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The human factor in EU competition law: The liability of non-human companies for antitrust infringements – a quick take

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Introduction: the non-human corporations

On June 4, 2026, Argentine President *Javier Milei*, assisted by Deregulation and State Transformation Minister *Federico Sturzenegger,* published a provocative op-ed in the *Financial Times* titled "*Argentina invites AI to free itself*". The necessity of the introduction was explained by him with an analogy to the *Dutch East India Company* and the invention of limited liability. Below is an excerpt from the article about what we know[2]:

> "*It is for this reason that my government last week submitted legislation to Congress establishing a dedicated legal framework for the deployment of AI. This rests on three pillars.*
>
> *First, a commitment to keep AI unregulated so that it is free to be developed without the deadly hand of premature and poorly understood regulation.*
>
> *Second, the creation of a new corporate category in Argentine law: the non-human corporation. These are entities operated by AI agents or robots. Where these systems exercise independent judgment in unpredictable environments — as they must, if they are to be genuinely useful — their actions entail real risks. Limited liability is not a luxury for such entities; it is a precondition for their existence. Human shareholders may participate, but are not required.*
>
> *Third, a competitive fiscal environment. These corporations will benefit from a low corporate tax rate, and shareholders can select the corporate governance law of their choosing. Final beneficiaries will have to be disclosed — Argentina has no interest in becoming a haven for illicit capital — but for all legitimate commercial activity our framework will offer unmatched terms.*"[3]

A feature of these non-human corporations will be that they are operated by AI agents or robots, exercising independent judgement and have limited liability. Human shareholders may participate, but that is not required.

This latter statement is very important, since an assessment might be very different if a non-human corporation is owned by a person which can typically be considered a parent

[1] Director of Research Centre for Competition Policy and Future Economies and Head of Department for Environmental and Competition Law. Artificial intelligence was used to improve the language of the article and to correct grammatical mistakes, but not to write any substantial or important part or idea within the article.

[2] The proposed bill is not yet public at the time of writing.

[3] Javier Milei: Argentina invites AI to free itself. Financial Times, 4 June 2026. https://www.ft.com/content/f93022fe-43f7-437d-abd8-06c457c0a43c

company under competition law or if the non-human corporation has no human shareholders directly or indirectly.

Milei's proposal couples four features: a new corporate category operated by AI agents or robots, limited liability treated as "a precondition for their existence," optional human shareholders, and shareholder choice of governance law within a deliberately unregulated environment. Read together, these are, in substance, a *liability-allocation* design, an attempt to wall risk inside an autonomous entity.

While Argentina seeks to deregulate the technological frontier, the European Union has built a comprehensive legal framework for algorithmic accountability. Even though introducing non-human corporations in the EU is close to impossible under the current regulatory trends in Europe, it is worthwhile to elaborate on how competition law would treat them, while also noting that due to extraterritorial reach and effects of EU competition law, even non-human corporations might come under investigation, if EU competition law would become applicable due to extraterritorial effects.

Antitrust law and the human element

The assessment of liability for competition infringements is founded in European law, classifications of other jurisdictions is not a determining factor.[4] The EU courts have a well-established case law establishing that public (state) ownership does not exempt entities and they have to also comply with the EU competition provisions.[5] This by analogy means that irrespective of the provisions in Argentinian law on the ownership of non-human corporations, the latter ones are probably also not exempted, since even state ownership does not result in exemptions.[6]

EU competition law from a substantive perspective does not allocate liability by reference to corporate form at all. It allocates it functionally, by reference to the notion of *undertaking*.

Traditional competition law in the European Union is focused on the behavior of undertakings. As we know very well, "*the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed*"[7] and any activity consisting in offering goods or services on a given market is an economic activity[8]. Obviously, a non-human corporation offering goods or services will meet these criteria. We must however note that some judgements of the European Union courts might be relevant to elaborate on this in detail. For example the ECJ has excluded bodies which fulfil an exclusively social function[9]. Even though similarly

[4] See e.g. Case T-128/98. Aéroports de Paris v Commission of the European Communities. ECLI:EU:T:2000:290. 128.
[5] Ibid. 124 and Case C-41/90. Klaus Höfner and Fritz Elser v Macrotron GmbH. ECLI:EU:C:1991:161. 22-23.
[6] Of course state immunity might apply in certain cases, but we suppose for the article that non-human organisations coming under scrutiny will not exercice overwhelmingly public power.
[7] Case C-41/90. Klaus Höfner and Fritz Elser v Macrotron GmbH. ECLI:EU:C:1991:161. 21.
[8] Case 118/85. Commission of the European Communities v Italian Republic. ECLI:EU:C:1987:283. 7.
[9] Case C-218/00. Cisal di Battistello Venanzio & C. Sas v Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL). ECLI:EU:C:2002:36. 46.

one might in principle imagine scenarios which by analogy could extend this idea to non-human organizations, what is more likely is that these corporations will carry out economic activities and therefore they will be treated as undertakings.

