Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

30 January 2025 *

(Reference for a preliminary ruling – Competition – Article 102 TFEU – Abuse of dominant position – Empowering national competition authorities to enforce the rules on competition – Directive (EU) 2019/1 – Independence of national competition authorities – Article 4(5) – Setting priorities for the proceedings for the enforcement of Articles 101 and 102 TFEU – Fines on undertakings and associations of undertakings – Article 13 – Procedures for infringement of the rules of competition law – Compliance with a reasonable time limit – National legislation requiring the national authority to issue a statement of objections within a time limit of 90 days of knowledge of the essential elements of the infringement – Automatic annulment in its entirety of the decision of the national competition authority in the event of failure to comply with that time limit – Principle *ne bis in idem* – Revocation of the power to initiate new infringement proceedings in respect of the same facts – Principle of effectiveness – Rights of defence of undertakings)

In Case C-511/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), made by decision of 1 August 2023, received at the Court on 8 August 2023, in the proceedings

Caronte & Tourist SpA

v

Autorità Garante della Concorrenza e del Mercato,

intervening parties:

Unione nazionale consumatori – Comitato regionale della Sicilia,

Unione nazionale consumatori,

Assarmatori,

Confederazione Italiana Armatori,

THE COURT (Second Chamber),

* Language of the case: Italian.

composed of K. Lenaerts, President of the Court, acting as President of the Second Chamber, F. Biltgen, President of the First Chamber, I. Jarukaitis, President of the Fourth Chamber, M.L. Arastey Sahún (Rapporteur), President of the Fifth Chamber, and J. Passer, Judge,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Caronte & Tourist SpA, by D. Astorre, F. Cintioli, M. Siragusa and R. Tremolada, avvocati,

– Autorità Garante della Concorrenza e del Mercato, by F. Sclafani, avvocato dello Stato,

– Unione nazionale consumatori – Comitato regionale della Sicilia, by P. Intilisano, avvocato,

– Assarmatori, by P. Molea and A. Police, avvocati,

– Confederazione Italiana Armatori, by G. Morbidelli and R. Righi, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by L. Fiandaca and P. Gentili, avvocati dello Stato,

– the Greek Government, by K. Boskovits, acting as Agent,

– the Hungarian Government, by D. Csoknyai, Z. Fehér and K. Szíjjártó, acting as Agents,

– the Slovak Government, by E. Drugda and S. Ondrášiková, acting as Agents,

– the European Commission, by F. Castillo de la Torre, G. Conte and C. Sjödin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 September 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 102 TFEU.

2 The request was submitted in the context of a dispute between Caronte & Tourist SpA ('C&T') and Autorità Garante della Concorrenza e del Mercato (the national competition authority, Italy; 'the AGCM') concerning penalties imposed by the latter on C&T on account of an abuse of a dominant position.

Legal context

European Union law

The FEU Treaty

3 According to Article 102 TFEU:

‘Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

…’

Directive (EU) 2019/1

4 Recitals 1, 2, 6, 8, 23 and 40 of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (OJ 2019 L 11, p. 3) read as follows:

‘(1) Articles 101 and 102 [TFEU] are a matter of public policy and should be applied effectively throughout the [European] Union to ensure that competition in the internal market is not distorted. Effective enforcement of Articles 101 and 102 TFEU is necessary to ensure fairer and more open competitive markets in the Union, in which undertakings compete more on their merits and without company-erected barriers to market entry, enabling them to generate wealth and create jobs. It protects consumers and undertakings active on the internal market from business practices that keep the prices of goods and services artificially high and enhances their choice of innovative goods and services.

(2) The public enforcement of Articles 101 and 102 TFEU is carried out by the national competition authorities … of the Member States in parallel to the [European] Commission pursuant to Council Regulation (EC) No 1/2003 [of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1)]. Together, the [national competition authorities] and the Commission form a network of public authorities that apply the Union competition rules in close cooperation (the “European Competition Network”).

…

(6) … Undertakings cannot compete on the merits if there are safe havens for anti-competitive practices, for example, because evidence of anti-competitive practices cannot be collected or because undertakings are able to escape liability for fines. …

…

(8) In order to ensure a truly common competition enforcement area in the Union that provides a more even level playing field for undertakings operating in the internal market and reduces unequal conditions for consumers, there is a need to put in place fundamental guarantees of independence, adequate financial, human, technical and technological resources and minimum enforcement and fining powers for applying Articles 101 and 102 TFEU and for applying national competition law in parallel to those Articles so that national administrative competition authorities can be fully effective.

…

(23) National administrative competition authorities should be able to prioritise their proceedings for the enforcement of Articles 101 and 102 TFEU to make effective use of their resources, and to allow them to focus on preventing and bringing anti-competitive behaviour that distorts competition in the internal market to an end. …

…

(40) To ensure the effective and uniform enforcement of Articles 101 and 102 TFEU, national administrative competition authorities should have the power to impose effective, proportionate and dissuasive fines on undertakings and associations of undertakings for infringements of Article 101 or 102 TFEU …'

5 Article 1 of that directive, entitled 'Subject matter and scope', provides, in paragraph 1:

'This Directive sets out certain rules to ensure that national competition authorities have the necessary guarantees of independence, resources, and enforcement and fining powers to be able to effectively apply Articles 101 and 102 TFEU so that competition in the internal market is not distorted and that consumers and undertakings are not put at a disadvantage by national laws and measures which prevent national competition authorities from being effective enforcers.'

