

## **Holding Company Liability for Subsidiary Company – A Critical Analysis under UK Companies Act 2006.**

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**Abstract:** *It is a common palace of commercial life today that businesses are conduct not only in the form of a single private or public company, but also in the form of a group of companies consisting of a holding company (which may often be a listed public company) and a number of usually wholly owned subsidiaries and possibly sub-subsidiaries. Nowadays the group from may be employed at quite a small level of private business for tax or other reasons. As with larger groups of companies, different branches of the business or different properties will be located in each subsidiary. It may be convenient for different parts of business to be managed by separate but connected companies. There is in practice a presumption of direction of the wholly-owned subsidiary by its parent company. Because of this direction, the parent company is often fined for the illicit behaviour of the subsidiary. But the presumption of direction can be rebutted and the parent company can deny its liability, proving the independence of the subsidiary.*

*This research work for:*

*To set out some of the arguments and provide links to academic and other material that can shed light on the debate, notably proprietary research that examines the holding companies liability to subsidiary company, from a regulatory and corporate governance perspective under the Companies Act 2006.*

**Key Words:** *Holding Company, Subsidiary Company, Antitrust Violations, Liability for Debts, Agency Relationship*

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### **I. Introduction**

The European competition law has two basic prohibitions: the anti-competitive agreements between two or more undertakings and abuse of position dominant individual or collective (which may occur both in the case of unilateral conduct both respect of agreements concluded by the dominant party). The rules of liability with regards to European competition law only apply where trade between member states are affected significantly, but since the national law applies even in the absence of cross-border effects, we must always be in line with legislation applicable, even when the agreements involving members of a single state or unique to a state or region (Wymeersch, 1994, 25). The violation of European competition law and national level can lead to fines, liability for damages in some states and even criminal liability. The parent firms are required to comply with these guidelines. The liability arising from a breach of competition law can be objective - a member of the association may be held responsible for the violation committed by the rest of the association.

The companies with the economic power to act independently and to set prices without regard the demands of consumers or suppliers, or competitive pressures have a particular obligation not restricting competition and not to exploit their customers (Wooldridge, 1981, 81). The domain is essentially the power to set a high price, which is presumed if the company is the dominant share of supply and application (usually 40% or more). In the medical field, the companies were considered dominant in small markets and then the members should ensure that they are aware of the products or services in relation to which might be considered dominant.

Although individual members may not be in a dominant position, the members of the association business may be considered collectively dominant in a specific market their products if four or less make up a significant portion (as perhaps around 80%) of the offer and are in contact with each other through the association. In an oligopolistic market, such parallel conduct that restricts competition or exploits customers may be considered abusive even if there is no evidence of active collusion (Whish, 2003, 23). At the time of the conduct of a dominant undertaking has a purpose or an anticompetitive effect without objective justification, it may result in penalties and civil liability.

### **II. Holding Company Liability For Antitrust Violations Of Their Subsidiaries**

The aggressive enforcement of antitrust prohibitions laid down in the way of tort claims nature has so far acquired only a minor role in the EU. The ECJ's jurisprudence and the initiatives of the European Commission have brought this issue to the forefront. Since anti-competitive business practices mostly have a

transnational character, the issues of court jurisdiction and applicable law gain significantly in importance. Under reference to the developments in the United Kingdom analysed the work of conflicts of law outlines of private antitrust enforcement in the EU (Pinto, 1998, 41).

The EU's antitrust rules can the antitrust violation of a subsidiary of the parent company be attributed, under certain circumstances, because the subsidiary despite its own legal personality, their behaviour does not decide independently on the market, but carries essentially transfers the parent company. The parent is then (co-) recipient of a penalty decision by the EU Commission and shall be liable jointly and severally liable for fines of up to hundreds of millions. According to settled case law of European courts, the liability of the parent company at 100%-owned subsidiaries (and possibly even for investments below 100%) is suspected. The presumption covers both the presumption that the parent can exercise a decisive influence on the other hand, the assumption that they actually exert this influence (Noack, 1998, 100). The EU Commission must first show that in these cases only that a 100% interest exists.

