

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

28 March 2019 (\*)

(Reference for a preliminary ruling — Article 102 TFEU — Principles of equivalence and effectiveness — Directive 2014/104/EU — Article 9(1) — Article 10(2) to (4) — Articles 21 and 22 — Actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union — Effects of national decisions — Limitation periods — Transposition — Temporal application)

In Case C-637/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Judicial da Comarca de Lisboa (District Court, Lisbon, Portugal), made by decision of 25 July 2017, received at the Court on 15 November 2017, in the proceedings

**Cogeco Communications Inc.,**

v

**Sport TV Portugal SA,**

**Controlinveste-SGPS SA,**

**NOS-SGPS SA,**

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, T. von Danwitz, E. Levits, C. Vajda and P.G. Xuereb, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 November 2018,

after considering the observations submitted on behalf of:

- Cogeco Communications Inc., by M. Sousa Ferro and E. Ameye, advogados,
- Sport TV Portugal SA, by C.I. Pinto Xavier and M. Pena Machete, advogados,
- Controlinveste-SGPS SA, by P.J. de Sousa Pinheiro and L. Montenegro, advogados,
- NOS-SGPS SA, by G. Machado Borges, J. Vieira Peres, G. Andrade e Castro and M. Martins Pereira, advogados,
- the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and D. Sousa, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by S. Fiorentino, avvocato dello Stato,

– the European Commission, by P. Costa de Oliveira, B. Ernst, G. Meessen and C. Vollrath, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 January 2019,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 9(1), Article 10(2) to (4), 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), as well as Article 102 TFEU and the principles of equivalence and effectiveness.

2 The request has been made in proceedings between Cogeco Communications Inc. and Sport TV Portugal SA, Controlinveste-SGPS SA and NOS-SGPS SA, concerning compensation for the harm arising from Sport TV Portugal’s anti-competitive practices as a subsidiary of Controlinveste-SGPS SA and NOS-SGPS SA.

### Legal context

#### *EU law*

3 Article 1(1) of Directive 2014/104 provides:

‘This Directive sets out certain rules necessary to ensure that anyone who has suffered harm caused by an infringement of competition law by an undertaking or by an association of undertakings can effectively exercise the right to claim full compensation for that harm from that undertaking or association. It sets out rules fostering undistorted competition in the internal market and removing obstacles to its proper functioning, by ensuring equivalent protection throughout the Union for anyone who has suffered such harm.’

4 Article 2 of that directive provides:

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

(1) “infringement of competition law” means an infringement of Article 101 or 102 TFEU, or of national competition law;

...

(3) “national competition law” means provisions of national law that predominantly pursue the same objective as Articles 101 and 102 TFEU and that are applied to the same case and in parallel to Union competition law pursuant to Article 3(1) of Regulation (EC) No 1/2003, excluding provisions of national law which impose criminal penalties on natural persons, except to the extent that such criminal penalties are the means whereby competition rules applying to undertakings are enforced;

...

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

...’

5 Article 9(1) of Directive 2014/104 provides:

‘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.’

6 Article 10(2) to (4) of that directive provides:

‘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 Directive 2014/104 provides:

‘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 to the Commission the text thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.’

8 Article 22 of that directive provides:

‘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.’

### ***Portuguese law***

9 Article 498 of the Código Civil (Civil Code) provides:

‘1. The right to compensation expires after a period of three years from the date on which the injured party was aware of his right, even if unaware of the identity of the person liable and the full extent of the damage, regardless of the general limitation in the case of the expiry of the relevant period from the event causing the damage.

...’

10 Article 623 of the Código de Processo Civil (Civil Procedure Code) provides:

‘A final conviction given in the criminal case constitutes, in relation to third parties, a rebuttable presumption as regards the existence of the facts which satisfy the conditions for the impositions of a penalty and the elements of an offence in any civil actions in which legal relationships depending on the commission of the offence are discussed.’