6 Article 2 of that directive, entitled 'Definitions', provides, in paragraph 1:

'For the purposes of this Directive, the following definitions apply:

…

(5) "European Competition Network" means the network of public authorities formed by the national competition authorities and the Commission to provide a forum for discussion and cooperation as regards the application and enforcement of Articles 101 and 102 TFEU;

…'

7 Under Article 3 of the directive, entitled 'Safeguards':

'1. Proceedings concerning infringements of Article 101 or 102 TFEU, including the exercise of the powers referred to in this Directive by national competition authorities, shall comply with general principles of Union law and the Charter of Fundamental Rights of the European Union.

2. Member States shall ensure that the exercise of the powers referred to in paragraph 1 is subject to appropriate safeguards in respect of the undertakings' rights of defence, including the right to be heard and the right to an effective remedy before a tribunal.

3. … Member States shall ensure that, prior to taking a decision pursuant to Article 10 of this Directive, national competition authorities adopt a statement of objections.'

8 Article 4 of Directive 2019/1, under the heading 'Independence', provides, in paragraph 5:

'5. National administrative competition authorities shall have the power to set their priorities for carrying out the tasks for the application of Articles 101 and 102 TFEU as referred to in Article 5(2) of this Directive. To the extent that national administrative competition authorities are obliged to consider formal complaints, those authorities shall have the power to reject such complaints on the grounds that they do not consider such complaints to be an enforcement priority. This is without prejudice to the power of national administrative competition authorities to reject complaints on other grounds defined by national law.'

9 Article 5 of that directive, entitled 'Resources', is worded as follows:

'1. Member States shall ensure at a minimum that national competition authorities have a sufficient number of qualified staff and sufficient financial, technical and technological resources that are necessary for the effective performance of their duties, and for the effective exercise of their powers for the application of Articles 101 and 102 TFEU as set out in paragraph 2 of this Article.

2. For the purposes of paragraph 1 national competition authorities shall be able, at a minimum, to conduct investigations with a view to applying Articles 101 and 102 TFEU, to adopt decisions applying those provisions on the basis of Article 5 of Regulation [No 1/2003]; and to cooperate closely in the European Competition Network with a view to ensuring the effective and uniform application of Articles 101 and 102 TFEU. …

…'

10 Article 13 of that directive, entitled 'Fines on undertakings and associations of undertakings', provides, in paragraph 1:

'Member States shall ensure that national administrative competition authorities may either impose by decision in their own enforcement proceedings, or request in non-criminal judicial proceedings, the imposition of effective, proportionate and dissuasive fines on undertakings and associations of undertakings where, intentionally or negligently, they infringe Article 101 or 102 TFEU.'

11 Article 29 of that directive, entitled 'Rules on limitation periods for the imposition of fines and periodic penalty payments', provides, in paragraph 1:

'Member States shall ensure that the limitation periods for the imposition of fines or periodic penalty payments by the national competition authorities pursuant to Articles 13 and 16 shall be suspended or interrupted for the duration of enforcement proceedings before national competition authorities of other Member States or the Commission in respect of an infringement concerning the same agreement, decision of an association, concerted practice or other conduct prohibited by Article 101 or 102 TFEU.

…’

12 Under Article 34(1) of Directive 2019/1, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the directive by 4 February 2021. In accordance with Article 36 thereof, Directive 2019/1 entered into force on 3 February 2019.

Italian law

Law No 287/90

13 Article 1 of legge n. 287 – Norme per la tutela della concorrenza e del mercato (Law No 287 adopting provisions for the protection of competition and the market) of 10 October 1990 (GURI No 240 of 13 October 1990, p. 3), in the version applicable to the dispute in the main proceedings (‘Law No 287/90’), entitled ‘Scope and relationship with [EU] law’, provides, in paragraph 4:

‘The provisions in this Title shall be interpreted in accordance with the principles laid down in the competition law [of the European Union].’

14 Article 3 of that law, entitled ‘Abuse of a dominant position’, provides in paragraph 1:

‘Abuse by one or more undertakings of a dominant position within the national market or a substantial part of it is prohibited; the following are also prohibited:

(a) directly or indirectly imposing purchase or selling prices or other contractual conditions that are unjustifiably onerous;

…’

15 Article 31 of that law, entitled ‘Fines’, provides in paragraph 1:

‘In the case of administrative fines resulting from the infringement of this law, the provisions of Title I, Sections I and II, of [legge n. 689 – Modifiche al sistema penale (Law No 689 amending the criminal justice system) of 24 November 1981, in the version applicable to the dispute in the main proceedings (“Law No 689/81”)] shall be observed in so far as they are applicable.’

Law No 689/81

16 Law No 689/81 governs the general scheme of administrative fines and provides, in Article 14, entitled ‘Statement of objections and notification’:

‘Wherever possible, the infringement or offence shall be communicated immediately both to the offender and to any person who is jointly and severally liable for payment of the sum owed on account of the infringement or offence.