The threshold is therefore trivial. Since *Höfner and Elser* "*undertaking*" is a functional concept covering any entity engaged in economic activity *irrespective of its legal status and the way in which it is financed*. The ECJ has long accepted that a single undertaking may be an economic unit comprising several natural or legal persons. Whether Argentine law labels the entity a "*non-human corporation*", grants it personality, or attaches limited liability is, for Article 101 TFEU and Article 102 TFEU purposes, beside the point. The AI entity that offers goods or services on a market is an undertaking from EU competition law point of view. If humans control or own it, they and it may together form one undertaking. Here we must note that it might very well be possible to set up legal entities that are not owned by humans, like the ones we already have with several non-profit organizations.

The notion of economic unit also infuses important considerations to our subject matter. The competition provisions are "*aimed at economic units which consist of a unitary organization of personal, tangible and intangible elements which pursues a specific economic aim on a long-term basis and can contribute to the commission of an infringement of the kind referred to in that provision*."[10] The case law typically refers to "*personal, tangible **and** intangible elements*" (emphasis added by me) and in reality undertakings all over the world must have a natural person who acts on their behalf or on behalf of any person who is entitled to represent the undertaking: "*In competition law, the term "undertaking" must be understood as designating an economic unit for the purpose of the subject-matter of the agreement in question even if in law that economic unit consists of several persons, natural or legal*."[11] Any person to whom rights are assigned which are peculiar to her and which are distinct from those assigned to others is an undertaking.[12]

To define whether an entity is an undertaking or not, economic independence is also an important factor[13], for example as we know well from the parent-subsidiary line of case law, "*the concept of undertaking in the chapter of the Treaty devoted to the rules on competition presupposes the economic independence of the entity concerned*"[14].

Under the current understanding of the new Argentinian non-human corporations, one type of these corporations is one where there are passive shareholders. In this regard we must note that one key limiting factor under current jurisprudence of the ECJ is the fact

[10] Case T-11/89. Shell International Chemical Company Ltd v Commission of the European Communities. ECLI:EU:T:1992:33. Confirmed also in Case C-73/95 P. Viho Europe BV v Commission of the European Communities. ECLI:EU:C:1996:405. 50.

[11] See also Case 170/83. Hydrotherm Gerätebau GmbH v Compact del Dott. Ing. Mario Andreoli & C. Sas. ECLI:EU:C:1984:271. 11.

[12] See Case 42/84. Remia BV and others v Commission of the European Communities. ECLI:EU:C:1985:327. 49.

[13] See Case C-73/95 P. Viho Europe BV v Commission of the European Communities. ECLI:EU:C:1996:405. 50.

[14] Joined cases C-395/96 P and C-396/96 P. Compagnie maritime belge transports SA (C-395/96 P), Compagnie maritime belge SA (C-395/96 P) and Dafra-Lines A/S (C-396/96 P) v Commission of the European Communities. ECLI:EU:C:2000:132. 35.

that a natural person in his sole capacity as a member or shareholder cannot be classified as an undertaking.[15] Later we will elaborate more on this, but here we have to highlight that this might be a determining factor to shield owners from liability.

Another important notion for our evaluation in EU competition law is the *principal-agent* relationship. While a principal might be responsible for the actions of an agent[16] it is also true that agents might become "independent" from their principals. If an agent works for the benefit of his principal he may in principle be treated as an auxiliary organ forming an integral part of the latter's undertaking, who must carry out his principal's instructions and thus, like a commercial employee, forms an economic unit with this undertaking. However an agent may not be regarded as an auxiliary body forming part of its principal's business where the agreement entered into with the principal confers upon the agent or allows it to perform duties which from an economic point of view are approximately the same as those carried out by an independent dealer, because they provide for the said agent accepting the financial risks of selling or of the performance of the contracts entered into with third parties.[17] According to the announcement of the Argentinian government non-human corporations will be able to independently take on risks and this might distance them from their owner or those who set up these corporations.

From a procedural perspective we have to note that competition authorities typically address companies in their decisions and not undertakings: "*the infringement of [...] competition law must be attributed unequivocally to a legal person on whom fines may be imposed.*"[18] A legal entity established as a company in Argentina might typically be recognized as an entity to which decisions can be addressed, so even though enforcement might be a different problem, these organizations, having a legal form, might very well be addresses of decisions of competition authorities.

Article 101 TFEU

In this working paper we will focus on Article 101 TFEU. While Article 102 TFEU might be important in the future, it is highly unlikely that the first competition law issues will arise in relation to substantial market power abused by non-human organizations.

Under Article 101 (1) TFEU to establish an infringement we need not only at least two undertakings or an association of undertakings, but also an agreement, a concerted practice between undertakings or a decision of an association of undertakings.

