Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

18 April 2024*

(Reference for a preliminary ruling – Article 102 TFEU – Principle of effectiveness – Actions for damages under national law for infringements of the competition law provisions – Directive 2014/104/EU – Late transposition of the directive – Temporal application – Article 10 – Limitation period – Detailed rules for the *dies a quo* – Cessation of the infringement – Knowledge of the information necessary for bringing an action for damages – Publication in the *Official Journal of the European Union* of the summary of the European Commission's decision finding an infringement of the competition rules – Binding effect of a Commission decision that is not yet final – Suspension or interruption of the limitation period for the duration of the Commission's investigation or until the date when its decision becomes final)

In Case C-605/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Městský soud v Praze (Prague City Court, Czech Republic), made by decision of 29 September 2021, received at the Court on 30 September 2021, in the proceedings

Heureka Group a.s.

v

Google LLC,

THE COURT (Grand Chamber),

Composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev (Rapporteur), A. Prechal, E. Regan, T. von Danwitz and Z. Csehi, Presidents of Chambers, J.-C. Bonichot, S. Rodin, J. Passer, D. Gratsias, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: J. Kokott,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 20 March 2023,

after considering the observations submitted on behalf of:

– Heureka Group a.s., by L. Duffek, L. Kačerová, J. Měkota, M. Olík and V. Podešva, advokáti,

* Language of the case: Czech.

– Google LLC, by R. Neruda, P.J. Pipková, J. Šturm, P. Vohnický and M. Vojáček, advokáti, and by A. Komninos, dikigoros,

– the European Commission, by N. Khan, G. Meessen and P. Němečková, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 September 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 102 TFEU, Article 10, Article 21(1) and Article 22 of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 2014 L 349, p. 1), and of the principle of effectiveness.

2 The request has been made in proceedings between Heureka Group a.s. ('Heureka'), a Czech company active on the market for sales price comparison services, and Google LLC concerning compensation for the harm allegedly suffered as a result of an infringement of Article 102 TFEU committed by Google and its parent company, Alphabet Inc., as found by the European Commission in a decision that is not yet final.

Legal context

European Union law

Regulation (EC) No 1/2003

3 Article 16 of 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), entitled 'Uniform application of Community competition law', is worded as follows:

'1. When national courts rule on agreements, decisions or practices under Article [101] or [102 TFEU] which are already the subject of a Commission decision, they cannot take decisions running counter to the decision adopted by the Commission. They must also avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated. To that effect, the national court may assess whether it is necessary to stay its proceedings. This obligation is without prejudice to the rights and obligations under Article [267 TFEU].

2. When competition authorities of the Member States rule on agreements, decisions or practices under Article [101] or [102 TFEU] which are already the subject of a Commission decision, they cannot take decisions which would run counter to the decision adopted by the Commission.'

Directive 2014/104

4 Article 2 of Directive 2014/104, entitled 'Definitions', provides:

'For the purposes of this Directive:

…

(8) "competition authority" means the Commission or a national competition authority or both, as the context may require;

…

(11) "infringement decision" means a decision of a competition authority or review court that finds an infringement of competition law;

(12) "final infringement decision" means an infringement decision that cannot be, or that can no longer be, appealed by ordinary means;

…'

5 Article 9 of that directive, entitled 'Effect of national decisions', provides:

'1. Member States shall ensure that an infringement of competition law found by a final decision of a national competition authority or by a review court is deemed to be irrefutably established for the purposes of an action for damages brought before their national courts under Article 101 or 102 TFEU or under national competition law.

2. Member States shall ensure that where a final decision referred to in paragraph 1 is taken in another Member State, that final decision may, in accordance with national law, be presented before their national courts as at least prima facie evidence that an infringement of competition law has occurred and, as appropriate, may be assessed along with any other evidence adduced by the parties.

3. This Article is without prejudice to the rights and obligations of national courts under Article 267 TFEU.'

6 Article 10 of that directive, entitled 'Limitation periods', states:

'1. Member States shall, in accordance with this Article, lay down rules applicable to limitation periods for bringing actions for damages. Those rules shall determine when the limitation period begins to run, the duration thereof and the circumstances under which it is interrupted or suspended.

2. Limitation periods shall not begin to run before the infringement of competition law has ceased and the claimant knows, or can reasonably be expected to know:

(a) of the behaviour and the fact that it constitutes an infringement of competition law;

(b) of the fact that the infringement of competition law caused harm to it; and

(c) the identity of the infringer.

3. Member States shall ensure that the limitation periods for bringing actions for damages are at least five years.

4. Member States shall ensure that a limitation period is suspended or, depending on national law, interrupted, if a competition authority takes action for the purpose of the investigation or its proceedings in respect of an infringement of competition law to which the action for damages relates. The suspension shall end at the earliest one year after the infringement decision has become final or after the proceedings are otherwise terminated.'

7 Article 21(1) of that directive is worded as follows:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 December 2016. They shall forthwith communicate the text of those measures to the Commission.

…'

8 Article 22 of Directive 2014/104, entitled 'Temporal application', states:

'1. Member States shall ensure that the national measures adopted pursuant to Article 21 in order to comply with substantive provisions of this Directive do not apply retroactively.