In the event that immediate communication is not given to any or all of the persons referred to in the preceding paragraph, the constituent elements of the infringement or offence shall be notified to the parties concerned within a period of 90 days, where those parties are resident in the territory of the

[Italian] Republic, or within a period of 360 days, where they are resident abroad, beginning on the date on which the [infringement or offence] is established.

Where the documents relating to the infringement or offence are sent to the competent authority by order of the court, the periods referred to the preceding paragraph shall commence on the date of receipt [of those documents].

…'

The dispute in the main proceedings and the question referred for a preliminary ruling

17 C&T provides ferry services across the Strait of Messina (Italy). On 24 March 2018, the AGCM received a report from a consumer complaining about the excessively high prices of those services and requesting the initiation of an investigation. On 23 April 2019, the AGCM sent a request for information to the port authority of Messina, which, on 19 November 2019, it followed up with a reminder, to which the port authority replied on 26 November 2019.

18 On 4 August 2020, the AGCM notified C&T of its decision to initiate a procedure with a view to establishing an infringement of competition law.

19 By decision of 11 April 2022, the AGCM found, on the basis of Article 3 of Law No 287/90, that there had been an abuse of a dominant position by C&T, in that it had charged excessive prices for ferrying vehicles across the Strait of Messina. Consequently, the AGCM ordered C&T to cease that practice in future and, in view of the seriousness of the infringement, it imposed a fine of EUR 3 719 370 on C&T.

20 C&T challenged the AGCM's decision of 11 April 2022 before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), which is the referring court, relying, inter alia, on the late commencement of the *inter partes* investigation stage of the procedure which gave rise to that decision.

21 In that regard, the referring court states that, according to the recent case-law of the Consiglio di Stato (Council of State, Italy), proceedings conducted by the AGCM in the field of competition must comply with Article 14 of Law No 689/81, under which that authority must, if it is not to lose its power to impose penalties, commence the *inter partes* investigation stage of the procedure by issuing a statement of objections within a period of 90 days, starting from the moment it has knowledge of the essential elements of the alleged infringement or offence ('the period at issue').

22 The exact starting point of the period at issue is subject to judicial review in the context of which the administrative court is to carry out a retrospective assessment and ascertain from which point in time the information available to the AGCM at a given time was sufficient for it to be required to issue the statement of objections and thus commence the *inter partes* investigation stage of the procedure. Any failure to issue the statement of objections within that period would entail the annulment, in its entirety, of the AGCM's decision adopted at the end of the infringement procedure. Moreover, in accordance with the principle *ne bis in idem*, that authority would no longer be in a position to initiate new infringement proceedings in respect of that same practice, even if the undertaking concerned never brought an end to it.

23 According to the referring court, the application of the period at issue undermines the AGCM's autonomy by requiring it to hear the cases before it in a purely chronological order, without being able to take account of the particular features of each case. In view of the great complexity of the AGCM's activities, in particular during investigations into the practices of large economic operators, excessive anticipation of the commencement of the *inter partes* investigation stage of the procedure would increase the risk that that authority will not succeed in gathering the evidence that is necessary and sufficient to establish the alleged infringement or offence.

24 Furthermore, the referring court argues that since the undertaking concerned is not required, under national law as interpreted by the Consiglio di Stato (Council of State), to establish that it has suffered damage as a result of the commencement of the *inter partes* investigation stage of the procedure after expiry of the period at issue, it follows that there is an irrebuttable presumption that the rights of defence of that undertaking have been infringed solely because that period has expired.

25 In any event, the application of a period of time the starting point of which would depend on the individual case would not be compatible with the principle of the protection of legitimate expectations, to which the undertakings penalised should be entitled.

26 In the light of those considerations, the referring court has doubts as to the compatibility with EU law of the application of the period at issue to proceedings for the investigation of offences related to the abuse of a dominant position.

27 In those circumstances, the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 102 TFEU, read in the light of the principles of the protection of competition and the effectiveness of administrative action, be interpreted as meaning that it precludes national legislation, such as that arising from the application of Article 14 of [Law No 689/81] – as interpreted in the most recent case-law – which requires the [AGCM] to initiate the investigation procedure with a view to establishing an abuse of a dominant position within a time limit of 90 days, starting from the moment the [AGCM] has knowledge of the essential elements of the infringement, [which could be no more than those set out in] the first report of the infringement?'

Consideration of the question referred

Admissibility

28 C&T and Assarmatori submit, in essence, that the request for a preliminary ruling is inadmissible because the infringement C&T is alleged to have committed is based not on an infringement of Article 102 TFEU, but solely on the infringement of Article 3 of Law No 287/90, which prohibits, at national level, the abuse of a dominant position. The AGCM thus chose to apply national competition law alone. Furthermore, the question referred concerns a request for interpretation of a provision of national law, namely Article 14 of Law No 689/81, which falls within the procedural autonomy of the Member States and is unrelated to substantive competition law.