Although this far-reaching rebuttable presumption of liability by the jurisdiction that was not yet clear how they could be refuted. The case law tended in the past to a broad interpretation of the group liability. In some new judgments of the European courts, the almost boundless presumption of liability is now some of the procedural and substantive barriers have been drawn.

Only proven commercial and operational autonomy of the subsidiary "save" from the parent full responsibility for antitrust violations. For the EU court takes the concept of relevance as a unique group of companies "an economic unit, even if, legally, that economic unit consists of several persons, natural or legal persons" for which liability is undivided between parent and controlled if it "does not decide independently upon its own conduct on the market, but carries out, in essence, the instructions given to it by the parent company, particularly in the light of economic links, which link the organisational and legal two legal entities (Miller, 1997, 38). For the European courts, it would suffice, the parent-in-chief, the ownership of 100% of the subaltern as "there is a rebuttable presumption that such parent company in fact, exercises a decisive influence on the conduct of its subsidiary so that the two companies constitute a single undertaking pursuant to article 81 of the Treaty.

### **III. Holding Company Liability For Debts Of Its Subsidiaries**

The doctrinal debate focuses on the regulation of groups, in particular, the issue of conflict of paying debts between parent companies and subsidiaries (or external partners of the latter). On the subject can identify three main interpretative recommendations. The first says that the prevalence of the interest group, which denies the second and last, the median, which attempts to reconcile the conflicting needs of the group and individual subsidiaries. According to the first approach, which emphasises the unity of the firm even if exercised in the form of corporate mergers, the group policy involves the individual companies alike; the social interest thus coincides with the interests of the group (Finch, 2002, 56). The second approach, often followed by the case law, considers the legal autonomy and equity individual company basis for the claim - and solving - conflict of interest. It accordingly, the subsidiary must be able to protect the interests of minority shareholders and creditors, preventing misuse of corporate assets and the consequent impoverishment of society.

The interim guidance is needed for a fair balance of interests in a logical compensatory defined type: the interest of the group, therefore, can not a priori be considered extra-social and therefore, is not necessarily enough to generate a situation of conflict. In the discipline, mutual legal autonomy of the component companies of the group is to make one is not liable to third parties for the obligations of the other, not having followed the proposals shaping the responsibility of the parent company for the debts of the subsidiary using the technique adapted to as art. 2362 exceeded the personality of the screen (Elderson, 1999, 25). For its part, the case - even before the legislature to intervene with the industry standards groups companies - had affirmed the legitimacy of the unitary direction exercised by the parent company. As clarified by the Supreme Court, in principle, there are, in fact, legal impediments to the decisions taken at the level of the management body of the group are then implemented by organs of the individual Company.

Nevertheless, with regard to the relevance of the interest group, the logical unit may effect the individual transactions. In this regard, for example, the European Court ruled that the waiving of debts owed by holding company subsidiaries or presentation of guarantees for group companies is likely to be considered as free revocable license under this article 405 of the European Commission, subsequently, enhancing the profile inclusion in larger aggregation, case law has recognised the legitimacy of operations in pursuit of group interests, provided that the interest of the individual Society does not conflict with the group (Edwards, 1999, 71). In this sense, it was not considered legitimate performance of acts that result in the subsidiary for the sole participation in the risk of loss and not to and gains occur without compensation of any kind.

#### **IV. Holding Company Liability for Subsidiary Company In The Abuse Of Ec Competition Rules**

The penalties may be imposed in cases of violations of any provision of bottom of the Competition Act and in cases of breaches of procedure, such as mentioned in points iii) and iv), Section I, Chapter XI of the model law on competition. The European law on competition provides such sanctions in case of procedural communication of false or misleading information as part of a notification of merger, if disclosure of false, misleading or incomplete, or even for noncompliance with a court order requiring agreements to disclose information (Drury, 1991, 91). Under the European law on competition, a procedural penalty may be imposed on parties involved in a competition case or other persons involved in such proceedings, as well as those before clarify the facts of the case, if they engage in an act or behave in purpose of delay or to prevent the disclosure of facts, or having such effect.