2. Member States shall ensure that any national measures adopted pursuant to Article 21, other than those referred to in paragraph 1, do not apply to actions for damages of which a national court was seised prior to 26 December 2014.'

Czech law

9 Paragraph 620(1) of the zákon č. 89/2012 Sb., občanský zákoník (Law No 89/2012 on the Civil Code) provides:

'The decisive circumstances for the limitation period applicable to the right to compensation for harm to begin to run shall include knowledge of the harm and of [the identity] of the party liable to compensate for that harm. This shall also apply, *mutatis mutandis*, for the purposes of damages for non-material harm.'

10 Paragraph 629(1) of the that code states:

'The limitation period shall be a period of three years.'

11 Zákon č. 262/2017 SB., o náhradě škody v oblasti hospodářské soutěže (Law No 262/2017 on compensation for harm in competition matters; 'Law No 262/2017'), which is intended to transpose Directive 2014/104, entered into force on 1 September 2017. Paragraph 9 provides in subparagraphs (1) to (3):

'(1) The limitation period for the exercise of the right to compensation for harm under this Law shall be a period of five years; the provisions of Paragraphs 629 and 636 of the Civil Code shall not apply.

(2) The limitation period shall begin to run on the day on which the party concerned knows, or should or could have known, of the harm, the [identity] of the party liable to compensate for that harm and the restriction of competition, and no earlier than the day on which the restriction of competition ceased.

(3) The limitation period shall not run for the duration of the investigation or the procedure before the competition authority concerning the same restriction of competition, and for a period of one year from the day on which

(a) the decision adopted by the competition authority or by a court finding that such a restriction exists has become final or

(b) the investigation, the procedure before the competition authority or the procedure before the court are otherwise terminated.'

12 Paragraph 36 of that law is worded as follows:

'Proceedings for compensation for harm caused by a restriction of competition and proceedings relating to the settlement, pursuant to the present law, of claims between those responsible for the harm who are jointly and severally liable to pay compensation for that harm, initiated after 25 December 2014, shall be conducted in accordance with this law; the legal effects of actions that were performed in the proceedings before the date of entry into force of this law shall be maintained.'

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

13 On 30 November 2010, the Commission initiated proceedings under Article 102 TFEU against Google concerning a possible abuse of a dominant position in the field of online searches. Also on 30 November 2010, the Commission published a press release informing the public that those proceedings had been initiated.

14 In 2013, Google submitted commitments to the Commission with a view to addressing that institution's concerns.

15 On 27 May 2014, the Sdružení pro internetový rozvoj v České republice (SPIR) (Association for Internet Development in the Czech Republic), of which Heureka is a member, issued a press release expressing its disagreement with those commitments.

16 On 15 April 2015, the Commission adopted a statement of objections addressed to Google, in which it provisionally concluded that that company's practices constituted an abuse of a dominant position and, therefore, infringed Article 102 TFEU.

17 On 14 July 2016, the Commission adopted a supplementary statement of objections and initiated proceedings for infringement of Article 102 TFEU against Google's parent company, Alphabet.

18 On 27 June 2017, the Commission adopted Decision C(2017) 4444 final relating to a proceeding under Article 102 [TFEU] and Article 54 of the EEA Agreement (Case AT.39740 – Google Search (Shopping)). A summary of that decision was published on 12 January 2018 in the *Official Journal of the European Union* (OJ 2018 C 9, p. 11).

19 By that decision, the Commission found that Google had abused the dominant position it held in 13 national markets for general search services within the European Economic Area (EEA) including the Czech Republic's market, by decreasing traffic from its general search results pages to competing comparison shopping services and increasing that traffic to its own comparison shopping service, which was capable of having, or which likely had had, anticompetitive effects on the 13 corresponding national markets for specialised comparison shopping search services and on those national markets for general search services.

20 Thus, according to that decision, Google, in essence, systematically accorded a leading position to its own price comparison service, while the price comparison services of Google's competitors were downgraded in the list of results.

21 As regards the duration of the infringement attributable to Google in the territory of the Czech Republic, the Commission found, in Decision C(2017) 4444 final, that that infringement had started in February 2013 and that it continued to produce effects on the date of adoption of that decision, namely 27 June 2017. The Commission therefore ordered Google, in Article 3 of that decision, to bring an end to its behaviour within 90 days and to refrain from similar behaviour having the same object or effect.

22 On 1 September 2017, Law No 262/2017 transposing Directive 2014/104 into Czech law entered into force.

23 By application lodged at the Registry of the General Court on 11 September 2017, Google and Alphabet brought an action against Decision C(2017) 4444 final.

24 On 26 June 2020, Heureka brought an action before the Městský soud v Praze (Prague City Court, Czech Republic) seeking an order that Google pay compensation for the harm which it allegedly suffered as a result of the anticompetitive practice in which, according to Decision C(2017) 4444 final, Google had allegedly engaged in the Czech Republic during the period from February 2013 to 27 June 2017. Heureka claimed that Google had positioned and displayed its own sales price comparison service in the best possible place amongst the results of its general search services, which reduced the number of visits to Heureka's sales price comparison portal, Heureka.cz.

25 In its defence, Google contended, inter alia, that, under the limitation rules of the obchodní zákoník (Commercial Code), according to which the limitation period of four years starts to run from the moment when the injured party knew or could have known of the harm and the identity of the party required to pay compensation, Heureka's right to compensation was time-barred at least for the period from February 2013 to 25 June 2016.