29 In that regard, it is important to note that, according to the Court's case-law, in a situation where a penalty has been imposed on an economic operator pursuant to an abuse of dominant position under national competition law alone, the Court may nevertheless answer a request for a preliminary ruling concerning the interpretation of Article 102 TFEU where that provision has been rendered applicable under national law by means of a reference made in national law to the content of that provision of EU law. Where, in regulating purely domestic situations, national legislation provides for the same solutions as those which are provided for by EU law, it is clearly in the interest of the European Union that provisions or concepts taken from EU law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (see, to that effect, judgment of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraphs 24, 26 and 28 and the case-law cited).

30 In the present case, it is apparent from the request for a preliminary ruling that under Article 1(4) of Law No 287/90 the provisions of Title I of that law are to be interpreted in accordance with the principles laid down in EU competition law. In that context, the referring court pointed out that Article 3 of that law is essentially the same in regulatory scope as Article 102 TFEU.

31 It must therefore be held that the provisions of Title I of Law No 287/90, which include Article 3, in regulating purely internal situations, provide for the same solutions as those which are provided for by EU law, and in particular Article 102 TFEU (see, to that effect, judgment of 11 December 2007, *ETI and Others*, C-280/06, EU:C:2007:775, paragraph 23).

32 Moreover, the fact that the referring court's doubts concern the compatibility with EU law not of the substantive provisions of national competition law, contained in Title I of Law No 287/90, but of the procedural provision in Article 14 of Law No 689/81, seems to have no effect on the admissibility of the present request.

33 Indeed, it is apparent from the request for a preliminary ruling that, according to the case-law of the Consiglio di Stato (Council of State), Article 14 of Law No 689/81 is rendered applicable to administrative fines resulting from the infringement of Law No 287/90 by Article 31(1) thereof. Moreover, a provision of national law which falls within the procedural autonomy of a Member State does not mean that EU law does not apply to it, since the competence of the Member States to adopt such a provision must be exercised in compliance with the requirements laid down, in that regard, by EU law.

34 In those circumstances, the reference for a preliminary ruling is admissible.

Substance

35 As a preliminary point, it is important to recall that, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it and consider provisions of EU law which the national court has not referred to in its question (see, to that effect, judgment of 30 January 2024, *Direktor na Glavna direktsia 'Natsionalna politsia' pri MVR – Sofia*, C-118/22, EU:C:2024:97, paragraph 31 and the case-law cited).

36 It follows, in accordance with settled case-law, that, during the period for transposition of a directive, the Member States to which it is addressed must refrain from taking any measures liable seriously to compromise the achievement of the result prescribed by that directive (judgment of 25 January 2022, *VYSOČINA WIND*, C-181/20, EU:C:2022:51, paragraph 75 and the case-law cited).

37 Since all the authorities of the Member States are subject to the obligation to ensure that provisions of EU law take full effect, the obligation to refrain from taking measures set out in the preceding paragraph of the present judgment applies just as much to national courts. Thus, from the date upon which a directive has entered into force, the courts of the Member States must refrain, as far as possible, from interpreting domestic law in a manner which might seriously compromise, after the period for transposition of that directive has expired, attainment of the objective pursued by that directive (see, to that effect, judgment of 11 April 2024, *Agencia Estatal de la Administración Tributaria (Exclusion of claims governed by public law from discharge of debt)*, C-687/22, EU:C:2024:287, paragraphs 47 and 48 and the case-law cited).

38 In the present case, the AGCM's decision to initiate the *inter partes* investigation stage of the infringement proceedings in respect of C&T was adopted on 4 August 2020 and therefore during the period for transposition of Directive 2019/1. In accordance with Article 34(1) and Article 36 of that directive, that directive entered into force on 3 February 2019 and Member States were required to comply with it by 4 February 2021.

39 As is apparent from Article 1(1) of Directive 2019/1, read in the light of recitals 1, 6 and 8 thereof, that directive establishes, for the purposes of the effective application of Articles 101 and 102 TFEU by the national competition authorities, certain fundamental guarantees aimed at enabling those authorities to be fully effective in enforcing those provisions, in particular, with the aim of ensuring fair and open competitive markets, protecting consumers and undertakings against anti-competitive practices, and preventing such practices from not being penalised.

40 It follows that, in order to assess whether the AGCM's decision to initiate the *inter partes* investigation procedure was out of time in the light of the period at issue, the referring court must, in accordance with the guidance provided in paragraphs 36 and 37 above, take account of the relevant provisions of Directive 2019/1, with the result that it is necessary to answer the question referred by also taking that EU act into consideration.

41 Moreover, it follows from the request for a preliminary ruling not only that infringement proceedings relating to Law No 287/90 are subject to the period at issue, but also that failure to observe that period entails the annulment in its entirety of the final decision adopted by the AGCM and the revocation of its power to initiate new proceedings in respect of the same facts.

42 In order to provide it with a fully useful answer, it is therefore appropriate to conclude that, by its question, the referring court asks, in essence, whether Directive 2019/1 and Article 102 TFEU must be interpreted as precluding national legislation which, in proceedings for a finding establishing an anti-competitive practice by a national competition authority, first, requires that authority to commence the *inter partes* investigation stage of those proceedings by notifying the statement of objections to the undertaking concerned within a period of 90 days, starting from the moment it has knowledge of the essential elements of the alleged infringement, which could be no more than those set out in the first report of the infringement, and, second, penalises

failure to observe that period by annulling in its entirety the final decision of that authority at the end of the infringement proceedings and revoking that authority's power to initiate new infringement proceedings in respect of that same practice.