Sanctions imposed on offenders for violating the provisions of background may be administrative, civil or criminal. Administrative sanctions - especially fines - are the most common form of punishment in cases of understanding. Some legal systems allow the imposition of offender's individual fines in addition to those liabilities, imposed on the undertaking on whose behalf they have acted (Dorresteijn, 1994, 56). The agreements are prohibited in the internal market under Article 81 of the Treaty of Rome. The term agreement is meant including any share of the market, setting production quotas or price agreement between companies to keep them artificially high. These different behaviours distort the market to the detriment of consumers and producers of other victims of these practices.

Free regime may, however, permit a certain type of cooperation that improves the distribution of products or provides technical progress in a particular industry. This is the case, for example, the treatment granted to distribution agreements and service of automobiles, or specialisation agreements, research and development, or the aerospace industry (Davies, 2003, 32). The European competition rules do not apply to downmarket public services (e.g. education, social protection), but only partially and, services of general economic interest (SGEI) such as telecommunications, transport gas, electricity, etc. However, the progressive opening of these sectors to competition does not herald the end of the provided services.

The EC Treaty specifically recognises that SGEIs among the shared values of the European Union (Article 16 TEC). They are also enshrined in the Charter of Fundamental Rights acquires a legal status with the Treaty of Lisbon. If Article 86 of the TEC provides that public companies must follow the rules of competition (§ 1), it specifies that undertakings entrusted with the operation of services of general economic interest (SGEI) are subject to competition rules "insofar as the application of these rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them" (§ 2) (Carrington, 1994, 10). Moreover, the introduction of competition in such areas is accompanied by definition and guarantee of universal service. Thus, if the EU rules to open postal services to competition by 2009, the latter accompanied by guarantees of accessibility and quality of services for all users.

#### **V. Agency Relationship**

Today's businesses must pay constant attention to the needs of the environment, which increasingly become more important social groups. Thus, the forms of management and governance are based on attention permanently to the different groups that influence and are influenced by the company (Bridgeford, 1997, 74). Thus, one can say that we are witnessing an era that is changing the conventional conception of the organisation as a result of increased sensitivity in individuals and in business to the ethical problems of the globalisation of the economy, increased international competition, and the greater influence of the media that have occurred in the last decades.

The agency theory looks at how formal and informal contracts by which one or more people called "the principal" responsible for another person called agent, the defence of their interests by delegating some power to her decision. However, spending demands on state and local governments continue to rise at a pace that outstrips the current inflation rate (Blumberg, 1990, 19). Without the statutory ability, for explicitly borrow funds is to close this seeming mismatch between current revenues, and ongoing expenses, elected officials and financial managers have often turned to "innovative" financing devices such as non-traditional bond refinancing to provide sizable upfront savings to help fund government services in the short-term.

In this policy environment, the elected official chooses an alternative policy option (debt refinancing with upfront savings structures) to meet his interests (i.e., lower principal and interest payments on the short term so as to avoid the possible electoral wrath of the public, associated with tax increases or spending cuts), at the expense of his principal's interests. This is further evidenced by the fact that some financial managers even reported the net present value savings of the transaction in the closing transcripts even though the basis mismatch inherent in synthetic fixed rate refunding ensured that this number could never be known at bond closing.

Thus, (Bentley, 1991, 81) describes the change from the conventional conception of the firm (traditional model) until the model current stakeholders. The first model considers the workers, suppliers and investors as inputs, in the organisation, become outputs that are available to customers. According to the model, long-term equilibrium indicates that those who receive the greatest benefit are the customers.

The biggest challenge for theoretical and business organisations today lies in devise and implements optimal institutional models of governance in companies with new government regulations, codes of conduct and institutional changes internal (Antunes, 2004, 47). For this, the importance of having strategic human resources adequate and effective systems of governance is evident, but hit the establishment of good government is no easy task, just as we reflected above. Several factors contribute to weakening the efficiency of government systems, occupying a prominent location conflict interest between owners (shareholders or partners) and drivers - executors.