26 In that respect, Google stated that, in view of the nature of the alleged abuse of a dominant position, Heureka was in a position to know both the identity of the infringer and the fact that it had suffered harm well before the adoption of Decision C(2017) 4444 final. Heureka could not have been unaware, in particular on reading the Commission's press release of 30 November 2010, that the operator of the search engine known as 'Google' was Google. In any event, the SPIR's press release of 27 May 2014, referred to in paragraph 15 above, in which that association had expressed its disagreement with the commitments submitted by Google to the Commission, was sufficient to cause the limitation period to begin to run.

27 Thus, the limitation period applicable in the present case began to run in February 2013, that is to say, at the beginning of the commission of the alleged infringement on Czech territory and at the beginning of the occurrence of the alleged harm, or at the latest on 27 May 2014, the date of publication of the SPIR's press release.

28 According to Google, there was nothing to prevent Heureka from bringing its action for damages earlier, it being noted that, in that situation, Heureka would have been able to increase progressively the quantum of its claim for damages depending on the increase over time in the harm suffered.

29 The referring court notes, in the first place, that, in the present case, any anticompetitive behaviour began before the entry into force of Directive 2014/104, namely 25 December 2014, and ceased only after the expiry of the time limit for transposing that directive, namely 27 December 2016.

30 That court therefore asks whether Article 10 of that directive applies to all the harm caused by the infringement of Article 102 TFEU at issue in the main proceedings, or only to harm arising after the date of entry into force of that directive, or even only to harm arising after the date of expiry of the period for transposition of that directive.

31 In the second place, the referring court asks whether Article 10 of Directive 2014/104 is a substantive provision, within the meaning of Article 22(1) of that directive, or a procedural provision.

32 In the third place, the referring court has doubts as to the compatibility of the Czech rules on limitation concerning actions for damages for infringements of the competition rules, applicable until the entry into force of Law No 262/2017 transposing Directive 2014/104, with Article 10 of that directive and, as the case may be, with Article 102 TFEU and with the principle of effectiveness.

33 In that regard, that court notes, as a preliminary point, that the limitation rules applicable in the case in the main proceedings are not those of the Commercial Code but those of the Civil Code and that it is the latter rules which constitute the former relevant rules on limitation in the present case. As it is, under Paragraph 620(1) of the Civil Code, the three-year limitation period begins to run as soon as the injured party knows, or as soon as it can be expected to have known, the identity of the infringer and the harm suffered. As regards the condition relating to knowledge of the fact that harm has been suffered as a result of the infringement at issue, it is apparent from the interpretation given to Paragraph 620(1) of the Civil Code by the Nejvyšší soud (Supreme Court, Czech Republic) that having knowledge of partial harm is sufficient to cause the limitation period to start to run. In particular in the case of continuing or repeated infringements, harm is divisible, so that every 'new occurrence of harm' can be claimed separately and sets a new limitation period running.

34 According to the referring court, this means that, in the present case, every general search on Google's web page which led to a positioning and display of results more favourable to Google's price comparison service would have set a new and separate limitation period running.

35 In the fourth and final place, that court notes that, in order for the limitation period to start to run, the Civil Code does not require that the injured party knows of the fact that the behaviour concerned constitutes an infringement of competition law. Nor does that code require the

infringement in question to have come to an end. Lastly, that code does not contain any rules requiring the suspension or interruption of the limitation period during the investigation into that behaviour.

36 In those circumstances, the Městský soud v Praze (Prague City Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 21(1) of [Directive 2014/104] and the general principles of EU law be interpreted as meaning that Directive 2014/104, in particular Article 10 thereof, will apply, directly or indirectly, to the present dispute seeking compensation in respect of all harm caused by a breach of Article 102 TFEU, which commenced before the date on which Directive 2014/104 entered into force and ended after the expiry of the period for transposition of that directive, in a situation when the action seeking compensation in respect of harm was also lodged after the expiry of the period for transposition, or such that Article 10 of Directive 2014/104 will apply only to the part of the conduct (and the ensuing part of harm) occurring after the date on which Directive 2014/104 entered into force or, as the case may be, after the expiry of the deadline for its transposition?

(2) Do the meaning and purpose of Directive 2014/104 and/or Article 102 TFEU and the principle of effectiveness require Article 22(2) of Directive 2014/104 to be interpreted such that the "national measures adopted pursuant to Article 21, other than those referred to in [Article 22,] paragraph 1" are those provisions of national legislation through which Article 10 of Directive 2014/104 was implemented, in other words, do Article 10 of Directive 2014/104 and the rules on limitation fall within [paragraph 1] or [paragraph 2] of Article 22 of Directive 2014/104?

(3) Is national legislation and its interpretation in line with Article 10(2) of Directive 2014/104 and/or with Article 102 TFEU and with the principle of effectiveness if it links "knowledge of the fact that harm was caused" – relevant to the commencement of the subjective limitation period – to the awareness of the injured party "of individual partial [occurrences of] harm", which occur over time in the course of continuous or continuing anticompetitive conduct (as case-law is based on the assumption that the claim in question for compensation in respect of harm is, in its entirety, divisible), and in relation to which separate subjective limitation periods start to run regardless of the knowledge of the injured party of the full extent of the harm caused by the entire infringement of Article 102 TFEU, that is, national legislation and its interpretation that allow the limitation period for a claim for compensation in respect of harm caused by anticompetitive conduct to begin to run before the point at which ceased that conduct consisting of more favourable placement and display of one's own price comparison engine in breach of Article 102 TFEU?