- 11 Pursuant to Article 24 of Lei No 23/2018 — Direito a indemnização por infração ao direito da concorrência, transpõe a Diretiva 2014/104/UE, do Parlamento Europeu e do Conselho, de 26 de novembro de 2014, relativa a certas regras que regem as ações de indemnização no âmbito do direito nacional por infração às disposições do direito da concorrência dos Estados-Membros e da União Europeia, e procede à primeira alteração à Lei No 19/2012, de 8 de maio, que aprova o novo regime jurídico da concorrência, e à quarta alteração à Lei No 62/2013, de 26 de agosto, Lei de Organização do Sistema Judiciário (Law No 23/2018 — Right to damages following an infringement of competition law, transposing 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, amending for the first time Law No 19/2012 of 8 May 2012 establishing a new legal framework for competition, and for the fourth time Law No 62/2013 of 26 August 2013 on the organisation of the judiciary) of 5 June 2018 (*Diário da República*, 1<sup>st</sup> series, No 107 of 5 June 2018), which transposed Directive 2014/104 into Portuguese law, the substantive provisions of that law, including those relating to the burden of proof, are not retroactively applicable and the procedural provisions thereof are not applicable to actions brought before its entry into force.

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

- 12 Cogeco Communications, a company established in Canada, was a shareholder of Cabovisão — Televisão Por Cabo SA (‘Cabovisão’) between 3 August 2006 and 29 February 2012.
- 13 On 30 April 2008, Cabovisão and Sport TV Portugal concluded a distribution contract for a television channel.
- 14 On 30 July 2009, Cabovisão filed with the Autoridade da Concorrência (Competition Authority, Portugal) a complaint against ZON Multimédia, Serviços de Telecomunicações e Multimédia-SGPS SA, ZON TV Cabo Portugal SA, Sport TV Portugal and ZON Conteúdos — Actividade de Televisão e de Produção de Conteúdos SA, in which it criticised practices restrictive of competition in the market of premium sports TV channels, in particular, a discriminatory pricing policy, constituting, in its view, an abuse of a dominant position.
- 15 The Competition Authority took no action on that complaint for all the companies covered by it, with the exception of Sport TV Portugal.
- 16 By decision of 14 June 2013, the Competition Authority held that Sport TV Portugal had abused its dominant position, within the meaning of both Article 102 TFEU and the corresponding national provision, and imposed on that company a fine of EUR 3 730 000.
- 17 Sport TV Portugal sought the annulment of that decision before the Tribunal da Concorrência, Regulação e Supervisão (Competition, Regulation and Supervision Court, Portugal). That court upheld in part the action brought by Sport TV Portugal after finding that Article 102 TFEU was not applicable in the present case, on the ground that it had not been shown that the business practice at issue may affect trade between Member States within the meaning of that article. Consequently, that court reduced the amount of the fine imposed to EUR 2 700 000.
- 18 Sport TV Portugal brought an appeal against the judgment at first instance before the Tribunal da Relação de Lisboa (Court of Appeal, Lisbon, Portugal). That court upheld that judgment by judgment of 11 March 2015.
- 19 On 27 February 2015, Cogeco Communications brought, before the Tribunal Judicial da Comarca de Lisboa (District Court, Lisbon, Portugal), an action against, inter alia, Sport TV Portugal and its parent

companies. That action seeks compensation for the harm that Cogeco Communications suffered as a result of Sport TV Portugal's anti-competitive practices between 3 August 2006 and 30 March 2011. Cogeco Communications sought a ruling from that court, at the outset, that those practices constituted an infringement of Article 102 TFEU and/or the corresponding national provision. In that regard, that court takes the view that Cogeco Communications may still prove before it that the abusive conduct at issue in the main proceedings affects trade between Member States.