## **VI. Critically Analysis**

The economic and legal literature on the principal-agent relationship between owner and manager has analysed efficiency properties of the contractual form used by an owner who hires a manager to perform tasks on its behalf. Mostly in the area of corporate control, this literature has emphasised the divergence of interests between owners and managers (Wymeersch, 1994, 26). The first branch of this literature has focused on the disutility of management effort. Models within this branch have analysed the efficiency properties of solutions that induce managers to implement the preferred project of the owner in the presence of moral hazard. The project to be implemented is well-defined. Choice of critical parameters defining the project lies exclusively in the hands of the principal and is exogenous. On the other hand, the manager is assumed to have sole authority over project implementation (Wooldridge, 1981, 82). The allocation of decision-making authority between owner and manager is simply not part of the analysis.

The second branch of the corporate control literature has also emphasised the divergence of interests driven by management moral hazard. Moral hazard in this second set of models stems not from aversion to the effort but from the tendency of managers to direct their efforts towards tasks that are not optimal for the owner (Whish, 2003, 24). Like the first branch of the corporate control literature, these models have focused on the design of incentives to direct management effort towards projects preferred by the owner. These models are closer in spirit to this paper's model in which projects differ in benefits to the corporate parent and the offspring management (Pinto, 1998, 42). Unlike this model, they are complete contracting models that specify management compensation as functions of either describable projects or observable outputs. Neither branch of the corporate control literature, however, can adequately explain tort law's differential treatment of corporate divisions and subsidiaries.

The locus of decision-making power over critical project parameters, however, plays a central role in the legal determination of parent tort liability (Miller, 1997, 39). The legal test for the imposition of such liability focuses on the extent of control exerted by the corporate parent over decisions defining the damage-causing project. The legal approach, therefore, implicitly treats control over project choice as endogenous to the corporate group. Corporate-parent liability for the torts of its subsidiary is not automatic. Rather, it depends on whether the choice of the tort-causing project implemented by subsidiary managers was either controlled or subject to a right of control by the corporate parent (Finch, 2002, 57). By contrast, a corporate parent is automatically liable for the torts of its division; control is assumed.

Section 82 of the Treaty prohibits the abuse of a dominant position by a company. When a company dominates a market, it may tend to take advantage of this situation to impose unfair conditions of sale: predatory pricing, exclusive sales agreements, loyalty rebates to divert the suppliers of their competitors (Elderson, 1999, 26). This is known as abuse of dominant position. The EC competition law does not sanction dominance as such but only their abuse. A concentration of companies is not prohibited in itself, unless it creates or strengthens a dominant position which may lead to abuse. We talk about concentration when several companies are merging to create a new company (merger) or when a company buys another (acquisition).

Originally, this control was not envisaged by the Treaty. The increase in business combinations within the common market (sometimes in order to escape antitrust) has required the intervention community. It has long remained informal. The Regulation No. 4064/89 of 21 December 1989 which laid the legal foundations was replaced in 2004 by Regulation No 139/2004. A common feature of modern business organisations is the separately incorporated subsidiary company of a corporate parent (Edwards, 1999, 72). Many of the economic underpinnings of the hierarchical relationship between a corporate parent and its subsidiary are amenable to analysis within a principal-agent framework. As the principal, a corporate parent is the investor-owner of the subsidiary corporation whose managers, in turn, are its agents.

The framework employed extends Aghion & Tirole's model, which develops a theory of separation between formal authority and real authority." I extend their model in two significant ways: first, I allow for choice from among more than two potentially viable projects; and second, I incorporate third-party liability into



the basic model to study the potential divergence between private optimality and social optimality (Drury, 1991, 92). The model follows an incomplete contracting approach, which accommodates notions of authority more satisfactorily than do complete contracting models. The contemporary practice also better reflects mechanisms used by corporations to delegate decision-making authority over project choice to managers without the use of contracts (Dorresteijn, 1994, 57). Expanding the means of allocating decision-making authority beyond asset ownership, this paper assumes that either an explicit or an implicit contract between a corporate parent and its managers can confer such authority. Indeed, this paper views the subsidiary form as a convenient and credible mechanism to delegate authority over project choice (Davies, 2003, 33). The paper's model, therefore, can be seen as lying somewhere between the moral hazard literature and the property rights literature.

