ein typisches Beispiel für eine derartige abstrakte Erfüllungsortsvereinbarung dann vorliegt, wenn die Parteien eines Kaufvertrags Lieferung an den Sitz des Käufers vereinbaren, die AGB des Verkäufers jedoch eine Erfüllungsortsvereinbarung zugunsten seines Sitzes beinhalten. Hier ist offensichtlich, dass die in den AGB enthaltene Erfüllungsortsvereinbarung nicht der Festlegung des Leistungsortes dient, weshalb ihr auch keine gerichtsstandsbegründende Wirkung zukommt. Genau dies trifft aber hier zu. Dass die Parteien die Lieferung nicht an den Sitz des Käufers, sondern des Übernehmers der Kaufpreisschuld vereinbart haben, ändert nichts am Charakter der «abstrakten Erfüllungsortsvereinbarung» und entfaltet daher mangels Einhaltung der für die Gerichtsstandsvereinbarung gemäss Art. 23 EuGVVO geltenden Formvorschriften auch keine gerichtsstandsbegründende Wirkung.»

[13] Siehe schon meine Andeutungen in den Nachweisen in Fn. 4.

[14] Beschluss vom 8.9.2009, 1 Ob 146/09s.

[15] OGH 14.9.2010, 1 Ob 137/10v. Der OGH argumentierte, die Einbeziehung der AGB sei nicht wirksam erfolgt. Nicht näher geprüft wurde dabei, was «frei Haus» überhaupt bedeutet, ob die Klausel tatsächlich einen Erfüllungsort festlegt, oder ob sie eine blosse Kosten- und Gefahrtragungsregel sei. Wenn nämlich «frei Haus» nach österreichischem Recht lediglich eine Kostentragungsregel beinhalten würde, wären der Erfüllungsort «Bad Leonfelden» zur Bestimmung des internationalen Gerichtsstandes unbedenklich (siehe auch ähnlich OLG München bei Fn. 16).

[16] Urteil vom 14.1.2009, 20 U 3863/08.

[17] Das OLG München argumentiert auch, es sei nicht ersichtlich, dass die Erfüllungsortsvereinbarung nicht allein dazu gedient hätte, verschleiernd einen bestimmten Gerichtsstand festzulegen und deshalb an Art. 23 EuGVVO zu messen wäre, zumal die Klägerin ihre Wünsche zum Gerichtsstand gleichfalls im Text der AGB offen gelegt habe.

[18] Urteil vom 22.4.2009, VIII ZR 156/07.

[19] Das LG Siegen (Urteil vom 7.3.2007, 8 O 250/06) hat etwa eine DDU-Bestimmungsort-Klausel als wirksame Erfüllungsortsvereinbarung qualifiziert.

[20] BGHZ 149, 113 = CISG-online 617.

II.

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Parental Liability for the Antitrust Infringements of Subsidiaries: A Rebuttable Presumption or Probatio Diabolica?

(Arkema SA ⁄. European Commission, ECJ (Second Chamber), Judgment of 29 September 2011, C-520/09 P; and Elf Aquitaine SA ⁄. European Commission, ECJ (Second Chamber), Judgment of 29 September 2011, C-521/09 P)

The ECJ judgments delivered in Arkema and Elf Aquitaine further develop the rules on application of the shareholding-based presumption which allows the Commission to impute to the parent companies liability for antitrust infringements committed by their subsidiaries. The ECJ reaffirms the rebuttable nature of the presumption and emphasises the need to conduct a detailed assessment of the parties' arguments presented for the rebuttal of the above presumption. It remains to be seen what evidence the parties will need to present in order to succeed in rebutting the presumption.

