Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 15 November 2018 — Vivendi SA v Autorità per le Garanzie nelle Comunicazioni

(Case C-719/18)

(2019/C 103/10)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Vivendi SA

Defendant: Autorità per le Garanzie nelle Comunicazioni

Questions referred

1. While Member States have the ability to investigate when undertakings have a dominant position (and to impose specific obligations on those undertakings as a result), is Article 43(11) of Legislative Decree No 177 of 31 July 2005, in the version in force on the date of adoption of the contested decision, according to which 'undertakings, including through subsidiaries or affiliates, whose revenues in the electronic communications sector, as defined by Article 18 of Legislative Decree No 259 of 1 August 2003, exceed 40 per cent of the total revenues in that sector, may not earn, within the Integrated Communications System, revenues exceeding 10 per cent of that system' incompatible with EU law and, in particular, with the principle of free movement of capital laid down in Article 63 TFEU?; is Article 43(11) of Legislative Decree No 177 of 31 July 2005 incompatible with EU law and, in particular, with the principle of free movement of capital laid down in Article 63 TFEU, in so far as — through reference to Article 18 of the Codice delle comunicazioni elettroniche (Electronic Communications Code), it restricts the sector in question to the markets susceptible to ex ante regulation, regardless of what commonly happens, which is that information (the pluralism of which the rule is designed to protect) is increasingly conveyed by the use of the Internet, personal computers and mobile telephony, which is sufficient to make it unreasonable to exclude from that sector, in particular, retail mobile telephony services, simply because they operate completely competitively; is Article 43(11) of Legislative Decree No 177 of 31 July 2005 incompatible with EU law and, in particular, with the principle of free movement of capital laid down in Article 63 TFEU, taking into account the fact that the Authority has defined the boundaries of the electronic communications sector, for the purposes of applying Article 43(11) [of Legislative Decree No 177/2005] in the course of the present proceedings, by taking into consideration only the markets where at least one analysis has been carried out since the entry into force of the Electronic Communications Code, that is, from 2003 to date, and with revenues resulting from the last useful assessment, carried out in 2015?

2. Do the principles of freedom of establishment and freedom to provide services laid down in Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU) [and] Articles 15 and 16 of Directive 2002/21/EC [1] [on a common regulatory framework for electronic communications networks and services] to safeguard pluralism and freedom of expression, together with the EU law principle of proportionality, preclude the application of national legislation concerning public broadcasting and audiovisual media services, such as that of Italy, contained in Article 43 (11) and (14) [of Legislative Decree No 177/2005], according to which the revenues relevant for determining the second threshold of 10 % can also be applied to undertakings that are not subsidiaries or under a dominant influence, but are even merely 'affiliates' within the meaning of Article 2359 of the Codice Civile (Civil Code) (referred to in Article 43(14) [of Legislative Decree No 177/2005]), even if it is not possible to exert any influence on the information being broadcast by those undertakings?

3. Do the principles of freedom of establishment and freedom to provide services laid down in Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU) [and] Articles 15 and 16 of Directive 2002/21/EC, together with the principles on safeguarding pluralism of information sources and competition in the broadcasting sector laid down in Directive 2010/13/EU ([2]) concerning audiovisual media services and in Directive 2002/21/EC, preclude national legislation such as Legislative Decree No 177/2005 which in Article 43(9) and (11) thereof sets very different thresholds (20 % and 10 % respectively) for 'persons required to be entered in the Register of Communications Operators established under Article 1(6)(a)(5) of Law No 249 of 31 July 1997' (that is, persons who have received a concession or authorisation under the legislation in force, from the Authority or from other competent administrative authorities, and concessionaires of advertising, however transmitted, publishers, and so on, referred to in Article 43(9)) and for undertakings operating in the electronic communications sector, as defined above (covered by Article 43(11))?

([1]) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

([2]) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010 L 95, p. 1).

Request for a preliminary ruling from the Monomeles Protodikeio Lasithiou (Greece) lodged on 4 December 2018 — M.V. and Others v Local Authority Municipality of Agios Nikolaos

(Case C-760/18)

(2019/C 103/11)

Language of the case: Greek

Referring court

Monomeles Protodikeio Lasithiou (Greece)

Parties to the main proceedings

Applicants: M.V. and Others

Defendant: Local Authority Municipality of Agios Nikolaos

Questions referred

1. Would an interpretation of the provisions of national law enacted for the purpose of transposing into national law the framework agreement on fixed-term work concluded on 18 March 1999, as set out in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) that excluded the automatic extension of fixed-term employment contracts of local authority cleansing department workers from the definition of 'successive' fixed-term employment contracts within the meaning of clauses 1 and 5(2) of that framework agreement, pursuant to an express legislative provision of national law such as that enacted in Article 167 of Law 4099/2012, on the ground that it involves the extension of an existing employment contract rather than the conclusion in writing of a new fixed-term employment contract, undermine the purpose and the practical effect of that framework agreement?