- 20 The defendants in the main proceedings contend that, even if Cogeco Communications had been entitled to obtain compensation for the harm it claims to have suffered, the right to compensation on which it relies is time-barred. The Portuguese law on non-contractual liability applicable to the dispute in the main proceedings provides for a limitation period of three years, which, they submit, began to run on 30 April 2008, the date of conclusion of the distribution agreement referred to in paragraph 13 of the present judgment, on 30 July 2009, the date of filing of Cogeco Communications' complaint with the Competition Authority, on 30 March 2011, the date on which the anti-competitive conduct ended, or, at the latest, on 29 February 2012, the date of Cogeco Communications' sale of Cabovisão. The defendants in the main proceedings state that, on each of those dates, Cogeco Communications had available to it all the necessary information to assess whether or not it had a right to compensation.
- 21 Cogeco Communications submits that the limitation period laid down in Article 498 of the Civil Code began to run only from the date of adoption of the Competition Authority's decision, namely 14 June 2013. That decision alone enabled it to have all the information necessary for it to be aware of the existence of practices contrary to competition law and for it to assert its right to compensation. Before that decision of the Competition Authority was adopted, a mere suspicion of infringement of competition rules could have been raised. According to Cogeco Communications, that limitation period was, in any event, suspended for the duration of the proceedings before the Competition Authority.
- 22 The referring court states that the dispute in the main proceedings lies between private-law companies, that the action before it was brought before the expiry of the deadline to transpose Directive 2014/104 and that, when that action was brought, that directive had not yet been transposed into the Portuguese legal order.
- 23 In those circumstances, the Tribunal Judicial da Comarca de Lisboa (District Court, Lisbon) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
1. May Articles 9(1) and 10[(2) to (4)] of Directive [2014/104], as well as the remaining provisions of that directive or general principles of EU law applicable, be interpreted as creating rights for a private party (in this case, a commercial limited company subject to Canadian law) which it may enforce in court proceedings against another private party (in this case, a commercial limited company subject to Portuguese law) in the context of an action seeking compensation for alleged damage sustained as a result of an infringement of competition law, in particular, when as at the date on which the action in question was brought (27 February 2015), the deadline for Member States to transpose that directive into national law, as provided for in Article 21(1) of [Directive 2014/104], had not yet even expired?
  2. May Article 10[(2) to (4)] of [Directive 2014/104], as well as the remaining provisions of the Directive or general principles of EU law applicable, be interpreted as precluding, as incompatible therewith, a national provision, such as Article 498(1) of the ... Civil Code which, when applied to facts which occurred before the publication of the Directive, before its entry into force and before the date laid down for its transposition, in an action also brought before that last date:
    - (a) lays down a three-year limitation period for a right to compensation based on non-contractual civil liability;
    - (b) lays down that that three-year period starts to run from the date on which the injured party was aware of its right, even if unaware of the identity of the person liable and the full extent of the damage; and

- (c) does not include any provision requiring or authorising the suspension or interruption of that period simply because a competition authority has taken measures in the context of an investigation or a process relating to an infringement of competition law to which the action for compensation relates?
3. May Article 9(1) of [Directive 2014/104], as well as the remaining provisions of the Directive or general principles of EU law applicable, be interpreted as precluding, as incompatible therewith, a national provision, such as Article 623 of the ... Civil Procedure Code which, when applied to facts which occurred before the Directive entered into force and before the date laid down for its transposition, in an action also brought before that last date:
- (a) provides that a final order in infringement proceedings does not produce effects in any civil actions in which legal relationships depending on the commission of the infringement are discussed? Or (depending on the interpretation)
- (b) lays down that such a final order in infringement proceedings constitutes, in relation to third parties, only a rebuttable presumption as regards the existence of the facts which satisfy the conditions for the imposition of a penalty and the elements of an offence, in any civil actions in which legal relationships depending on the commission of the infringement are discussed?
4. May Articles 9(1) and 10[(2) to(4)] of [Directive 2014/104], the third paragraph of Article 288 [TFEU], or any other provisions of primary or secondary law, case-law precedents or general principles of the European Union applicable, be interpreted as precluding, as incompatible therewith, the application of provisions of national law, such as Article 498(1) of the ... Civil Code and Article 623 of the ... Civil Procedure Code which, when applied to facts which occurred before the publication of the Directive, before its entry into force and before the date laid down for its transposition, in an action also brought before that last date, do not take into consideration the text and purpose of [Directive 2014/104] and do not seek to achieve the result pursued by it?
5. In the alternative, and only if the Court of Justice of the European Union answers any of the preceding questions in the affirmative, may Article 22 of [Directive 2014/104], as well as the remaining provisions of the Directive or general principles of EU law applicable, be interpreted as precluding, as incompatible therewith, the application to the case by the national court of Article 498(1) of the ... Civil Code or Article 623 of the ... Civil Procedure Code in their current version, but interpreted and applied in such a way as to be compatible with the provisions of Article 10 of [Directive 2014/104]?
6. If [the fifth question] is answered in the affirmative, may a private party rely on Article 22 of [Directive 2014/104] against another private party before a national court in an action seeking compensation for the alleged damage sustained as a result of an infringement of competition law?