(1) Facts and Procedure

On 19 January 2005 the Commission issued its infringement ***Decision***[1] against Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Base Chemicals AB, Eka Chemicals AB, Akzo Nobel AB, Clariant AG, Clariant GmbH, Elf Aqui-

taine SA, Arkema SA (formerly known as Atofina SA), and Hoechst AG, which established that the specified undertakings participated in a ***single and continuous infringement of Article 101 TFEU*** (ex Article 81 EC) ***from at least 1 January 1984 to 7 May 1999*** on the market for monochloroacetic acid (MCAA). The anticompetitive practices of the cartelists consisted of allocating customers and volume quotas, concerted price increases, establishing a compensation mechanism to ensure the implementation of quotas, and the exchange of sales volumes and prices. Taking into account that ***Elf Aquitaine*** held ***98% of the shares in Arkema***, the Commission jointly fined the companies EUR 45 million. As Arkema had been the addressee of another Article 101 TFEU (ex Article 81 EC) decision,[2] it was given an additional fine of EUR 13,5 million.

On 25 April 2005, ***Arkema*** brought an ***action for the annulment*** of the Commission's Decision before the General Court (GC). It claimed *inter alia* that the Commission had failed to observe the rules governing imputability to a parent company of the practices of its subsidiary; that the principle of the subsidiary's legal and commercial independence had been infringed by the presumption of the parent company's decisive influence on the subsidiary's conduct; and that the principle of personal liability had been infringed.

The ***GC*** dismissed the claims.[3] The GC stated that earlier case-law[4] had established a ***rebuttable presumption*** that where the parent company owns 100% of the subsidiary, in the absence of sufficient evidence to the contrary, it can be presumed that the parent company exercises a ***decisive influence over the affiliate's commercial policy***.[5] The GC considered that «[i]n the context of a group of companies, a holding company that coordinates financial investments within the group is in a position to regroup shareholdings in various companies and has the function of ensuring that they are run as one, including by means of such budgetary control».[6]

Arkema ***appealed***. It argued that by defining the function of the holding company in this way the GC had, in fact, ***made the imputability presumption irrebutable*** because any attempt to prove that the subsidiary acted independently would run counter to the very function of the holding (parent company) as defined. In his ***Opinion***, Advocate General *Mengozzi* ***disagreed with Arkema*** and contended that «the function which the GC recognizes that a non-operational holding company has of running the group companies as one does not necessarily entail interference in the commercial policy of its subsidiaries».[7] According to the Advocate General, it will always be open to the parent company or its subsidiaries to rebut the presumption based on the controlling shareholding and to prove that the abovementioned function of the holding company was not actually exercised.[8] Following the GC's reasoning, «the parties concerned are not required to adduce direct and irrefutable evidence of the independence of the subsidiary's conduct on the market but only to submit evidence capable of demonstrating that independence ... Moreover, the fact that in the present case the applicant did not submit evidence to rebut the presumption of the absence of independence does not mean that that presumption cannot under any circumstances be rebutted».[9] AG *Mengozzi* noted that the GC had examined various pieces of evidence presented by Arkema, including Elf Aquitaine's status as a non-operational holding, the submission that Arkema had never implemented the reporting policy, that MCAA activity within the Elf Aquitaine group was minor and the fact that Arkema and its parent company operated in separate markets and did not supply the same customers. In the light of the above considerations AG *Mengozzi* advised the ECJ to dismiss Arkema's appeal.

On 27 April 2005 ***Elf Aquitaine*** lodged a ***parallel appeal against the Commission's Decision*** before the GC.[10] In support of its claim Elf Aquitaine contended that the contested Decision had been inadequately reasoned. Firstly, Elf Aquitaine submitted that the Commission had imputed liability for actions of the subsidiary on the sole basis of the 100% shareholding and without additional reasoning had found the documents providing an overview of business management insufficient to rebut the above presumption.[11] Secondly, Elf Aquitaine contended that there had been a failure to observe the rules governing imputability to a parent company arguing that the Commission did not have discretion to establish the burden of proof for imputability, but had to take into account the circumstances of each particular case.[12] Thirdly, Elf Aquitaine argued that there had been a violation of the principle of personal liability for competition law infringements.[13] Finally, Elf Aquitaine contended that there had been a breach of the principle of good administration by resorting to the shareholding presumption without conducting a detailed investigation into the facts of the present case[14].

