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Vicarious Liability in Groups of Companies and in Supply Chains – Is Competition Law Leading the Way?*

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ABSTRACT: The article discusses the concept of vicarious liability in the area of competition law. It argues that this concept is to some extent embedded in the concept of the undertaking under competition law with the consequence that parent companies – under certain conditions – can be held liable for competition law infringements committed by subsidiaries. The liability can be termed "vicarious" because it is imposed regardless of whether the parent company was involved in or ought to have had any knowledge of the competition law infringements committed by the subsidiary. Whereas such liability has until recently only been imposed for administrative fines, the Skanska decision changes this. Following this decision it must be assumed that parent companies can also be held vicariously liable for civil liability incurred by a subsidiary. It is pointed out that it is a separate question whether the Akzo-presumption rule, established with regard to the imposition of fines for competition law infringements, can also be applied in a pure civil liability case concerning parental liability. Next, the article discusses whether the results reached in the area of competition law can be transferred to other areas of the law. In this regard, the article analyses recent case law with regard to parental liability for workers' injuries and environmental damage and compares these areas of the law to competition law. Finally, the article discusses whether the concept of the undertaking can be extended to apply also in situations where companies are not tied by ownership but by contract. In this regard the article focuses on the (possibly) emerging concept of supply chain liability.

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