43 In that regard, it should be recalled at the outset that, in the absence of specific EU rules governing procedural time limits for the establishment and imposition of penalties by the national competition authorities, it is for Member States to establish and apply national procedural rules in that field (see, to that effect, judgment of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraphs 43 to 45).

44 However, while establishing and applying those rules falls within the competence of the Member States, the latter must exercise that competence in a manner consistent with EU law. Having regard to the principle of effectiveness, they may not render the implementation of EU law impossible in practice or excessively difficult and, specifically, in the field of competition law, they must ensure that the rules which they establish or apply do not jeopardise the effective application of Articles 101 and 102 TFEU (see, to that effect, judgment of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraph 46 and the case-law cited).

45 It is appropriate to take the view that it is compatible with EU law to lay down reasonable procedural time limits for the establishment and imposition of penalties by the national competition authorities. Such reasonable time limits are established in the interests both of the undertakings concerned and of those authorities, in accordance with the principle of legal certainty, and are not liable to make it in practice impossible or excessively difficult to apply EU law (see, to that effect, judgment of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraph 48).

46 Thus, national rules laying down procedural time limits for the establishment of infringements and the imposition of penalties by the national competition authorities must, in compliance with the principle of legal certainty, seek to ensure that cases are dealt with within a reasonable time while not having the effect of compromising the effective application of Articles 101 and 102 TFEU and Directive 2019/1 in the domestic legal system (see, to that effect, judgment of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraph 49).

47 In order to determine whether national rules on time limits observe such a balance, it is necessary to take into consideration, inter alia, the duration of the period concerned and all the detailed rules for its application, such as the date on which it starts to run, the mechanism adopted to start the period running, and that for suspending or interrupting it (see, to that effect, judgments of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraph 50, and of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 30).

48 Account must also be taken of the specific features of competition law cases and in particular of the fact that those cases require, in principle, a complex factual and economic analysis (judgment of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraph 51).

49 Furthermore, for the purpose of setting reasonable time limits for the procedures conducted by the national competition authorities with a view to penalising anti-competitive practices, the principle of legal certainty requires the Member States to put in place a system of time limits that is sufficiently precise, clear and foreseeable to enable all the parties involved to know precisely the extent of the obligations which the rules in question impose on them and to take steps accordingly

(see, by analogy, judgments of 11 December 2012, *Commission* v *Spain*, C-610/10, EU:C:2012:781, paragraph 49; of 3 June 2021, *Jumbocarry Trading*, C-39/20, EU:C:2021:435, paragraph 48; and of 7 March 2024, *Die Länderbahn and Others*, C-582/22, EU:C:2024:213, paragraph 66).

50 In that context, it follows from the case-law of the Court relating to infringement proceedings brought by the Commission under Articles 101 and 102 TFEU that compliance with the principle that action must be taken within a reasonable period is required, in principle, at every stage of those proceedings (see, to that effect, judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraphs 199 and 230, and of 21 September 2006, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission*, C-105/04 P, EU:C:2006:592, paragraphs 37 to 39).

51 For similar reasons, when setting procedural time limits for the establishment of infringements and the imposition of penalties by the national competition authorities, Member States may lay down not only general limitation rules applicable to infringement proceedings as a whole, but also, where appropriate, time limits for the conduct of certain stages of those proceedings, such as the stage prior to communication of the statement of objections to the undertaking concerned, provided that the time limits in question satisfy the requirements referred to in paragraphs 46 to 49 above.

52 In that regard, it must be borne in mind that the reasonableness of the duration of that phase is, in principle, to be appraised in the light of the circumstances specific to each case (see, to that effect, judgment of 13 June 2013, *HGA and Others* v *Commission*, C-630/11 P to C-633/11 P, EU:C:2013:387, paragraph 82). Specifically, the duration of a procedural time limit for that phase must be sufficient in practical terms to ensure its proper conduct (see, to that effect, judgments of 29 October 2015, *BBVA*, C-8/14, EU:C:2015:731, paragraph 29, and of 9 September 2020, *Commissaire général aux réfugiés et aux apatrides (Rejection of a subsequent application – Time limit for bringing proceedings)*, C-651/19, EU:C:2020:681, paragraph 57).

53 It should also be borne in mind that, in proceedings for infringement of Articles 101 and 102 TFEU conducted by the Commission, the preliminary investigation stage, covering the period up to the statement of objections, is intended not only to enable the Commission to gather all the relevant evidence confirming that there has or has not been an infringement of the competition rules, but also to adopt a position on the course which the procedure is to follow and on the subsequent action to be taken in respect thereof (see, to that effect, judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 182, and of 29 September 2011, *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraph 113).