Agreements and concerted practices: the need for concurrence of wills

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[15] Joined cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P. Dansk Rørindustri A/S (C-189/02 P), Isoplus Fernwärmetechnik Vertriebsgesellschaft mbH and Others (C-202/02 P), KE KELIT Kunststoffwerk GmbH (C-205/02 P), LR af 1998 A/S (C-206/02 P), Brugg Rohrsysteme GmbH (C-207/02 P), LR af 1998 (Deutschland) GmbH (C-208/02 P) and ABB Asea Brown Boveri Ltd (C-213/02 P) v Commission of the European Communities. ECLI:EU:C:2005:408. 111.

[16] See e.g. Joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73. Coöperatieve Vereniging "Suiker Unie" UA and others v Commission of the European Communities. ECLI:EU:C:1975:174. 546.

[17] T-66/99. Minoan Lines SA v Commission of the European Communities. ECLI:EU:T:2003:337. 124-128.

[18] See Article 299 TFEU and Case T-24/05. Alliance One International, Inc., formerly Standard Commercial Corp. and Others v European Commission. ECLI:EU:T:2010:453. 125.

To have an agreement there must be a "*faithful expression of the joint intention of the parties to the agreement*"[19] to conduct themselves on the market in a specific way[20]. The concept centers around "*the existence of a concurrence of wills between at least two parties, the form in which it is manifested being unimportant so long as it constitutes the faithful expression of the parties' intention*"[21]. The courts usually use the term parties here, but sometimes they also refer to economic operators[22]. The main factor to be established is, whether there is an agreement, whether there is a concurrence of expressed wills.

A natural first objection, like „*an AI cannot form intent*" would be a misreading of EU competition law. Fines under Article 23 (2) of Regulation 1/2003[23] require an infringement committed "intentionally or negligently," but in *Schenker*[24] the Court held that this condition is satisfied where the undertaking cannot be unaware of the anticompetitive nature of its conduct, whether or not it is aware that it is infringing the competition rules. The standard is objective and attaches to the undertaking, not to a human's subjective state of mind.

Where a human firm builds, deploys, or runs the AI, three established routes attribute the machine's conduct to it.

It is settled[25] that an undertaking answers for the acts of those authorized to act on its behalf and it is unnecessary that partners or managers knew of or sanctioned the conduct. An in-house algorithm sits comfortably within this logic, even though that would very well be a novelty.

VM Remonts[26] is the most useful analogy for an externally supplied AI tool. The ECJ held that an undertaking is liable for the anticompetitive conduct of an independent service provider only where one of three conditions is met:

- the provider was in fact acting under the direction or control of the undertaking; or
- the undertaking was aware of the anticompetitive objective and intended to contribute to it; or
- the undertaking could reasonably have foreseen the conduct and was prepared to accept the risk.

[19] Case 41-69. ACF Chemiefarma NV v Commission of the European Communities. ECLI:EU:C:1970:71. 112.
[20] Case T-2/89. Petrofina SA v Commission of the European Communities. ECLI:EU:T:1991:57. 211.
[21] Case T-41/96. Bayer AG v Commission of the European Communities. ECLI:EU:T:2000:242. 68 – 69.
[22] See Joined cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95. Cimenteries CBR and Others v Commission of the European Communities. ECLI:EU:T:2000:77. 960.
[23] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. OJ L 1, 4.1.2003, pp. 1–25.
[24] Case C-681/11. Bundeswettbewerbsbehörde and Bundeskartellanwalt v Schenker & Co. AG and Others. ECLI:EU:C:2013:404.
[25] Joined cases 100 to 103/80. SA Musique Diffusion française and others v Commission of the European Communities. ECLI:EU:C:1983:158.
[26] Case C-542/14. SIA 'VM Remonts'(formerly SIA 'DIV un KO') and Others v Konkurences padome. ECLI:EU:C:2016:578.

A deployed deterministic algorithm is at minimum under the firm's "direction or control". A self-learning system that drifts into coordination is captured by the third limb foreseeability plus accepted risk. We must make an important note here. LLMs are not deterministic systems, but non-deterministic systems, so even though the deployment of the models are attributable, but not all actions can be seen, observed or prevented by those who deploy the models. Non-deterministic systems are a completely different breed than the cases we had in EU jurisprudence. Recently a German court rationalized a judgement[27] based on prior caselaw, without accounting for this very important difference.

Nevertheless, competition law has been consistent that the liability for the actors on behalf of the interests of the undertaking establish liability. The most probably outcome of such an assessment would be that independent actions of AI agents of a non-human organization would be attributable to the corporation, to the undertaking.

