# Table of Contents

Foreword xv
Acknowledgements xvii
Introduction 1

## CHAPTER 1
The Single Economic Entity Doctrine as an Essential Criterion for the Application of Antitrust Law on a Corporate Group 5

### §1.01 Issue of Discussion 5

### §1.02 Problem Assignment: The Contested Facts of a ‘Single Economic Entity’ 8

[A] The ‘Group- or Concern Privilege’ under Article 101(1) TFEU 9

[B] The Determination of a ‘Single Economic Entity’ 11

[C] The Application of the Concept of a ‘Single Economic Entity’ for the Attribution of Liability 15

### §1.03 Terminological Determinations 21

[A] Affiliated Undertakings, Corporate Groups, Concerns 21

[B] Joint Ventures 23

[C] Topic Delineation 26

## CHAPTER 2
The Implementation of Article 101(1) TFEU on a Corporate Group of Companies: Practice of the Commission and the European Courts 29

### §2.01 The Intra Enterprise Doctrine or ‘Group Privilege’ as Original Basis for the Assumption of an ‘Economic Entity’ 34

[A] Initial Decisions Recognizing the Distinctiveness of Group-Intern Agreements 34

[1] The Primary Decision of ‘Christiani & Nielsen’ 34

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>[a]</td>
<td>The Kodak Case</td>
<td>36</td>
</tr>
<tr>
<td>[b]</td>
<td>Béguelin Import Co. v. S.A.G.L. Import Export</td>
<td>38</td>
</tr>
<tr>
<td>[c]</td>
<td>Centrafarm I &amp; II</td>
<td>39</td>
</tr>
<tr>
<td>[B]</td>
<td>Subsequent Adjudication Leading to the Current Position of Assessing Agreements between Affiliated Companies</td>
<td>41</td>
</tr>
<tr>
<td>[1]</td>
<td>The Classification of a ‘Single Economic Entity’</td>
<td>41</td>
</tr>
<tr>
<td>[a]</td>
<td>Hydrotherm Gerätebau GmbH v. Ing. Mario Andreoli</td>
<td>41</td>
</tr>
<tr>
<td>[b]</td>
<td>Corinne Bodson v. S.A. Pompes Funèbres des Régions Libérées</td>
<td>44</td>
</tr>
<tr>
<td>[i]</td>
<td>The Decision of Viho Constituting the Status Quo of European Case Law on Intra-group Agreements</td>
<td>45</td>
</tr>
<tr>
<td>§2.02</td>
<td>The Concept of a ‘Single Economic Entity’ and the Attribution of Antitrust Responsibility</td>
<td>50</td>
</tr>
<tr>
<td>[A]</td>
<td>The Employment of the Concept of a ‘Single Economic Entity’ for the Issue of Attributing Conduct between Companies of a Corporate Group</td>
<td>51</td>
</tr>
<tr>
<td>[1]</td>
<td>The Development of Attributing Liability in European Competition Law</td>
<td>51</td>
</tr>
<tr>
<td>[a]</td>
<td>Imperial Chemical Industries Ltd. and Others</td>
<td>51</td>
</tr>
<tr>
<td>[b]</td>
<td>Istituto Chemioterapico Italiano S.p.A. and Commercial Solvents</td>
<td>55</td>
</tr>
<tr>
<td>[a]</td>
<td>Ahmed Saeed Flugreisen &amp; Silver Line Reisebüro GmbH</td>
<td>58</td>
</tr>
<tr>
<td>[b]</td>
<td>Società Italiana Vetro SpA v. EC Commission</td>
<td>60</td>
</tr>
<tr>
<td>[1]</td>
<td>The ‘Belt and Braces’ Approach to Antitrust Liability</td>
<td>62</td>
</tr>
<tr>
<td>[a]</td>
<td>AEG-Telefunken v. EC Commission</td>
<td>62</td>
</tr>
<tr>
<td>[b]</td>
<td>Stora Kopparsberg Bergslag AB v. EC Commission</td>
<td>66</td>
</tr>
<tr>
<td>[c]</td>
<td>Assessment of the Stora-Decision in Subsequent European Practice</td>
<td>70</td>
</tr>
<tr>
<td>[i]</td>
<td>The Burden of Proving ‘Decisive Influence’</td>
<td>70</td>
</tr>
<tr>
<td>[ii]</td>
<td>The Ascertainment of the Correct Legal Entity in a Group of Companies</td>
<td>73</td>
</tr>
<tr>
<td>[iii]</td>
<td>The Assessment of Indicia Pointing to ‘Decisive Influence’</td>
<td>77</td>
</tr>
<tr>
<td>[d]</td>
<td>Assessment of European Practice Following ‘Stora’ under Principles of Corporate Law</td>
<td>81</td>
</tr>
</tbody>
</table>
Chapter 3
The ‘Single Economic Entity’ Doctrine: An Assessment of ‘Privileges and Responsibility’ in a Corporate Group