(4) Do Article 10(2), (3), and (4) of Directive 2014/104 and/or Article 102 TFEU and the principle of effectiveness preclude national legislation that provides that a subjective limitation period, in the case of actions seeking compensation in respect of harm, is three years and starts to run on the day when the injured party learned or could have learned of partial harm and of the person obliged to compensate for it, but does not take into account (i) the point at which the infringement ceased; (ii) the knowledge of the injured party that the conduct constitutes an infringement of the competition rules and that, at the same time (iii) does not suspend or interrupt the three-year limitation period during the proceedings before the Commission

concerning the ongoing infringement of Article 102 TFEU; and (iv) does not contain the rule that the suspension of the limitation period will end no earlier than one year after the decision concerning the infringement has become final?'

Developments subsequent to the order for reference and procedure before the Court

37 In its judgment of 10 November 2021, *Google and Alphabet* v *Commission (Google Shopping)* (T-612/17, EU:T:2021:763), the General Court essentially dismissed the action brought by Google and Alphabet against Decision C(2017) 4444 final by validating the Commission's analysis as regards the market for specialised comparison shopping search services. However, as regards the national markets for general search services, the General Court considered that the Commission had relied on considerations that were too imprecise to justify the existence of anticompetitive effects, even potential effects, and that the plea put forward by Google and Alphabet alleging that the analysis of effects was purely speculative had to be upheld for those markets. Thus, the General Court annulled that decision only in so far as the Commission had found there to be an infringement by Google and Alphabet in 13 national markets for general search services within the EEA on the basis of anticompetitive effects in those markets and dismissed the action as to the remainder.

38 On 20 January 2022, Google and Alphabet lodged an appeal against the judgment of the General Court of 10 November 2021, *Google and Alphabet* v *Commission (Google Shopping)* (T-612/17, EU:T:2021:763). That appeal is still pending.

39 On 22 June 2022, the Court gave the judgment in *Volvo and DAF Trucks* (C-267/20, EU:C:2022:494), in which it ruled, inter alia, on the nature of Article 10 of Directive 2014/104 and on the temporal applicability of that provision.

40 By letter of 28 June 2022, the Court notified that judgment to the referring court, asking it whether, in the light of that judgment, it wished to maintain its request for a preliminary ruling.

41 By written communication received at the Court on 27 September 2022, the referring court informed the Court that it was withdrawing the first and second questions of its reference for a preliminary ruling but that it was maintaining the third and fourth questions of that reference.

Consideration of the questions referred

42 By its third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 10 of Directive 2014/104 and/or Article 102 TFEU and the principle of effectiveness must be interpreted as precluding national legislation, as interpreted by the relevant national courts, which lays down a three-year limitation period applicable to actions for damages in respect of continuing infringements of EU competition law rules and which:

– starts to run, independently and separately for each partial occurrence of harm resulting from such an infringement, from the moment when the injured party knew, or could reasonably be expected to have known, of the fact that it had suffered that partial harm and the identity of the party liable to pay compensation for that harm, without the injured party having had knowledge of the fact that the behaviour concerned constituted an infringement of the competition rules and without that infringement having come to an end;

– may not be suspended or interrupted during the Commission's investigation into such an infringement, and

– nor may it be suspended, at the very least, until one year after the date on which the Commission's decision finding that infringement becomes final.

43 It follows from the information provided by the referring court that it seeks, inter alia, to determine whether, by its action brought on 26 June 2020, Heureka, which considers that it has been harmed by an abuse of a dominant position committed by Google on the relevant market in the Czech Republic between February 2013 and 27 June 2017 as found by a Commission decision that is not yet final, may claim compensation for the harm caused during the whole of that period, or whether its right to compensation is already time-barred for part of that period.

44 That court states in that regard that, before Directive 2014/104 was transposed by Law No 262/2017, Paragraph 620(1) of the Civil Code made the starting point of the limitation period, fixed at three years by Paragraph 629(1) of that code, subject only to knowledge of the harm and of the party who caused it. Those provisions were interpreted as meaning that the totality of harm arising in the course of a continuing infringement of competition law was divisible in partial occurrences of harm and that a separate limitation period began to run for each partial occurrence of harm. The right to compensation therefore became time-barred at separate junctions and gradually.

45 The referring court notes, moreover, that, in the present case, the infringement in question began before 25 December 2014, the date on which Directive 2014/104 entered into force, but ceased only after 27 December 2016, the date on which the transposition period laid down in Article 21 of that directive expired. However, since that directive was transposed belatedly into Czech law, that infringement appears to have ceased before the date of entry into force of Law No 262/2017, namely 1 September 2017. Conversely, the main proceedings were brought after that date.

46 In those circumstances, it is necessary, in order to answer the third and fourth questions, to ascertain first of all the temporal applicability of Article 10 of Directive 2014/104, to which those questions refer and which lays down certain requirements in relation to the limitation period applicable to actions for damages for infringements of competition law, by determining, in particular, the minimum duration of that period and the earliest point in time at which it may begin to run and the circumstances in which it must be suspended or interrupted.