The ***GC*** held that since almost all of Arkema's capital was owned by Elf Aquitaine, the Commission

could reasonably presume the lack of autonomy on the part of the subsidiary and it was ***for Elf Aquitaine to produce the evidence to the contrary***.[15] The GC held that the Commission was correct in dismissing the documents providing an overview of business management because they provided only a ***general image of the business management*** and were ***insufficient*** to rebut the above presumption.[16]

Elf Aquitaine ***appealed***. Although the Court's jurisprudence consistently stated that the shareholding presumption is a «simple» rebuttable presumption, Elf Aquitaine contended that the ***presumption had become absolute or irrebutable***. Elf Aquitaine argued that the fact that the shareholding alone was sufficient for applicability of the presumption;[17] that the GC's confirmation of the Commission's margin of discretion in imputing the liability for the subsidiary's conduct;[18] and the GC's assessment of the evidence presented by the applicant, all indicated that the presumption was in fact absolute.[19] In relation to the last condition Elf Aquitaine argued that by requiring the negative proof concerning the absence of the parent company's influence on the subsidiary's conduct the GC has created a sort of *probatio diabolica*, which was inconsistent with the effective judicial review and the right for access to justice. Elf Aquitaine also submitted that the GC has thus created an inadmissible inequality between the applicant, who had to satisfy this *probatio diabolica* and the Commission, which could make use of the imputability presumption and enjoyed the discretion whether to apply it or not. According the applicant the criteria laid down in *Akzo Nobel* including organisational, economic and legal links between the parent and its subsidiary[20] had to be viewed by the GC as a whole, rather than assessing each piece of evidence in isolation.

Addressing the applicant's arguments concerning the compatibility of the shareholding-based presumption with the principles of sufficient reasoning and impartial investigation ***AG Mengozzi*** considered that the argument that the use of a presumption was inconsistent with the requirements of an impartial investigation – by allowing the Commission not to search for additional evidence – would mean, in principle, the denial of the very admissibility of presumptions.[21] The AG *Mengozzi* recalled that the admissibility of the shareholding-based presumption has been repeatedly confirmed in the ECJ's jurisprudence.[22] As in *ICI*, the majority shareholding in a subsidiary provided the parent company the possibility to influence the conduct of the subsidiary and, in the absence of the evidence to the contrary, it was legitimate to assume that such influence was exercised, and that the subsidiary did not act independently.[23] It was also confirmed in *Stora* that the imputability of conduct was not based solely on the 100% shareholding, but a combination of this and the absence of the evidence that the subsidiary has acted independently.[24] AG *Mengozzi* concluded that a ***presumption*** remained ***admissible*** as long as it was possible ***in «reasonable limits»*** to submit the evidence to the contrary.[25] Hence, in AG *Mengozzi's* view, the GC has not established any standards of proof in this regard, but merely examined the evidence presented by the applicant and found it insufficient to rebut the presumption. In relation to the margin of discretion exercised by the Commission, AG *Mengozzi* noted that this discretion related solely to the Commission's decision whether to sanction the parent company for the actions of subsidiary where the conditions for imputability have already been met.

