



# Reports of Cases

**Case C-605/21**

**Heureka Group a.s.**

**v**

**Google LLC**

(Request for a preliminary ruling from the Městský soud v Praze)

**Judgment of the Court (Grand Chamber) of 18 April 2024**

(Reference for a preliminary ruling – Article 102 TFEU – Principle of effectiveness – Actions for damages under national law for infringements of 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)

1. *Competition – Actions for compensation for the harm caused by infringements of competition rules – Directive 2014/104 – Temporal application – Provision laying down certain requirements in relation to the limitation period applicable to actions for damages – Substantive provision – Prohibition of retroactive application of national transposing legislation*  
(European Parliament and Council Directive 2014/104, Arts 10 and 22)

(see paragraphs 47-49)

2. *Competition – Actions for compensation for the harm caused by infringements of competition rules – Directive 2014/104 – Temporal application – Actions for compensation for the harm caused by an abuse of a dominant position which began before the entry into force of the directive – Temporal applicability of the provision of the directive laying down certain requirements in relation to the limitation period – Condition – Actions for compensation not yet time-barred on the date on which the transposition period of the directive expired – Determination of the starting point of the limitation period for those actions – Applicability of national law – Limits – Compliance with Article 102 TFEU and with the principle of effectiveness – National limitation period being able to begin to run only after the infringement has ceased and the injured party knows the information necessary to bring*

*the action – Moment when that information is known coinciding in principle with the date of publication of the summary of the Commission’s decision finding the infringement – Decision that is not yet final – Irrelevant  
(Art. 102 TFEU; European Parliament and Council Directive 2014/104, Arts 10 and 22)*

(see paragraphs 50-78, 82-88)

3. *Dominant position – Abuse – Prohibition – Direct effect – Right of individuals to claim compensation for damage suffered – Detailed rules governing the exercise of that right – Limitation periods – National legislation making no provision for the suspension or interruption of the limitation period during the Commission’s investigation – Not permissible – National legislation making no provision for the suspension of the limitation period until the Commission’s final decision – Whether permissible  
(Art. 102 TFEU)*

(see paragraphs 79, 80)

4. *Competition – Actions for compensation for the harm caused by infringements of competition rules – Directive 2014/104 – Limitation period applicable to actions for damages – Suspension of the limitation period following action taken by a competition authority for the purpose of the investigation or proceedings in respect of the infringement at issue  
(European Parliament and Council Directive 2014/104, Art 10(2) and (4))*

(see paragraphs 90, 91)

5. *Acts of the institutions – Directives – Implementation by Member States – Need to ensure that directives are effective – Obligations of national courts – Obligation of conforming interpretation – Scope – Interpretation of national law contra legem – Not included  
(Art 288, third para., TFEU)*

(see paragraph 93)

## **Résumé**

Having received a reference for a preliminary ruling, the Grand Chamber of the Court of Justice rules on the requirements to be met by the national rules on limitation applicable to actions for damages brought before national courts for infringements of EU competition law. That clarification is provided in the context of an action for damages brought by a Czech undertaking against Google LLC for abuse of a dominant position allegedly committed in the Czech Republic by Google and its parent company, Alphabet Inc.

By decision of 27 June 2017,<sup>1</sup> the European Commission found that, since February 2013, Google had infringed Article 102 TFEU by abusing its dominant position in 13 national markets for general search services, including that of the Czech Republic, by decreasing traffic from its general search results pages to competing comparison shopping services and increasing that traffic to its own comparison shopping service. A summary of the decision was published on 12 January 2018 in the *Official Journal of the European Union*.<sup>2</sup>

Google and Alphabet brought an action against that decision before the General Court, which was essentially dismissed.<sup>3</sup> However, since the appeal against that judgment of the General Court is still pending before the Court of Justice, the Commission's decision is not yet final.

In June 2020, Heureka Group a.s. ('Heureka'), a Czech company active on the market for sales price comparison services, brought an action before the Městský soud v Praze (Prague City Court, Czech Republic) seeking an order that Google pay compensation for the harm resulting from the infringement of Article 102 TFEU found in the Commission's decision and committed in the Czech Republic during the period from February 2013 to 27 June 2017. In Heureka's submission, Google's anticompetitive conduct reduced the number of visits to its portal, Heureka.cz.

In its defence, Google claimed that Heureka's right to compensation was, at least in part, time-barred.

In that regard, the Prague City Court states that the national rules applicable to Heureka's action provide for a limitation period of three years which starts to run, independently and separately for each partial occurrence of harm resulting from an infringement of the competition rules, from the moment when the injured party knew, or is deemed to have known, of the fact that it suffered such partial harm and the identity of the party liable to pay compensation for that harm. However, in order for that period to start to run, the injured party is not required to know of the fact that the behaviour concerned constitutes an infringement of competition law or that that infringement has come to an end. Moreover, the applicable national rules do not require the suspension or interruption of that period during the Commission's investigation into the infringement. That limitation period may not be suspended, at the very least, until one year after the date on which the Commission's decision finding that infringement becomes final.

According to the Prague City Court, it follows 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.

Furthermore, since Directive 2014/104<sup>4</sup> was transposed belatedly into Czech law, the Prague City Court notes that the infringement alleged against Google ceased after the expiry of the period for transposition of that directive, namely 27 December 2016, but apparently before the date of entry into force of the transposing legislation on 1 September 2017.