## Consideration of the questions referred

### *The fifth and sixth questions*

- 24 By its fifth and sixth questions, which it is appropriate to consider together in the first place, the referring court asks, in essence, whether Article 22 of Directive 2014/104 must be interpreted as meaning that that directive is applicable to the dispute in the main proceedings.
- 25 As regards the application *ratione temporis* of Directive 2014/104, it should be noted that that directive contains a special provision which explicitly states the conditions for the temporal application of its procedural and substantive provisions.
- 26 In particular, first, under Article 22(1) of Directive 2014/104, Member States had to ensure that the national measures adopted pursuant to Article 21 thereof in order to comply with substantive

provisions of that directive do not apply retroactively.

27 Secondly, under Article 22(2) of Directive 2014/104, Member States had to ensure that any national measures adopted in order to comply with the procedural provisions of that directive do not apply to actions for damages of which a national court was seised prior to 26 December 2014.

28 Conversely, it is apparent from Article 22(2) of Directive 2014/104 that the Member States enjoyed a measure of discretion in deciding, when transposing that directive, whether the national rules intended to transpose the directive's procedural provisions would apply to actions for damages brought after 26 December 2014 but before the date of transposition of that directive or, at the latest, before the expiry of the period prescribed for its transposition.

29 Accordingly, where the Member States, in exercising that discretion, have decided that the provisions of their domestic legal system transposing the procedural provisions of Directive 2014/104 are not applicable to actions for damages brought before the date of entry into force of those national provisions, actions brought after 26 December 2014 but before the date of expiry of the period prescribed for the transposition of that directive remain governed solely by the national procedural rules that were already in force before the transposition of the directive.

30 The same applies a fortiori to the national provisions adopted pursuant to Article 21 of Directive 2014/104 by the Member States in order to comply with the substantive provisions thereof, in so far as, as is apparent from the wording of Article 22(1) of that directive, such national provisions must not apply retroactively.

31 In the present case, first, it is common ground that Cogeco Communications' action for damages was brought on 27 February 2015, namely before the expiry of the deadline for transposing Directive 2014/104 and before the transposition of that directive into the Portuguese legal order by Law No 23/2018.

32 Secondly, it is apparent from the file before the Court that the Portuguese legislature decided, in Article 24 of that law, that the national rules transposing the procedural provisions of that directive are not applicable to actions for damages brought before the entry into force of that law.

33 In those circumstances, and taking into account that Article 22(1) of Directive 2014/104 prohibits the retroactive application of the substantive provisions of Portuguese law adopted pursuant to Article 21 thereof, it must be held that that directive is, in any event, not applicable *ratione temporis* to the dispute in the main proceedings.

34 In the light of the foregoing considerations, the answer to the fifth and sixth questions is that Article 22 of Directive 2014/104 must be interpreted as meaning that that directive is not applicable to the dispute in the main proceedings.

