# Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 21 April 2021 — Reti Televisive Italiane SpA (RTI) v Autorità per le Garanzie nelle Comunicazioni — AGCOM

**(Case C-255/21)**

(2021/C 329/08)

*Language of the case: Italian*

## Referring court

Consiglio di Stato

## Parties to the main proceedings

*Appellant:* Reti Televisive Italiane SpA (RTI)

*Respondent:* Autorità per le Garanzie nelle Comunicazioni — AGCOM

## Questions referred

1. For the purposes of the Community rules prohibiting excessive advertising, and given the general relevance under [EU] law of the concept of the group or single economic entity, which may be gleaned from numerous sources of anti-trust law (and, in so far as is relevant here, from recital 43 of Directive 2018/1808/EU ([1]) and from the new wording of Article 23 of Directive 2010/13/[EU]), ([2]) and notwithstanding the differences which exist under Italian domestic law between the licences [provided for by] Article 5(1)(b) of Legislative Decree No 177/[2005] for television broadcasters and radio broadcasters, is it consistent with Community law to interpret national law on broadcasting in the sense that Article 1(1)(a) of Legislative Decree No 177/[2005], as amended, in the current wording of 30 March 2010 (implementing Directive 2007/65/EC), ([3]) implies that the process of convergence of the various forms of communication (electronic communications, publishing, including electronic publishing, and the Internet, in all its applications) is all the more applicable among suppliers of television and radio media, especially when they are already integrated into a connected group of undertakings, and applies generally, with the resulting consequences for the interpretation of Article 38(6) of the abovementioned [legislative decree], such that the 'broadcaster' may also be the group, as a single economic entity, or on the contrary, in accordance with the abovementioned Community principles and given the independence of the matter of the prohibition on excessive advertising from general anti-trust law, is it not permissible to ascribe relevance, prior to 2018, to the group or to the abovementioned process of convergence and so-called cross-mediality, such that, for the purposes of calculating the limits on advertising broadcasting time, regard is to be had solely to the individual broadcaster, even if it is part of a group (for the reason that such relevance is mentioned only in the consolidated wording of Article 23 of Directive 2010/13/[EU] resulting from Directive 2018/1808/EU)?

2. In the light of the abovementioned principles of EU law concerning groups and undertakings as a single economic unity, for the purposes of the prohibition on excessive advertising and the supervening versions of Article 23 [of Directive 2010/13/EU], and notwithstanding the abovementioned differences between licences, may it be inferred from the anti-competitive rules of the [integrated communications system] referred to in Article 43 of Legislative Decree No 177/[2005], that the concept of a group 'media service provider' (or, to use the appellant's words, a 'group publishing undertaking') is relevant for the purposes of the exemption of intra-group cross-medial promotional announcements from the limits on advertising broadcasting time mentioned in Article 38(6) of Legislative Decree [No 177/2005], or on the contrary, must such relevance be excluded, prior to 2018, given the independence of television anti-trust law from the rules governing the limits on advertising broadcasting time?

3. Does the new wording of Article 23(2)(a) of Directive 2010/13/EU recognise a pre-existing principle of antitrust law according to which the group is generally relevant, or is it innovative, and so, if it is the former, does the new wording describe a legal reality already inherent in EU law — such as will apply even to the case under consideration, which pre-dates the new wording, and such as to affect the interpretations adopted by the [national regulatory authority] and require it in any event to acknowledge the concept of group 'media service provider' — or if it is the latter, does the new wording preclude recognition of the relevance of the corporate group in cases arising prior to the introduction of that wording, for the reason that, being innovative in scope, it is inapplicable *ratione temporis* to situations arising prior to its introduction?

4. In any event, and leaving aside the licensing scheme established by Article 5 of Legislative Decree No 177/2005 and the novelty of [the version of] Article 23 [of Directive 2010/13/EU] introduced in 2018, or in the event that, according to the answer to question [3], the new provision is innovative, rather than recognitive, are the integrating relationships between television and radio — considered generally under antitrust law — because of the general and transversal applicability of the concepts of economic entity and of group, the key to interpreting the limits on advertising broadcasting time, which thus apply with implicit regard to the group undertaking (or, more precisely, to the relationships of control which exist between the undertakings of the group) and to the functional unity of such undertakings, with the result that the intragroup promotion of television and radio programmes […], or on the contrary, are such integrating relationships irrelevant in the matter of the limits on advertising broadcasting time, such that it must be held that the 'own' programmes referred to in (the original version of) Article 23 [of Directive 2010/13/EU] are [the broadcaster's own] in the sense that they belong solely to the broadcaster which promotes them, rather than to the corporate group as a whole, for the reason that that provision is self-sanding and does not permit of a systemic interpretation such that it might apply to the group considered as a single economic entity?

5. Lastly, even if it cannot be interpreted as a rule to be construed against the background of antitrust law, is Article 23 [of Directive 2010/13/EU], in its original version, to be understood in any case as an incentivising provision which describes the peculiar characteristic of promotion, which is exclusively informative and is not intended to persuade anyone to purchase goods or services other than the programmes promoted and, as such, is it to be understood as falling outside the scope of the rules on excessive advertising, and therefore applicable, within the limits of undertakings belonging to the same group, at least in the case of integrated cross-medial promotion, or is it to be understood as a derogation from, and an exception to, the calculation of [the limits on] advertising broadcasting and, as such, as a rule to be interpreted strictly?

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([1]) Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities (OJ 2018 L 303, p. 69).

([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).

([3]) Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 2007 L 332, p. 27).

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**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 23 April 2021 — Asociación Multisectorial de Empresas de la Electrónica, las Tecnologías de la Información y la Comunicación, de las Telecomunicaciones y de los contenidos (AMETIC) v Administración General del Estado, Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), Asociación para el Desarrollo de la Propiedad Intelectual (ADEPI), Artistas, Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE), Artistas Intérpretes, Sociedad de Gestión (AISGE), Ventanilla Única Digital, Derechos de Autor de Medios Audiovisuales (DAMA), Centro Español de Derechos Reprográficos (CEDRO), Asociación de Gestión de Derechos Intelectuales (AGEDI) and Sociedad General de Autores y Editores (SGAE)**

**(Case C-263/21)**

(2021/C 329/09)

*Language of the case: Spanish*

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

*Applicant:* Asociación Multisectorial de Empresas de la Electrónica, las Tecnologías de la Información y la Comunicación, de las Telecomunicaciones y de los contenidos Digitales (AMETIC)

*Defendants:* Administración General del Estado, Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), Asociación para el Desarrollo de la Propiedad Intelectual (ADEPI), Artistas, Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE), Artistas Intérpretes, Sociedad de Gestión (AISGE), Ventanilla Única Digital, Derechos de Autor de Medios Audiovisuales (DAMA), Centro Español de Derechos Reprográficos (CEDRO), Asociación de Gestión de Derechos Intelectuales (AGEDI) and Sociedad General de Autores y Editores (SGAE)