47 In that regard, it should be recalled that Article 10 of Directive 2014/104 is a substantive provision within the meaning of Article 22(1) of that directive. Under that provision, Member States had to ensure that the national measures adopted pursuant to Article 21 of that directive in order to comply with its substantive provisions do not apply retroactively (judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraphs 36 and 47).

48 However, it must be borne in mind that, as from the expiry of the period prescribed for transposition of a directive, national law must be interpreted in conformity with any provision of that directive (see, to that effect, judgments of 4 July 2006, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 115, and of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraphs 33 and 77).

49 Therefore, in order to determine the temporal applicability of Article 10 of Directive 2014/104, it is necessary to ascertain whether the situation at issue in the main proceedings arose before the expiry of the time limit for the transposition of that directive or whether it continued to produce effects after the expiry of that time limit (see, to that effect, judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 48).

50 To that end, in view of the specificities of the limitation rules, their nature and their operational arrangements, in particular in the context of an action for damages for an infringement of competition law, it is necessary to ascertain whether, at the date of expiry of the time limit for transposition of Directive 2014/104, namely 27 December 2016, the limitation period laid down by national law, applicable to the situation at issue in the main proceedings until that date, had elapsed, which means determining the moment when that limitation period began to run (see, to that effect, judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 49).

51 In the absence of EU rules governing the matter until the date of expiry of the time limit for transposition of Directive 2014/104, it was for the legal system of each Member State to lay down the detailed rules governing the exercise of the right to claim compensation for the harm resulting from an infringement of Articles 101 and 102 TFEU, including those on limitation periods, provided that the principles of equivalence and effectiveness were observed, that latter principle requiring that the rules applicable to actions for safeguarding rights which individuals derive from the direct effect of EU law do not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (see, to that effect, judgments of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraphs 42 and 43, and of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 50).

52 In that regard, it follows from that principle that, even before the expiry of the time limit for transposition of Directive 2014/104, national legislation laying down the date on which the limitation period starts to run, the duration of that period and the rules for its suspension or interruption must be adapted to the specificities of competition law and the objectives of the implementation of the rules of that law by the persons concerned, so as not to undermine completely the full effectiveness of Articles 101 and 102 TFEU (see, to that effect, judgments of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 47, and of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 53).

53 In that context, it should be recalled that Article 102 TFEU produces direct effects in relations between individuals and creates rights for the individuals concerned, which the national courts must safeguard (judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 38 and the case-law cited).

54 The full effectiveness of Article 102 TFEU and, in particular, the effectiveness of the prohibition laid down in that article would be called into question, especially if, on account of the national legislation fixing the date on which the limitation period starts to run, and the duration of that period and the detailed rules for its suspension or interruption, it would be practically impossible or excessively difficult for a party to claim compensation for the harm caused to it by abusive conduct on the part of a dominant undertaking that is liable to restrict or distort competition. The right of any individual to claim compensation for such a loss actually strengthens the working of the EU competition rules and discourages abuses of a dominant position which are liable to restrict or distort competition, thereby making a significant contribution to the

maintenance of effective competition in the European Union (see, to that effect, judgment of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraphs 39 and 41 and the case-law cited).

55 It is apparent from the case-law that the exercise of that right would be rendered practically impossible or excessively difficult if the limitation periods applicable to actions for damages for infringements of the provisions of competition law began to run before the infringement came to an end and the injured party did not know, or could not reasonably have been expected to know, the information necessary for bringing its action for damages (see, to that effect, judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraphs 56, 57 and 61).

56 As regards the first condition relating to the cessation of the infringement, it should be noted, in the first place, that it is apparent from the settled case-law of the Court that the bringing of actions for damages on account of infringements of EU competition law requires, in principle, a complex factual and economic analysis (judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 54 and the case-law cited).

57 Disputes concerning infringements of the rules on competition law are characterised, in principle, by information asymmetry to the detriment of the injured party, which makes it more difficult for that party to obtain that information than for the competition authorities to obtain the information necessary for exercising their powers to apply competition law (judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 55).

58 Moreover, it is often particularly difficult for the injured party to establish the existence and scope of such an infringement and the harm resulting from that infringement before it comes to an end.

59 In those circumstances, the requirement that the limitation period cannot begin to run before the infringement concerned has come to an end is necessary in order to enable the injured party to identify and prove its existence, its scope and its duration, the extent of the harm caused by the infringement and the causal link between that harm and that infringement and thus to be effectively able to exercise its right to claim full compensation under Articles 101 and 102 TFEU.

60 In particular, in view of the complexity of quantifying the harm in competition law cases where the infringement is still ongoing, requiring the injured party to increase gradually the amount of compensation claimed on the basis of the additional harm resulting from that infringement would render the exercise of the right to full compensation practically impossible or excessively difficult.

61 In the second place, it should be recalled that, just as is the case for the implementation of the EU competition rules by public authorities (public enforcement), actions for damages for infringement of those rules (private enforcement) are an integral part of the system for enforcement of those rules, which are intended to punish anticompetitive behaviour on the part of undertakings and to deter them from engaging in such behaviour (judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 37 and the case-law cited).