Finally, the temptation to utilise a synthetic fixed rate bond refinancing structure may be strong for public financial managers since it provides elected officials the ability to increase spending, cut taxes, or painful spending cuts by providing the appearance of lower refinancing interest costs (compared to a traditional fixed rate refinancing). However, the future potential substantial basis mismatch as evidenced during the supreme mortgage crisis that impacted the municipal bond markets can reduce or eliminate future expected to refinance savings that state governments will rely on in their budgets (i.e., prospect of moral hazard).

Based on perceived abuses in the management of their debt programmes, several firms have recently reformed their bond finance practices by placing greater restrictions on the agency relationship and sale and management of government debt including practices related to debt refinancing (Carrington, 1994, 11). These statutory debt restrictions have presumably been put to ensure that public financial managers' actions (acting on behalf of elected officials) reflect the desires and policy goals of the public, which, in this case, are assumed to be the long-term cost efficient and effective management of a state debt. However, there is concern that these debt restrictions could ultimately undermine the principal's goals as they may unduly restrict public managers, leading to a less efficacious long-term debt management programme.

Because of these potential unintended consequences, it is essential to understand the degree and extent of the potential costs of these debt management reforms. These results seem to indicate that the common compensation scheme used for financial advisors may be providing perverse incentives. Since financial advisors are not compensated unless a transaction is executed, they may be an incentive to encourage state governments to utilise otherwise imprudent debt structures that appeal to the short-run interests of many elected officials (Bridgeford, 1997, 75). This finding provides empirical support for government issuers to utilise non-contingent financial advisory compensation schemes whereby, financial advisors are not paid by and from transactions but on a retainer basis regardless of the size and frequency of bond transactions.

Real control is the actual ability of a party to choose its preferred project from the set of feasible projects. Feasible projects comprise a subset of potential projects constrained by model restrictions. First, a party without formal authority has real control if it is informed but the other party is uninformed. Second, a party with formal authority has real control if it is informed; it is irrelevant whether the other party is informed. Real control, therefore, is a function of both the allocation of formal authority and the probabilities with which the parties are informed about project payoffs. Under both the division and subsidiary forms, either the corporate parent or managers of the corporate offspring may wield real control (Blumberg, 1990, 20). In short, formal authority is the right to control project choice and real authority is the actual power to choose a project. The allocation of formal authority and the extent of real authority are endogenous; they depend on the alignment of corporate parent and management project preferences.

Offspring managers, therefore, are not restricted to simply implementing the preferred project of the corporate parent. The corporate parent can choose whether to grant offspring management autonomy over project choice. After permitting such independence, I ask whether the legal test of control used to impose vicarious liability on a corporate parent for the torts of its offspring can help advance aggregate social welfare (Bentley, 1991, 82). The answer depends on whether there exist social welfare tradeoffs between the grant of autonomy to managers, which can foster additional management initiative, and the relinquishment of control by the corporate parent, which can impose greater harm to third parties.

The argument for vicarious corporate parent liability is that it induces the corporate parent to monitor and control offspring activities, thereby internalising to the parent offspring enterprise the social costs of the implemented project (Antunes, 2004, 48). Reduction in harm to third parties who have no contractual relationship to either the corporate parent or the corporate offspring is a clear benefit of encouraging greater corporate-parent control beyond the obvious costs of such control, including the cost of care, there may be an additional hidden social cost of reduced management initiative. Vicarious corporate parent liability could extinguish the formal authority and reduce the real authority of offspring managers, thereby reducing their innovative efforts. I identify conditions under which vicarious liability can reduce aggregate social welfare and evaluate the sensitivity of the legal test of control to such conditions.