(2) **Judgment**

In its assessment of the rules applicable to the imputability of conduct the ECJ relied on its earlier case-law, where it had held that «where a parent company has a 100% shareholding in a subsidiary which has infringed the competition rules of the European Union, first, the parent company can exercise a decisive influence on the conduct of the subsidiary and, second, there is a rebuttable presumption that the parent company does in fact exercise such a decisive influence».[26] Therefore, «it is sufficient for the Commission to prove that the subsidiary is wholly owned by the parent company in order to presume that the parent company exercised a decisive influence over the commercial policy of the subsidiary».[27] The ECJ emphasised that the ***shareholding-based presumption*** was ***capable of being overturned*** and the GC's observation on the function of the holding company concerned primarily the ***merits of the evidence*** adduced by Arkema (that Elf Aquitaine was merely a non-operational holding company that rarely intervened in the management of its subsidiaries). In the ECJ's interpretation of the GC's reasoning, it was ***not sufficient to claim that the parent company was non-operational*** in order to rebut the presumption.[28] The ECJ therefore rejected Arkema's assertion that the GC had applied an irrebutable presumption.[29]

The ECJ also confirmed the admissibility of shareholding-based imputability presumption in its *Elf Aquitaine* judgment.[30] The ECJ noted that this pre-

sumption was based on the fact that, except in very exceptional circumstances, the parent company holding the whole of the subsidiary's capital can exercise a decisive influence on the subsidiary's conduct and that evidence that such influence was not effectively exercised can be best located within the companies against whom such presumption is invoked.[31] In line with AG *Mengozzi*'s Opinion, the ECJ rejected the applicant's assertion that the GC created a *probatio diabolica* and that the presumption was irrebutable. The ECJ held that the mere fact that an entity did not produce sufficient evidence to rebut it or that it might be difficult to produce such evidence could not lead to the conclusion that such presumption was absolute. This was especially so since the undertakings concerned were in the best position to locate such evidence.[32] Thus, once *prima facie* evidence allows the application of the imputability presumption, the Commission was under no obligation to produce any additional evidence showing the lack of autonomy on the part of the wholly-owned subsidiary.[33]

However, the ECJ disagreed with AG *Mengozzi* in assessing whether the Commission's reasoning was sufficient to meet its ***obligations to state reasons*** for its decision pursuant to Article 296 TFEU (ex Article 253 EC). In case of an infringement decision, the duty to state reasons would be satisfied if the addressees of that decision can comprehend the grounds for imputability.[34] The ECJ noted *inter alia* that in order to rebut the imputability presumption the applicant had adduced particular arguments related to the organisational, economic and legal links between Elf Aquitaine and Arkema. Under such circumstances the GC had to give particular attention as to whether the contested decision contained a detailed explanation as to whether the adduced arguments (that Elf Aquitaine was nothing more than a non-operational holding company; that Arkema's commercial conduct was not carried out pursuant to Elf Aquitaine's instructions; that Elf Aquitaine was not informed about Arkema's conduct on the relevant market; that Arkema was authorised to conclude contracts without prior authorisation of the parent company; that Arkema enjoyed financial autonomy from Elf Aquitaine; and that Arkema had always determined its legal strategy by itself)[35] were insufficient to rebut the imputability presumption.[36] The ***mere statement that such arguments were insufficient to rebut the presumption*** made it difficult, if not impossible, to determine whether the Commission found these arguments unconvincing or whether the Commission considered Elf Aquitaine's 98% shareholding in Arkema sufficient for imputability to apply regardless of arguments raised in rebuttal.[37] On that basis the ECJ concluded that the GC has committed an error in law by holding that the contested decision was in conformity with Article 296 TFEU.[38] The ECJ therefore ***annulled the GC's judgment*** and the part of the Commission's Decision imputing liability to Elf Aquitaine.

(3) **Comment**

The *Arkema* and *Elf Aquitaine* judgments have reaffirmed the admissibility of the imputability presumption based on a controlling shareholding. These cases ***reaffirm the rebuttable nature of the presumption*** and emphasise the need for the Commission to provide adequate reasoning so that the addressees are able to ascertain the reasons why certain evidence was considered insufficient for the rebuttal of the presumption. The Court made it clear that «all the relevant factors related to the economic, organisational, and legal links which exist between [the subsidiary] and the company in the same group which is considered to be responsible for the actions of that group» must be assessed on a ***case-by-case basis***.[39] In this sense, mere assumptions or negations without substantive assessment of the evidence adduced by the parties would be insufficient to explain the Commission's reasoning to the addressees of its decision. Moreover, it would not suffice to provide the Court with the adequate substance for judicial review.