§3.01 The Classification of the ‘Single Economic Entity Doctrine’ 134

[A] Assessment of an ‘Economic Entity’ under the Facts of Article 101 TFEU 137


[a] Legal Personality as a Precondition of an ‘Undertaking’ 145

[b] The Requirement of an Autonomous ‘Entity’ with Legal Personality as an Addressee of Article 101(1) TFEU 146

[i] Independent Entities as Addressees of Article 101 TFEU 147

[ii] The Term ‘Undertaking’ in European Competition Law 148

[iii] The Danger of a Two-Tiered Definition of an Undertaking 150
[1] Assessment with Regard to Group-Intern Agreements 185
  [a] The Commission’s Approach 187
  [b] The Principle of Limited Liability 188
[B] The Relevant Factors for Determining ‘Control’ 190
  [1] Criteria Mentioned in European Case Law 191
[C] General Policy Considerations 195
  [2] The Upper Limit of Fines 196
  [3] Determining Liability under the Principle of Organizational Negligence 196

§3.04 The Assessment of ‘Joint Control’ 197

CHAPTER 4
Intermediate Result 203

CHAPTER 5
The Concept of Corporate Liability 205
§5.01 The Standard of ‘Legal Separation’ under Corporate Entity Law 205
  [B] The Standard of ‘Organizational Autonomy’ 209

§5.02 Employing the Standard for Attributing Liability in European Antitrust Law 210
  [A] The Consideration of Corporate Affiliations 210
    [1] Current Practice 211
    [2] The Court’s Role in Determining Antitrust Liability 212
    [3] Applying the Concept of Corporate Control under the ECMR 213
  [B] The Respective Business Areas in Which Parental ‘Control’ May Lead to the Assumption of an Actual Exertion of ‘Decisive Influence’ 214
    [1] The Case of a Single Legal Representation 215
    [3] Influence on the Operative or Personal Level 222
    [4] Intermediate Result 224
CHAPTER 6
An Assessment of Corporate Group Liability on the Basis of ‘Organizational Autonomy’

§6.01 The Consideration of Compliance Efforts under Current Procedural Standards of European Competition Law

[A] The Insufficient Identification of ‘Personal Liability’ in European Competition Law
[1] Intentional Conduct
[2] Negligent Conduct

[B] The Significance of ‘Corporate Compliance Measures’ in Setting Fines on ‘Controlling’ Companies
[1] The Preventive Value and Efficiency of Antitrust Compliance Programs
[a] The Standard of Intent or Negligence
[b] The Aspect of Prevention
[c] Dogmatic Inconsistency towards Leniency
[a] The Commission’s Burden of Proof
[b] The Duty to Review another Company’s Conduct
[c] Reversal of the Burden of Proof for Compliance Programs
[4] Résumé

§6.02 The Consideration of Compliance Measures: A Harmonization of Antitrust Jurisdictions

[A] The Extension of Jurisdiction in Antitrust Matters and the Principles of International Law
[4] Restraints of Extraterritorial Jurisdiction under Considerations of International Law

[B] The Extraterritorial Application of European Competition Law
[1] The ECJ’s Wood Pulp Decision

[C] The Consideration of Compliance Measures under the Aspect of ‘Positive Comity’
Different Substantive Approaches to Parental Liability:
Comparison to U.S. Practice 262
[a] Approach under Common Law 262
[b] The Implications on an International Level 263
[c] Applying the FTAIA 264

The Reference to ‘Best-Practice-Compliance’
for Internationally Active Corporate Groups 265

 Résumé 267

CHAPTER 7
Conclusion 269

Index 273