## **VII. Concluding Remarks**

A recent example is the elevator cartel, imposed for the first EU-level fines of over € 900 million and then to the Austrian cartel of over €70 million - in each case by reference to the turnover of the entire group of affected elevator companies. The advanced antitrust liability also encourages the idea to take civil liability of the parent company for damages from an antitrust violation of the subsidiary (Wymeersch, 1994, 27). No wonder that more companies to defend themselves against the expansion of liability, among others, recognised the principle of separation of the spheres of individual companies, therefore, a "piercing the corporate veil" is possible only in exceptional cases.

Another approach is compliance programmes in subsidiaries, such as antitrust training. So try to parent companies argue that they have applied the necessary diligence to prevent violations of their daughters. Both approaches have been by the Commission but not yet accepted. In a recent decision, of the Court of the European Union (T-24/05 of 27 10th, 2010) but has now been actually abolished the attribution of liability to the Commission (in a case of common control) to a subsidiary (Wooldridge, 1981, 83). However, this was less a softening of the previous cases as confirmed. The Commission was not in this case, contrary to their own specification adequately tested whether the consolidated company had exercised specifically, a "decisive influence" on the anti-illegal trading company.

Liability over debt problems are part of the economic activity companies, regardless of their activity and the place where the conduct, can go through situations that are not capable of dealing with the payment obligations incurred as a result of the financing of their investment projects. Financial difficulties are directly related non-core funding, since its use increases the possibility that the company cannot meet the payment of their obligations, and has led to the establishment of mechanisms to provide themselves with legal certainty to such financial transactions. For a society, that enters bankruptcy proceedings are compounded difficulties in obtaining new funding, even if their prospects are not negative and its problems are of a temporary nature, so that, generally, have established different mechanisms that seek to regulate these types of situations and provide framework general actions for all parties involved in the financing of the business activity. Insolvency problems have been studied in the literature economic and financial, due to its impact on all developed countries (Whish, 2003, 25). It is therefore of interest to analyse the evolution of such situations in the past years as well as possible explanations for them. While this problematic when it arises, it tends to generalise, you cannot see as a uniform phenomenon, and it is necessary to deepen the differences between different countries.

Since 2003, a system of shared responsibility was introduced in European policy of competition. The European Commission has primary responsibility to ensure its proper operation: it has investigative powers, rules on corporate behaviour and sanctions for violations. As for the Member States, they have primary responsibility for the application of Community competition rules. In practice, this responsibility lies with national authorities responsible for competition (in UK, the role of the Competition Council) and national courts when they have to resolve a dispute relating to competition (Pinto, 1998, 43).

When a situation to suggest that competition is restricted or distorted, the Commission may either take up motion or act on complaints. If the Commission decides not to proceed with the complaint, it must inform the complainant of the reasons for rejection. Conversely, the Commission may decide to investigate: it can choose to send inquiries to enterprises, take statements from any person or entity consents to be interviewed by it or even make inspections at the premises.

After consultation with a committee composed of representatives of Member States, the Commission may determine the behaviour of firms. It can allow practices that are expressly authorised and those with no effect on competition. Regarding misconduct, the Commission takes a decision ordering the company responsible to stop it and can, if necessary, impose so-called structural (e.g., decision to amend the scope of business of an operator or decision to withdraw an exemption), provisional measures (in case of emergency, when there is a risk of serious and irreparable harm to competition) or even of so-called behavioural (fines or penalties the amount depends on several factors including the severity and duration of the infringement) (Noack, 1998, 102).

A common solution in large corporations is to associate the agent to the benefits of the company, usually that kind of loyalty incentives in the form of pay based on profits, ownership or, more recently, stock options shares or rights concessions on the price increases. These systems are widely used at present, serve as palliatives but the problem is not removed while managers do not have 100% of the company.