62 In that regard, first, rules on limitation which provide for a limitation period of three years, the *dies a quo* of which precedes the end of a single and continuous infringement and which cannot be suspended or interrupted during the Commission's investigation, could have the consequence that that period expires well before the adoption of a Commission decision finding that infringement, which would directly affect the injured party's ability to bring an action for

damages following such a decision (follow-on damages action) and, therefore, would render the exercise of its right to seek full compensation excessively difficult. It is generally difficult for that party to adduce evidence of an infringement of Article 101(1) or Article 102 TFEU in the absence of a decision by the Commission or by a national authority.

63 Second, as the Advocate General noted, in essence, in point 118 of her Opinion, cessation of the infringement as a condition which must be satisfied in order for the limitation period to begin to run may have a deterrent effect and lead the perpetrator of that infringement to bring that infringement to an end sooner. Conversely, that is not the case with rules which, for the purposes of bringing an action for damages for an infringement of competition law, do not take that condition into account, but allow the limitation period to be divided up into several successive *dies a quo* and, consequently, cause the limitation periods to expire for a certain part of the harm caused by the infringement concerned.

64 As regards the second condition which, as is apparent from the case-law referred to in paragraph 55 above, must be satisfied in order for the limitation period to begin to run, that is to say, when the injured party knew the information necessary for bringing its action for damages for infringements of the rules on competition law, it should be borne in mind that the existence of an infringement of competition law, the existence of harm, the causal link between that harm and that infringement, and the identity of the infringer form part of that information (see, to that effect, judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 60).

65 In the absence of that information, it is extremely difficult, if not impossible, for the injured party to obtain compensation for the harm caused to it by that infringement.

66 In that regard, it is for the national court before which an action for damages has been brought to determine the moment from which it may reasonably be expected that the injured party knew of that information. It should be borne in mind that the national court alone has jurisdiction to determine and assess the facts of the main proceedings (see, to that effect, judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 61 and the case-law cited). That being so, it is open to the Court, when giving a preliminary ruling on a reference, to give clarifications to guide the national court in that determination.

67 Thus, it follows from the case-law that, in principle, that moment coincides with the date of publication of the summary of the Commission decision concerned in the *Official Journal of the European Union* (see, to that effect, judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 71).

68 First, publication in the *Official Journal of the European Union* in all the official EU languages of an act emanating from an EU institution guarantees that both natural and legal persons have the opportunity to be aware of it (see, to that effect, order of 6 March 2023, *Deutsche Bank (Cartel – Euro interest rate derivatives)*, C-198/22 and C-199/22, EU:C:2023:166, paragraph 49 and the case-law cited).

69 Second, in the context of actions for damages brought following a final decision of the Commission, the connection to an objective factor such as the publication in the *Official Journal of the European Union* of the summary of that decision is in the interests of legal certainty, in that it makes it possible, in so far as the infringement concerned has come to an end, in principle, to establish the moment from which the limitation period begins to run, both for undertakings that

have participated in a cartel and for injured parties (see, to that effect, order of 6 March 2023, *Deutsche Bank (Cartel – Euro interest rate derivatives)*, C-198/22 and C-199/22, EU:C:2023:166, paragraph 48).

70 That being so, it cannot be ruled out that the elements necessary for bringing an action for damages may be known to the party injured by an infringement of the competition law provisions well before the publication in the *Official Journal of the European Union* of the summary of a Commission decision (order of 6 March 2023, *Deutsche Bank (Cartel – Euro interest rate derivatives)*, C-198/22 and C-199/22, EU:C:2023:166, paragraph 44 and the case-law cited).

71 However, it is for the party against whom the action for damages is brought to demonstrate that that is the case.

72 In the present case, however, the question still arises as to the effects, on the determination of the *dies a quo* of the limitation period, of the publication in the *Official Journal of the European Union* of the summary of a Commission decision, which has not yet become final, finding an infringement of the competition rules. Unlike the cases that gave rise to the judgment of 22 June 2022, *Volvo and DAF Trucks* (C-267/20, EU:C:2022:494) and to the order of 6 March 2023, *Deutsche Bank (Cartel – Euro interest rate derivatives)* (C-198/22 and C-199/22, EU:C:2023:166), in which the Commission's decisions had become final, in the present case, as is apparent from paragraphs 37 and 38 above, Decision C(2017) 4444 final has not become final. That decision was challenged by Google and Alphabet before the General Court and the judgment delivered by that court, which only partially upheld that challenge, is the subject of an appeal by those companies which is still pending before the Court of Justice.

73 In that respect, it should be recalled that acts of the EU institutions enjoy, in principle, a presumption of legality and, therefore, produce legal effects as long as they have not been annulled or withdrawn (see, to that effect, judgment of 5 October 2004, *Commission* v *Greece*, C-475/01, EU:C:2004:585, paragraph 18 and the case-law cited). That principle also implies an obligation on all persons subject to EU law to recognise the full effectiveness of those acts until such time as their illegality has been established by the Court and to respect their enforceability until such time as the Court has decided to stay their enforcement (see, to that effect, judgments of 7 June 1988, *Commission* v *Greece*, 63/87, EU:C:1988:285, paragraph 10, and of 21 September 1989, *Hoechst* v *Commission*, 46/87 and 227/88, EU:C:1989:337, paragraph 64).