<sup>1</sup> Commission Decision C(2017) 4444 final of 27 June 2017 relating to proceedings under Article 102 [TFEU] and Article 54 of the EEA Agreement (Case AT.39740 – Google Search (Shopping)).

<sup>2</sup> OJ 2018 C 9, p. 11.

<sup>3</sup> Judgment of 10 November 2021, *Google and Alphabet v Commission (Google Shopping)* (T-612/17, EU:T:2021:763).

<sup>4</sup> 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).

In the light of the foregoing, the Prague City Court referred a number of questions to the Court for a preliminary ruling seeking to ascertain, in essence, whether Article 10 of Directive 2014/104 and/or Article 102 TFEU and the principle of effectiveness preclude national legislation on limitation such as that at issue in the main proceedings for actions for damages relating to continuing infringements of EU competition law rules.

### *Findings of the Court*

In order to answer the questions referred for a preliminary ruling, the Court examines first of all the temporal applicability of Article 10 of Directive 2014/104, which determines the minimum duration of the limitation period applicable to actions for damages for infringements of competition law and the earliest point in time at which it may begin to run, and the circumstances in which that limitation period must be suspended or interrupted.

In that regard, the Court recalls that Article 10 of Directive 2014/104 is a substantive provision, so that, in accordance with Article 22(1) of that directive, Member States must ensure that the measures transposing that article do not apply retroactively. However, as from the expiry of the period prescribed for transposition of that directive, namely 27 December 2016, national law must be interpreted in conformity with any provision of that directive.

In that context, in order to determine the temporal applicability of Article 10 of Directive 2014/104 in the present case, the Court ascertains whether the legal situation at issue in the main proceedings arose before 27 December 2016 or whether it continued to produce effects thereafter.

To that end, it is necessary to examine whether, on 27 December 2016, the national limitation period applicable to the situation at issue in the main proceedings had elapsed. In that context, however, account must be taken of the fact that, even before the expiry of the time limit for transposition of Directive 2014/104, the applicable national limitation rules had to comply with the principles of equivalence and effectiveness, and cannot undermine completely the full effectiveness of Article 102 TFEU.

The full effectiveness of Article 102 TFEU and, in particular, the effectiveness of the prohibition laid down therein require that the national limitation periods applicable to actions for damages for infringements of that article do not begin to run before the infringement has come to an end and the injured party does not know, or cannot reasonably be expected to know, the information necessary for bringing its action for damages.

As regards the first condition relating to the cessation of the infringement, the Court considers that, in view of the fact that disputes concerning infringements of the rules on competition law are characterised, in principle, by information asymmetry to the detriment of the injured party and that it is often particularly difficult for such a party to establish the existence and scope of such an infringement and the harm resulting from that infringement before it comes to an end, 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 be effectively able to exercise its right to claim full compensation under Article 102 TFEU. Moreover, since it is generally difficult for the injured party to adduce evidence of an infringement of that article in the absence of a decision by the Commission or by a national authority finding that

infringement, rules on limitation which could have the consequence that the limitation period expires well before the adoption of such a decision would render the exercise of that party's right to seek full compensation excessively difficult.

As regards the second condition relating to knowledge of the information necessary for bringing an action for damages, the Court recalls 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.

Although it is for the referring court to determine, in the present case, the date on which Heureka knew that information, the Court nevertheless considers it appropriate to point out that, in principle, the moment when that information is known coincides with the date of publication in the *Official Journal of the European Union* of the summary of the Commission's decision finding the infringement, irrespective of whether or not that decision has become final.

The Court also states that Article 102 TFEU and the principle of effectiveness require the suspension or interruption of the limitation period for the duration of an investigation conducted by the Commission. However, that article and that principle do not require the limitation period to continue to be suspended until the moment the Commission's decision becomes final. An injured party may, in order to substantiate its action for damages, rely on the findings in a Commission decision which has not become final, where that decision has binding effect for as long as it has not been annulled.

In view of the foregoing, the Court finds that national 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 an infringement of Article 102 TFEU from the moment when the injured party knows, or can reasonably be expected to know, of the fact that it suffered partial harm and the identity of the party who is 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 knowledge of the fact that the behaviour concerned constitutes 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 are incompatible with Article 102 TFEU and the principle of effectiveness, in that they make the exercise of the right to claim compensation for the harm suffered as a result of that infringement practically impossible or excessively difficult.

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 period 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.

In that regard, it is apparent from the Commission's decision finding Google's abuse of a dominant position that that infringement had not yet come to an end on the date that decision was adopted, namely 27 June 2017. It follows that, on the date on which the period for transposing Directive 2014/104 expired, not only had the limitation period not expired but it had not even started to run.

Since the situation at issue in the main proceedings had not arisen before the expiry of the period for transposing Directive 2014/104, Article 10 of that directive is applicable *ratione temporis* in the present case. However, the Court holds that it follows from the clear wording of Article 10(2) and (4) of that directive that the national rules on limitation at issue are also incompatible with that provision. It states, in particular, that 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 decision finding that infringement became final or after the proceedings are otherwise terminated. In that respect, that provision therefore exceeds the requirements under Article 102 TFEU and the principle of effectiveness.

Lastly, the Court points out that, although an untransposed directive cannot be relied on directly in a dispute between individuals, the national court hearing such a dispute is nevertheless required to interpret national law in conformity with that directive as soon as the time limit for its transposition expires, without however interpreting national law *contra legem*.