The cost of agency relations rests not only on the principal and the agent may experience some costs to transmit information to the principal and get his confidence (Miller, 1997, 40). In general, when agency relationships are established long-term moral hazard is reduced, resulting in greater efficiency in business and lower costs of control. If the worker or manager wants the job security, not take advantage of opportunities for private gain at the expense of the company, the risk of being detected. That is why recruitment is usually spent in promoting the enterprise establishing seniority wage supplements, transparent systems of internal promotion, privileges of rank and other systems of incentives for loyalty and stability.

Given the characteristics of today's markets, the competitive environment is increasingly uncertain and complex, leading to greater difficulty for businesses in achieving a sustainable competitive advantage over time, what new forms of management and governance are needed to be competitive because the corporate governance is an aspect to take into account in any organisation, because, ultimately, is what will determine the development of the activity of the organisation and achieving its general objectives and therefore it will depend on achieving success business (Finch, 2002, 58).

Nevertheless, there is anecdotal evidence that many state and local governments structure their refinancing bonds to achieve upfront principal and interest savings (Luby, 2009, 68). The most plausible explanation for the continued use of this practice relates to the ongoing fiscal stress that most state and local governments continue to face. In this seemingly unending era of budget austerity at the sub-national level in the United States, new tax adoptions and/or existing tax increases remains anathema to most state politicians mostly out of concern for their future electoral prospects (Elderson, 1999, 27). This is very common in human society. There is, for example, when the citizen-voter-vote political representative instructs the development and application of legal rules for the common benefit. It also occurs when a company's shareholders charge their management to an administrator.

The agency relationship always implies the existence of moral hazard problem: the possibility that the agent (policy makers, business manager) seek personal goals to the detriment of the interests of the principal (the subsidiary or shareholder). There will be a loss of efficiency provided that the costs and damages caused by a decision not borne by the individual to decide. The directors of a company or a state agency may use his or her decision to maliciously obtained personal gain at the expense of the subsidiary or shareholder (Edwards, 1999, 73). These benefits may take the form of bonus extras, large and luxurious offices, private use of vehicles, can promote subordinates for reasons of sympathy or relationship, can make decisions that are too risky or beneficial to the company or organisation in the short term but harmful in the long term, can also make decisions that increase their personal power and control dodge allow owners and subsidiaries.

The problem is more or less in any form of employment contract. Any employee hired for any job is always a certain decisiveness and ability to wriggle out, avoid and reduce the control effort. The control and supervision of workers has a cost which may be effective to hire individuals (Drury, 1991, 93). This implies the appearance of an intermediate level of agents; you've got to the foremen, but will be gained in efficiency provided that the foremen are less likely to wriggle workers. There are systems that encourage agents to control each other but there is a limit to the systems of control, which exceeded the distrust generated environments that limit the possibilities of international cooperation and reduce efficiency.

### **VIII. Conclusion**

The EU laws provide fuller detail on the essential facility doctrine; there are many applicable legal problems still to be solved. A more meaningful way to understand the essential facility doctrine in the European Union is not strictly through legal matters but also through enterprise culture (Dorresteijn, 1994, 58). After the European Union War, preferential treatment by government increased large enterprises' monopoly power and accelerated their diversification across industries with governmental support.

This doctrine has been controversial because of its imposition of a right to refuse to deal. The EU has codified the essential facility doctrine in 2001 through the amendment of the Enforcement Decree of the holding companies. As a result, the affiliated companies of a large enterprise participated in most industries, such as manufacturing, the distribution industry, construction, and finance (Davies, 2003, 34). Through the mutual investment among them, the formation of the chapel was accelerated in Korea, leading to the concentration of economic power. The regulation of the chapel is one of the most important purposes of the holding companies for generating balanced development in the European Union economy through the promotion of fair and free trade (Carrington, 1994, 12). The codification of the essential facility doctrine under the holding companies reflects the strong will of the European Union to regulate the chapel. Korea recognises the social and economic importance of network industries, and it tries to promote economic growth through the introduction of competition in network industries based on enforced sharing, under the essential facility doctrine. Therefore, despite criticism of the essential facility doctrine in the EU, the essential facility doctrine will be applied more actively in the EU, because it is the result of an ongoing economic development strategy.

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