In other words ***the Court has preserved the potential to rebut the presumption***, and the usage of presumptions in general.[40] *Arkema* and *Elf Aquitaine* have also preserved another, procedural function of the presumption: that it is the applicant that has to bear the burden of proof in making its case against an established presumption. While confirming the general admissibility of the shareholding-based presumption, the Court emphasised that once the parties have produced evidence aimed at demonstrating the absence of the decisive parental influence on the subsidiary's conduct, it was ***for the Commission to explain why such evidence would be insufficient*** to rebut the presumption.

It is notable that the ECJ's rulings in *Elf Aquitaine* and *Arkema* have ***followed the recent string of judgments delivered by the GC*** where the application of the presumption of parental liability was quashed by the Court on procedural grounds.[41] For instance, in *Grolsch* the GC held

that the Commission had failed to state the reasons why it considered that the subsidiary's conduct should be attributed to the parent company.[42] By failing to state the requisite *Akzo Nobel*'s «economic, organizational, and legal links» that would justify imputability of conduct, the Commission had effectively denied *Grolsch* the opportunity to rebut the presumption concerning the exercise of a decisive influence over its 100% subsidiary.[43] In *General Quimica* the ECJ provided an example of how the rebuttal arguments should be analysed by the Commission and the GC, although eventually reaching the same conclusion as the GC.[44] In another case, *Gosselin Group*, the applicants adduced evidence concerning internal decision-making within the group, which demonstrated that at the time of the infringement the parent company did not have the possibility of exercising a decisive influence over the subsidiary's commercial policies, which was viewed by the GC as sufficient to rebut the shareholding-based presumption.[45] While the admissibility of the shareholding-based presumption has been confirmed in these cases, the next step for the Commission and the Court will be the development of a coherent assessment practice as to what types of evidence can be brought in order to successfully rebut the imputability presumption.

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1 Commission Decision 2006/897/EC of 19 January 2005 (Case No C.37.773 – *MCAA*). See also *Christopher Mayock*, The European Commission fines members of the monochloroacetic acid cartel (Akzo, Atofina, Hoechst, Clariant), 19 January 2005, e-Competitions, No 36862.

2 Commission Decision 94/599/EC of 27 July 1994 (IV/31.865 – *PVC*).

3 GC of 30 September 2009, T-168/05 *Arkema SA ⁄ European Commission* («GC *Arkema* Judgment»).

4 ECJ of 25 October 1983, 107/82 *AEG-Telefunken ⁄ Commission*, para. 50; and ECJ of 16 November 2000, C-286/98 P *Stora Koppabergs Bergslags ⁄ Commission*, para. 29.

5 GC *Arkema* Judgment, paras. 67-69.

6 *Ibid*., para. 76.

7 Opinion of Advocate General *Mengozzi* of 17 February 2011, C-520/09 P *Arkema SA ⁄ Commission* («*Arkema* Opinion»), point 18.

8 *Ibid*., point 19.

9 *Ibid*., point 21, GC *Arkema* Judgment, para. 82.

10 GC of 30 September 2009, T-174/05 *Elf Aquitaine ⁄ Commission* («GC *Elf Aquitaine* Judgment»).

11 *Ibid*., paras. 73-78.

12 *Ibid*., paras. 101-104.

13 *Ibid*., paras. 178-183.

14 *Ibid*., paras. 200-202.

15 *Ibid*., para. 157.

16 *Ibid*., para. 159.

17 *Ibid*., paras. 86 and 150.

18 *Ibid*., para. 105.

19 *Ibid*., paras. 160-173.