And finally, *Eturas*[28] is also super important. The ECJ held that where a platform administrator sent operators a message that discounts would be capped and the system was then technically modified, operators who were aware of the message could be presumed to have participated in a concerted practice, unless they publicly distanced themselves, reported the practice, or adduced other rebutting evidence such as systematically exceeding the cap. Crucially, the judges drew a line at awareness. Operators whose awareness could not be established could not be presumed to have participated merely because the technical restriction was implemented. Awareness of humans is the pivot and this is exactly the variable a genuinely autonomous entity removes.

When non-deterministic autonomous agents operate non-human organizations there is the possibility that it escapes competition law scrutiny for the following reason. If there is real autonomy, then that removes concertation between undertakings. If each agent reaches a supra-competitive equilibrium purely by observing and adapting to market conditions, with no contact or signaling, there is no "*meeting of minds*" and no concerted practice, but only the conscious-parallelism outcome that *Wood Pulp*[29] expressly leaves outside Article 101. The conduct reproduces the effect of a typical cartel while lacking its constitutive element.

In this case non-determinism prevents competition law to *"re-capture the conduct"*. Where an algorithm is a deterministic tool, enforcers impute its coordination to the humans who designed or deployed it knowing it would or might coordinate. This is the "messenger"/hub-and-spoke logic of *Eturas*[30] where dissemination through a shared system plus a rebuttable presumption of awareness sufficed. That presumption is built

[27] Landgericht München I., Endurteil vom 28.05.2026 - 26 O 869/26. See cirtique here: https://boundsofpower.substack.com/p/would-you-invest-in-the-land-of-decay.
[28] Case C-74/14. "Eturas" UAB and Others v Lietuvos Respublikos konkurencijos taryba. ECLI:EU:C:2016:42
[29] Joined cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85. A. Ahlström Osakeyhtiö and others v Commission of the European Communities. ECLI:EU:C:1992:293
[30] Ibid.

on human operators who could in principle be aware of conduct. If the agent's collusive behavior is genuinely emergent and unforeseeable to its principals, there is no design intent to impute and no awareness to presume and *Eturas* is not applicable.

The non-human character here is important. As noted above, even on the objective standard of *Schenker*, where an undertaking is liable if it "could not be unaware" its conduct was anti-competitive, there is still a presupposed cognitive baseline that a non-human organization without a human principal does not supply. A non-human corporation with no controlling person has no human element to which we are used to.

Above we have highlighted three scenarios:

- No infringement at all: genuine autonomous parallel adaptation with no contact or signalling produces no concerted practice (aka Wood Pulp). Nothing to enforce against anyone.
- Infringement, but no human to attribute upward to. There is concertation (or the entity itself infringes), but the Eturas awareness pivot finds no aware human operator and there is no “Akzo-parent”. Liability stops at the entity.
- Entity liable but judgment-proof: liability lands on the thinly-capitalised ownerless entity, which cannot pay any sanction.

Conclusions

Should an Argentine-registered non-human corporation attempt to operate within the European single market, its lack of human directors or owners *in most cases* will not immunize it from antitrust scrutiny. EU competition law under Articles 101 and 102 TFEU is governed by a functional economic realism that looks past national corporate registries and formal legal personalities.

To sum it up, a clear distinction must be made. If a non-human organization will have human “shareholders”, the economic entity doctrine might apply. Under *Akzo*[31], a human, or human-controlled entity (as a parent company), holding all or most of the equity or voting rights of a non-human corporation would be presumed to exercise decisive influence and would be liable for the entity's infringement, with the presumption being difficult to rebut. If however natural persons merely holding shares and do not engage in independent economic activity, than they might not be held liable for the actions of the non-human organization. On the other hand the limited-liability wall that Milei treats as constitutive is, for competition purposes, functionally pierced. Any attempting human creator, developer, or financial investor who deploys a "humanless" corporation to operate in the European marketplace cannot use Argentine registration as a shield against antitrust prosecution. The EU courts will look through the algorithmic veil, probably apply a functional consolidated definition of the undertaking, and utilize established principles of parental, descendant, and third-party liability to hold the underlying human and corporate beneficiaries jointly and severally liable.

[31] Case C-97/08 P. Akzo Nobel NV and Others v Commission of the European Communities. ECLI:EU:C:2009:536.

However, if a non-human organization will be set up like a non-profit organization, without owners, attribution of liability to anyone but the company itself would become more difficult. Where the entity is genuinely ownerless and autonomous, there may be no person to attribute to and a limited-liability, thinly capitalized entity is, by construction, close to judgment-proof. In this case the only possibility would be that liability falls on the entity itself. Here we have to note that even if there were human owners, but without any substantial power to supervise, observe or influence the decision of the non-human organization, limited liability would protect any human investors from personal exposure beyond their stake, consistent with standard corporate law principles that EU competition law respects unless there is abuse of the corporate form.

This working paper is a quick take on the possible antitrust liability of the recently announced and proposed non-human corporation in Argentinian law.