54 Although the complexity of a competition procedure may justify extending its preliminary stage over a long period of time (see, to that effect, judgments of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 62, and of 17 November 2022, *Irish Wind Farmers' Association and Others* v *Commission*, C-578/21 P, EU:C:2022:898, paragraph 88), the Commission is not, however, allowed to persist in refraining from taking action during that phase of the procedure (see, to that effect, judgments of 18 March 1997, *Guérin automobiles* v *Commission*, C-282/95 P, EU:C:1997:159, paragraph 36, and of 13 June 2013, *HGA and Others* v *Commission*, C-630/11 P to C-633/11 P, EU:C:2013:387, paragraph 81).

55 Moreover, respect for the rights of the defence is a fundamental principle of EU law which must be fully observed in the context of administrative procedures under EU law. In proceedings for infringement of the competition rules, it is the statement of objections which constitutes the essential safeguard in that regard (see, to that effect, judgments of 26 October 2017, *Global Steel Wire and Others* v *Commission*, C-457/16 P and C-459/16 P to C-461/16 P, EU:C:2017:819, paragraphs 139 and 140; of 13 September 2018, *UBS Europe and Others*, C-358/16, EU:C:2018:715, paragraph 60; and of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 56). That is confirmed by the second sentence of Article 3(3) of Directive 2019/1, pursuant to which Member States are to ensure that, prior to taking a decision to establish and order the cessation of an infringement of Article 101 or 102 TFEU, the national competition authorities are to adopt a statement of objections.

56 It follows that the considerations set out in paragraphs 53 to 55 above are also relevant in the context of an administrative procedure conducted, at national level, by a national competition authority in order to punish an infringement of Article 102 TFEU.

57 In order effectively to fulfil their obligation to implement EU competition law, the national competition authorities must be able to give differing degrees of priority to the complaints brought before them, by having, for that purpose, a broad discretion (see, by analogy, judgments of 14 December 2000, *Masterfoods and HB*, C-344/98, EU:C:2000:689, paragraph 46, and of 19 September 2013, *EFIM* v *Commission*, C-56/12 P, EU:C:2013:575, paragraphs 72 and 83).

58 The recognition that a broad discretion is also justified in the light of Directive 2019/1, Article 5(1) and (2) of which provides, in essence, that the national competition authorities must have the necessary resources to enable them to carry out investigations for the purposes of the application of Articles 101 and 102 TFEU, to cooperate in the European Competition Network referred to in Article 2(1)(5) of that directive and to adopt decisions aimed, in particular, at bringing an infringement of those provisions to an end and imposing penalties.

59 In order to be able to carry out those tasks in accordance with their operational independence, those authorities must, in accordance with Article 4(5) of Directive 2019/1, have the power to set their priorities. As is apparent from recital 23 of that directive, that power is intended to enable those authorities to make effective use of their resources and to focus on preventing and bringing anti-competitive behaviour in the internal market to an end.

60 It follows both from the very purpose of the stage prior to the statement of objections in consumer protection infringement proceedings and from the broad discretion which a national competition authority must have in setting priorities for its procedures in respect of the enforcement of Article 102 TFEU that, during that phase of the procedure, such an authority must be in a position not only to carry out all the preliminary measures of inquiry and the often complex factual and legal assessments which are necessary in order to ascertain whether the commencement of the *inter partes* investigation stage is justified, but also to choose, according to the degree of priority which it wishes to give, in the exercise of its operational independence, to an ongoing infringement procedure, the most appropriate time for commencing, where applicable, the *inter partes* investigation stage of that procedure.

61 Thus, a national competition authority must have the possibility of temporarily postponing the commencement of the *inter partes* investigation stage in a given procedure, even when it has already established the existence of the essential elements of the alleged infringement. Such a possibility is consistent with the objective of ensuring that the authority concerned is able to

treat adequately all the infringement proceedings brought before it. It is also likely to contribute to an efficient use of the available resources and to foster appropriate cooperation in the European Competition Network. Nevertheless, that temporary postponement cannot amount to a failure to observe the reasonable period within which the stage prior to the statement of objections in infringement proceedings must be concluded.

62 Moreover, in the exercise of its procedural autonomy, a Member State must ensure not only that EU competition law and the prosecution and punishment of infringements thereof are fully effective, but also that fundamental rights are observed, in particular the rights of the defence of the undertakings concerned by infringement proceedings (see, to that effect, judgments of 7 December 2010, *VEBIC*, C-439/08, EU:C:2010:739, paragraph 63, and of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 98).

63 In accordance with Article 3(1) and (2) of Directive 2019/1, the exercise of the powers which, under that directive, must be conferred on national competition authorities is to be subject to appropriate safeguards as regards the rights of defence of undertakings, in particular the right to be heard.

64 In that regard, the Court has already held that the excessive duration of the stage prior to the statement of objections may have an effect on the future ability of the undertakings concerned to defend themselves, in particular by adversely affecting their rights of defence during the *inter partes* investigation stage of the infringement proceedings against them. The more time that elapses between a preliminary investigation measure and the notification of the statement of objections, the more unlikely it becomes that any exculpatory evidence relating to the infringements set out in the statement of objections can be obtained (see, to that effect, judgment of 21 September 2006, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission*, C-105/04 P, EU:C:2006:592, paragraph 49).