20 ECJ of 10 September 2009, C-97/08 *Akzo Nobel and Others ⁄ Commission*, para. 65. See also *Frédérique Wenner/Bertus Van Barlingen*, The European Court of Justice confirms the European Commission's approach on parental liability (Akzo Nobel), 10 September 2009, e-Competitions, No 35012.

21 Opinion of Advocate General *Mengozzi* of 17 February 2011, C-521/09 P *Elf Aquitaine SA ⁄ Commission* («*Elf Aquitaine* Opinion»), point 25.

22 *Elf Equitaine* Opinion, point 56.

23 ECJ of 14 July 1972, 48/69 *Imperial Chemical Industries ⁄ Commission* («*Dyestuff Cartel*»), paras. 136-137.

24 ECJ of 16 November 2000, C-286/98 P *Stora Kopparbergs Bergslags ⁄ Commission*, para. 28.

25 *Elf Equitaine* Opinion, para. 62.

26 ECJ of 29 September 2011, C-520/09 P *Arkema SA ⁄ European Commission* («ECJ *Arkema* Judgment»), para. 40. ECJ of 25 October 1983, 107/82 *AEG-Telefunken ⁄ Commission*, para. 50; ECJ of 10 September 2009, C-97/08 P *Akzo Nobel and Others ⁄ Commission*, para. 60; and ECJ of 20 January 2011, C-90/09 P *General Química and Others ⁄ Commission*, para. 39.

27 ECJ *Arkema* Judgment, para. 41.

28 *Ibid*., para. 48.

29 *Ibid*., para. 50.

30 ECJ of 29 September 2011, C-521/09 P *Elf Aquitaine SA ⁄ European Commission*, («ECJ *Elf Aquitaine* Judgment»), para. 56.

31 *Ibid*., para. 60.

32 *Ibid*., paras. 66, 70.

33 *Ibid*., para. 80. See also ECJ of 10 September 2009, C-97/08 P *Akzo Nobel and Others ⁄ Commission*, para. 62.

34 *Ibid*., para. 152. See also ECJ of 2 October 2003, C-196/99 *Siderúrgica Aristrain Madrid SL ⁄ Commission*, paras. 93-101.

35 *Ibid*., para. 160.

36 *Ibid*., para. 167.

37 *Ibid*., para. 168.

38 *Ibid*., para. 170.

39 ECJ of 1 July 2010, C-407/08 P *Knauf Gips KG ⁄ Commission*, para. 100. See also *Alexandr Svetlicinii*, Who is To Blame? Liability of «Economic Units» for Infringements of EU Competition Law, ELR [2011] 52-56.

40 See generally *David Bailey*, Presumptions in EU competition law, ECLR [2010] 362-369.

41 GC of 16 June 2011, T-185/06 *L'air Liquide ⁄ Commission*; GC of 15 September 2011, T-234/07 *Koninklijke Grolsch NV ⁄ Commission*; GC of 16 June 2011, T-196/06 *Edison ⁄ Commission*; and GC of 16 June 2011, T-208/08 and T-209/08 *Gosselin Group NV and Stichting Administratiekantoor Portielje ⁄ Commission*.

42 GC of 15 September 2011, T-234/07 *Koninklijke Grolsch NV ⁄ Commission*, paras. 89-90 (on Commission Decision of 18 April 2007 relating to a proceeding under Article 81 EC (Case COMP/37.766 – *Dutch Beer market*)).

43 *Ibid*., para. 91.

44 ECJ of 20 January 2011, C-90/09 P *General Química SA ⁄ Commission*. See also *Michel Debroux*, Attributability: The CJEU rejects the GCEU's ruling for a lack of sufficient reasoning but rejects the appeal against the Commission's decision and confirms the presumption of liability of the holding company when it holds – even indirectly –100% of its subsidiary's capital, Concurrences No 35945 [2011] 94-95.

45 GC of 16 June 2011, T-208/08 and T-209/08 *Gosselin Group NV and Stichting Administratiekantoor Portielje ⁄ Commission*, paras. 53-59.