74 In particular, according to the first sentence of Article 16(1) of Regulation No 1/2003, when national courts rule on agreements, decisions or practices under Article 101 or 102 TFEU, which are already the subject of a Commission decision, they cannot take decisions running counter to the decision adopted by the Commission. Article 16(1) does not require the Commission's decision to have become final in order for the national court to be obliged to comply with it. Article 16 differs in that respect from Article 9 of Directive 2014/104, which ascribes probative value to decisions of national competition authorities only where those decisions are final. That difference between those two provisions is justified precisely by the binding nature of decisions of the EU institutions.

75 It is true that, in paragraph 42 of the judgment of 6 October 2021, *Sumal* (C-882/19, EU:C:2021:800), the Court held that, in order to hold any entity within an economic unit liable, the infringement of the competition rules concerned must be recorded in a Commission decision which has become final or established independently before the national court concerned where

no decision as to the existence of an infringement has been adopted by the Commission (see, to that effect, judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 42). However, those considerations relate only to the two most obvious situations in which an action for damages may be brought.

76 In the present case, unlike the dispute which gave rise to the judgment of 6 October 2021, *Sumal* (C-882/19, EU:C:2021:800), which concerned a final decision of the Commission, the action for damages in the main proceedings was brought following a Commission decision which has not become final, because it was the subject of an action for annulment before the General Court whose judgment is being challenged before the Court of Justice.

77 As the Advocate General observed, in essence, in points 54 and 62 of her Opinion, a Commission decision that is not yet final, in which the Commission finds an infringement of competition law, has binding effect for as long as it has not been annulled, and it is for the national court to draw the appropriate conclusions from that in the proceedings before it. An injured party may therefore rely on the findings made in such a decision in order to substantiate its action for damages.

78 Therefore, irrespective of whether or not the Commission decision at issue has become final, from the date of publication in the *Official Journal of the European Union* of the summary of that decision and provided that the infringement concerned has come to an end, the view may, in principle, reasonably be taken that the injured party has all the information necessary to enable it to bring an action for damages within a reasonable period, including the information necessary to determine the extent of any harm suffered as a result of the infringement concerned. That publication generally makes it possible to establish the existence of an infringement. In addition, the extent of any harm suffered as a result of that infringement may be established by the injured party on the basis of that finding and the facts at its disposal.

79 As regards whether Article 102 TFEU and the principle of effectiveness require the suspension or interruption of the limitation period for the duration of an investigation by the Commission, it should be noted that, as is apparent from paragraph 62 above, a limitation period of three years, which starts to run before the end of the single and continuous infringement concerned and which cannot be suspended or interrupted during the Commission's investigation, could elapse even before the procedure before the Commission has been completed, which would make the exercise of the right to full compensation by means of an action for damages brought following a Commission decision excessively difficult, if not impossible. The suspension or the interruption of the limitation period for the duration of a Commission investigation are, in principle, necessary to enable the injured party, in particular following that investigation, to assess whether an infringement of competition law has been committed, to know its scope and duration, and to rely on that finding in a subsequent action for damages.

80 By contrast, since, as is apparent from paragraph 77 above, an injured party may, in order to substantiate its action for damages, rely on findings in a Commission decision that has not become final, the view must be taken that Article 102 TFEU and the principle of effectiveness do not require the limitation period to continue to be suspended until the moment the Commission's decision becomes final. Furthermore, as the Advocate General observed, in essence, in point 70 of her Opinion, although the national court has the power to stay the proceedings before it until the Commission's decision becomes final, where it considers it appropriate on account of the circumstances of the case, it is in no way required to do so provided that it does not depart from that decision.

81 In the light of the considerations set out in paragraphs 51 to 80 above, it must be held that rules on limitation, such as those at issue in the main proceedings, under which, first, the three-year limitation period begins to run independently and separately for each partial occurrence of harm resulting from the infringement concerned, from the moment when the injured party knew, or could reasonably be expected to have known, of the fact that it had suffered that partial harm and the identity of the party liable to pay compensation for that harm, without it being necessary for the infringement to have come to an end and for that person to have had knowledge of the fact that the behaviour concerned constituted an infringement of the competition rules, and, second, that period may not be suspended or interrupted during the Commission's investigation into such an infringement, make the exercise of the right to claim compensation for the harm suffered as a result of that infringement practically impossible or excessively difficult.

82 Consequently, it is by disregarding the elements of those rules on limitation which are incompatible with Article 102 TFEU and the principle of effectiveness that it is necessary to examine whether, on the date the time limit for transposing Directive 2014/104 expired, namely 27 December 2016, the limitation period laid down by national law, applicable to the situation at issue in the main proceedings until that date, had expired.

83 In the present case, the summary of Decision C(2017) 4444 final was published in the *Official Journal of the European Union* on 12 January 2018, and so, subject to verification by the referring court, it could reasonably be expected that, on that date, Heureka knew all the information necessary to enable it to bring an action for damages. If Google intends to challenge that finding by claiming that Heureka knew that information well before that date, it is for Google to demonstrate before the referring court that that was actually the case.