65 While reasonable procedural time limits are thus intended, inter alia, to ensure the effective exercise of the rights of defence of undertakings which are the subject of infringement proceedings, the fact remains that national legislation laying down procedural time limits for the imposition of penalties by the national competition authorities must be adapted to the specific features of EU competition law and the objectives of applying EU competition law by the persons concerned, so as not to prejudice the full effectiveness thereof (see, to that effect, judgment of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraph 52).

66 In the present case, as is apparent from the request for a preliminary ruling, the AGCM must commence the *inter partes* investigation stage of the procedure by issuing the statement of objections within a fixed period of 90 days, starting from the time the essential elements of the alleged infringement are established. Furthermore, failure to observe the period at issue results, first, in the automatic annulment, in its entirety, of the final decision adopted by the AGCM at the end of the infringement proceedings, in so far as it concerns both the cessation of the anti-competitive behaviour and the penalties imposed on the undertaking concerned. Second, that authority is, by virtue of the principle *ne bis in idem*, definitively prevented from initiating new infringement proceedings in respect of the same anti-competitive behaviour. As is apparent from the documents before the Court, the purpose of those rules is to safeguard the rights of defence of undertakings during infringement proceedings against them by informing them in good time of the objections raised against them.

67 As the Advocate General observed, in essence, in points 107 to 109 of his Opinion, the application of the period at issue entails the risk that the AGCM may have to treat all infringement proceedings before it without any differentiation, taking into consideration not the circumstances specific to each procedure, but by following only a chronological order, thus preventing it from establishing and implementing priorities for proceedings for the enforcement of Articles 101 and 102 TFEU. That authority could thus be forced to initiate investigative procedures on uncertain factual and legal bases or give priority to certain categories of cases which its available resources allow it to handle after the preliminary investigation stage, where appropriate, to the detriment of cases which are particularly complex and harmful to free competition on the internal market. Such a prejudice to the AGCM's operational independence is all the more likely in a situation in which the starting point of the period, whereby, moreover, the mechanism to start the period running appears not to be very precise, clear or foreseeable either for that authority or for the undertaking concerned, coincides with the first report of the alleged infringement to that authority, which is then obliged to investigate the case immediately.

68 In addition, the consequences of failing to observe the period at issue are liable to prevent the AGCM from cooperating fully in the European Competition Network, which, as is apparent from Article 2(1)(5) of Directive 2019/1, read in the light of recital 2 thereof, is formed by the national competition authorities and the Commission for the purposes of close cooperation as regards the application and enforcement of Articles 101 and 102 TFEU.

69 As the AGCM and the Commission rightly pointed out in their written observations, it may prove necessary for the national competition authorities, particularly when complaints or requests for leniency are addressed to several national competition authorities, to coordinate among themselves and with the Commission in the context of that network so as to ensure the optimal distribution of cases among the various authorities in that network and to avoid parallel proceedings in respect of the same facts. In the present case, it is not apparent from the documents before the Court that the AGCM has the possibility of suspending or interrupting the period at issue.

70 In that context, it should also be recalled that, in accordance with the first subparagraph of Article 29(1) of Directive 2019/1, the limitation periods for the imposition of fines or periodic penalty payments by the national competition authorities must be suspended or interrupted for the duration of enforcement proceedings initiated before the national competition authorities of other Member States or the Commission in respect of an infringement concerning the same anti-competitive practice.

71 Furthermore, it should be noted, first, that the rights of defence of undertakings subject to infringement proceedings are not, in any event, liable to be infringed solely because the period at issue was not observed.

72 As the Advocate General stated, in essence, in point 131 of his Opinion, while it is admittedly important to ensure that an undertaking's rights of defence are not irremediably impaired during the preliminary stage of competition infringement proceedings, such an undertaking will, in any event, continue to be able to exercise its rights of defence effectively provided that it is guaranteed that no decision may be taken in its respect by the national competition authority without that authority having proceeded to an *inter partes* investigation stage during which that undertaking will have been able exercise its rights of defence fully.

73 Second, the Court has held that national rules on limitation which, for reasons inherent to them, are systematically an obstacle to the imposition of effective and dissuasive penalties for infringements of EU competition law are liable to render the application of the rules of EU competition law impossible in practice or excessively difficult. Consequently, it held that national legislation laying down a limitation period, the application of which was, in the light of the high degree of complexity of competition law cases, liable to create a systemic risk that acts constituting infringements of that law would go unpunished, was incompatible with the principle of effectiveness (see, to that effect, judgment of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraphs 53 and 56).

74 It should also be noted that, under Article 13(1) of Directive 2019/1, read in the light of recital 40 thereof, national competition authorities must have the power to impose effective, proportionate and dissuasive fines on undertakings and associations of undertakings where, intentionally or negligently, they infringe Article 101 or 102 TFEU.

75 As the Advocate General observed, in essence, in points 137 to 139 of his Opinion, the consequences which the national legislation at issue in the main proceedings attaches to the failure to observe the period at issue appear capable of giving rise to a systemic risk that acts constituting infringements of EU competition law would go unpunished. That national legislation could thus mean that a significant number of proven infringements of competition rules are not subject to effective and dissuasive penalties. Moreover, the fact that it is impossible for the AGCM to initiate new infringement proceedings in order to adopt such penalties could, in fact, encourage undertakings to continue anti-competitive practices, thereby seriously undermining the effective implementation of EU competition rules by the national competition authorities.