84 It is apparent, moreover, from Article 1 of Decision C(2017) 4444 final that the infringement at issue in the main proceedings began in February 2013 and that it had not yet come to an end on the date of adoption of that decision, namely 27 June 2017, since the Commission did not find that Google's behaviour had been interrupted during that period. Moreover, the Commission ordered that company, in Article 3 of that decision, to put an end to its behaviour within 90 days.

85 In that regard, as the Advocate General stated, in essence, in point 91 of her Opinion, the alleged infringement consists in continuous behaviour pursuing a single economic objective, namely the more favourable positioning and display reserved by Google in its general search results pages for its own comparison shopping service in order to increase traffic to that comparison shopping service to the detriment of competing comparison shopping services.

86 In that context, irrespective of when it may be expected that Heureka knew the information essential for bringing its action for damages, whether that was the date of publication of the summary of Decision C(2017) 4444 final in the *Official Journal of the European Union* or a point in time before that date, the limitation period could not have started to run before 27 June 2017 since, as is apparent from Articles 1 and 3 of Decision C(2017) 4444 final, the alleged infringement at issue in the main proceedings had not come to an end on that date. In any event, it is for the referring court to ascertain the exact date on which that infringement ceased.

87 It follows that, on the date on which the time limit for transposing Directive 2014/104 expired, namely 27 December 2016, not only had the limitation period not expired but it had not even started to run.

88 Therefore, the situation at issue in the main proceedings had not arisen before the expiry of the period for transposition of that directive, with the result that Article 10 of that directive is applicable *ratione temporis* in the present case. Accordingly, the third and fourth questions must be answered on the basis, not only of Article 102 TFEU and the principle of effectiveness, but also of Article 10 of Directive 2014/104.

89 In that regard, it follows from paragraphs 51 to 81 above that rules on limitation, such as those to which the third and fourth questions relate, are incompatible with Article 102 TFEU and the principle of effectiveness, in so far as, first, the three-year limitation period begins to run independently and separately for each partial occurrence of harm resulting from the infringement concerned, from the moment when the injured party knew, or could reasonably be expected to have known, of the fact that it had suffered that partial harm and the identity of the party liable to pay compensation for that harm, without it being necessary for the infringement to have come to an end and for that person to have had knowledge of the fact that the behaviour concerned constituted an infringement of the competition rules, and, second, that period may not be suspended or interrupted during the Commission's investigation into such an infringement.

90 Furthermore, it follows from the clear wording of Article 10(2) and (4) of Directive 2014/104 that such rules are also incompatible with that provision.

91 In particular, the second sentence of Article 10(4) of that directive now requires that the suspension of the limitation period following action taken by a competition authority for the purpose of the investigation or proceedings in respect of an infringement of competition law to which the action for damages relates is to end, at the earliest, one year after the date on which the infringement decision has become final or after the proceedings are otherwise terminated.

92 It should also be recalled that, according to settled case-law, a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual. If the possibility of relying on a provision of a directive that has not been transposed, or has been incorrectly transposed, were to be extended to the sphere of relations between individuals, that would amount to recognising a power in the European Union to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations (judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 76).

93 It is also apparent from the case-law of the Court that, in a dispute between individuals such as that at issue in the main proceedings, the national court is required, where appropriate, to interpret national law, as soon as the time limit for transposing an untransposed directive expires, so as to render the situation at issue immediately compatible with the provisions of that directive, without however interpreting national law *contra legem* (judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 77).

94 In the light of the foregoing considerations, the answer to the third and fourth questions is that Article 10 of Directive 2014/104 and Article 102 TFEU and the principle of effectiveness must be interpreted as precluding national legislation, as interpreted by the relevant national courts, which lays down a three-year limitation period applicable to actions for damages in respect of continuing infringements of EU competition law rules and which:

– starts to run, independently and separately for each partial occurrence of harm resulting from such an infringement, from the moment when the injured party knew, or could reasonably be

expected to have known, of the fact that it had suffered that partial harm and the identity of the party liable to pay compensation for that harm, without the injured party having had knowledge of the fact that the behaviour concerned constituted an infringement of the competition rules and without that infringement having come to an end, and

– may not be suspended or interrupted during the Commission's investigation into such an infringement.

Furthermore, Article 10 of Directive 2014/104 also precludes such rules in so far as they do not provide for the limitation period to be suspended, at the very least, until one year after the date on which the decision finding that infringement has become final.

Costs

95 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 (Grand Chamber) hereby rules:

Article 10 Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, and Article 102 TFEU and the principle of effectiveness

must be interpreted as precluding national legislation, as interpreted by the relevant national courts, which lays down a three-year limitation period applicable to actions for damages in respect of continuing infringements of EU competition law rules and which:

– **starts to run, independently and separately for each partial occurrence of harm resulting from such an infringement, from the moment when the injured party knew, or could reasonably be expected to have known, of the fact that it had suffered that partial harm and the identity of the party liable to pay compensation for that harm, without the injured party having had knowledge of the fact that the behaviour concerned constituted an infringement of the competition rules and without that infringement having come to an end, and**

– **may not be suspended or interrupted during the Commission's investigation into such an infringement.**

Furthermore, Article 10 of Directive 2014/104 also precludes such rules in so far as they do not provide for the limitation period to be suspended, at the very least, until one year after the date on which the decision finding that infringement has become final.

[Signatures]