76 In those circumstances, in the light of the considerations set out in paragraphs 67 to 69 and 75 above, the application of the period at issue to the AGCM's activities is liable to have the consequence of undermining the operational independence of that authority and of creating a systemic risk that acts constituting infringements of Article 102 TFEU would go unpunished. It follows that the national provisions laying down the period at issue are liable seriously to compromise the achievement of the result prescribed by Directive 2019/1.

77 Moreover, it must be stated that an interpretation of national law according to which the consequences of the AGCM's failure to observe the period at issue would be limited to that authority losing its power to impose penalties, which thus remains in a position to order an undertaking to cease its anti-competitive behaviour, would not, however, be capable of ruling out the existence of such a risk of impunity and of ensuring that Articles 101 and 102 TFEU are applied effectively. Such limits on the action of a national competition authority would be incompatible both with the Member States' obligation to adopt and ensure that effective and dissuasive penalties are enforced, as laid down in Article 13(1) of Directive 2019/1, and with the case-law of the Court according to which, where the existence of an infringement of Articles 101 or 102 TFEU is established, it is only in strictly exceptional situations, in particular where the undertaking concerned has participated in a national leniency programme and its cooperation has been decisive in detecting and actually penalising the anti-competitive practice, that a national competition authority may confine itself to finding that infringement without imposing a fine on the undertaking concerned (see, to that effect, judgments of 22 March 2022, *Nordzucker and Others*, C-151/20, EU:C:2022:203, paragraph 64 and the case-law cited, and of 18 January 2024, *Lietuvos notarų rūmai and Others*, C-128/21, EU:C:2024:49, paragraph 108).

78 In so far as, according to the referring court, the application of the period at issue in the main proceedings is the result of a certain interpretation of national law by a higher court, it should also be added that, in order to ensure the effectiveness of all provisions of EU law, the primacy principle requires national courts to interpret, to the greatest extent possible, their national law in conformity with EU law (judgments of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 70 and the case-law cited, and of 12 October 2023, *Z. (Right to obtain a duplicate of the credit agreement)*, C-326/22, EU:C:2023:775, paragraph 34 and the case-law cited).

79 When applying national law, those courts are therefore required to interpret it, to the greatest extent possible, in the light of the text and the purpose of the provision of EU law applicable, taking into consideration the whole body of national law and applying the interpretative methods recognised by national law, with a view to ensuring that those provisions are fully effective and to achieving an outcome consistent with the objective which they pursue (see, to that effect, judgments of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 71 and the case-law cited, and of 22 September 2022, *Vicente (Action for the recovery of lawyers' fees)*, C-335/21, EU:C:2022:720, paragraph 72 and the case-law cited).

80 It is thus for the referring court to interpret, to the greatest extent possible, its national law, in particular Article 31 of Law No 287/90 and Article 14 of Law No 689/81, in a manner consistent with EU law with a view to ensuring that it is fully effective. The obligation to interpret national law in conformity with EU law requires that court to change established case-law, where necessary, if it is based on an interpretation of domestic law that is incompatible with the objectives of a provision of EU law and, to that effect, to disapply, on its own authority, any interpretation adopted by a higher, or even supreme, court which it must follow in accordance with its national law, if that interpretation is not compatible with EU law (see, to that effect, judgments of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 78 and the case-law cited; of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraph 58; and of 13 June 2024, *DG de la Función Pública, Generalitat de Catalunya and Departamento de Justicia de la Generalitat de Catalunya*, C-331/22 and C-332/22, EU:C:2024:496, paragraphs 108 and 110).

81 In the light of all the foregoing considerations, the answer to the question referred is that Article 4(5) and Article 13(1) of Directive 2019/1, as well as Article 102 TFEU, read in the light of the principle of effectiveness, must be interpreted as precluding national legislation which, in proceedings for a finding establishing an anti-competitive practice by a national competition authority, first, requires that authority to commence the *inter partes* investigation stage of those proceedings by notifying the statement of objections to the undertaking concerned within a period of 90 days, starting from the moment it has knowledge of the essential elements of the alleged infringement, which could be no more than those set out in the first report of the infringement, and, second, penalises failure to observe that period by annulling in its entirety the final decision of that authority at the end of the infringement proceedings and revoking that authority's power to initiate new infringement proceedings in respect of that same practice.

Costs

82 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 4(5) and Article 13(1) of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, as well as Article 102 TFEU, read in the light of the principle of effectiveness,

must be interpreted as precluding national legislation which, in proceedings for a finding establishing an anti-competitive practice by a national competition authority, first, requires that authority to commence the *inter partes* investigation stage of those proceedings by notifying the statement of objections to the undertaking concerned within a period of 90 days, starting from the moment it has knowledge of the essential elements of the alleged infringement, which could be no more than those set out in the first report of the infringement, and, second, penalises failure to observe that period by annulling in its entirety the final decision of that authority at the end of the infringement proceedings and revoking that authority's power to initiate new infringement proceedings in respect of that same practice.

[Signatures]