### ***The second question and the first part of the fourth question***

35 A preliminary point to make is that, according to the Court's settled case-law, in the procedure laid down in Article 267 TFEU, which provides for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to decide the case before it. With that in mind, the Court may have to reformulate the questions referred to it. The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 27 June 2017, *Congregación de Escuelas Pías Provincia Betania*, C-74/16, EU:C:2017:496, paragraph 36 and the case-law cited).

- 36 In the present case, regard being had to all the information provided by the referring court, the observations submitted by Cogeco Communications, Sport TV Portugal, Controlinveste-SGPS, NOS-SGPS, the Portuguese Government and the European Commission and the answer given to the fifth and sixth questions, it is necessary, in order to provide the referring court with such points of interpretation that may be of assistance, to reformulate the second question and the part of the fourth question relating to the compatibility of national legislation such as Article 498(1) of the Civil Code with EU law.
- 37 It is apparent from the order for reference that the Tribunal Judicial da Comarca de Lisboa (District Court, Lisbon) is uncertain, more specifically, as to whether Article 102 TFEU and the principles of equivalence and effectiveness must be interpreted as precluding national legislation which, first, provides that the limitation period in respect of actions for damages is set at three years and starts to run from the date on which the injured party was aware of its right to compensation, even if unaware of the identity of the person liable and the full extent of the damage, and, secondly, does not include any possibility of suspending or interrupting that period during the proceedings before the national competition authority.
- 38 In that regard, 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 (see, to that effect, judgment of 5 June 2014, *Kone and Others*, C-557/12, EU:C:2014:1317, paragraph 20 and the case-law cited).
- 39 The full effectiveness of Article 102 TFEU and, in particular, the practical effect of the prohibition laid down in that article would be put at risk if it were not open to any individual to claim damages for loss caused to him by abusive conduct of a dominant undertaking liable to restrict or distort competition (see, by analogy, judgment of 5 June 2014, *Kone and Others*, C-557/12, EU:C:2014:1317, paragraph 21 and the case-law cited).
- 40 It follows that any person can claim compensation for the harm suffered where there is a causal relationship between that harm and an abuse of a dominant position prohibited by Article 102 TFEU (see, by analogy, judgment of 5 June 2014, *Kone and Others*, C-557/12, EU:C:2014:1317, paragraph 22 and the case-law cited).
- 41 The right of any individual to claim compensation for such a loss actually strengthens the working of the European Union 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 5 June 2014, *Kone and Others*, C-557/12, EU:C:2014:1317, paragraph 23 and the case-law cited).
- 42 In the absence of EU rules governing the matter that are applicable *ratione temporis*, it is for the domestic 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 abuse of dominant position prohibited under Article 102 TFEU, including those on limitation periods, provided that the principles of equivalence and effectiveness are observed (see, by analogy, judgment of 5 June 2014, *Kone and Others*, C-557/12, EU:C:2014:1317, paragraph 24).
- 43 Accordingly, the rules applicable to actions for safeguarding rights which individuals derive from the direct effect of EU law must not be less favourable than those governing similar domestic actions (principle of equivalence) and must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (principle of effectiveness) (judgment of 5 June 2014, *Kone and Others*, C-557/12, EU:C:2014:1317, paragraph 25).
- 44 In that regard, and specifically in the context of competition law, those rules must not jeopardise the effective application of Article 102 TFEU (see, to that effect, judgment of 5 June 2014, *Kone and Others*, C-557/12, EU:C:2014:1317, paragraph 26).



- 45 In that context, as limitation periods constitute detailed rules governing the exercise of the right to claim compensation for the harm resulting from an infringement of competition law, it is necessary, first, as the Advocate General observed in point 81 of her Opinion, to take all elements of the Portuguese rules on limitation into consideration.
- 46 Secondly, account must be taken of the specificities of competition law cases and in particular of the fact that the bringing of actions for damages on account of infringements of EU competition law requires, in principle, a complex factual and economic analysis.
- 47 In those circumstances, it must be stated that national legislation laying down the date from which the limitation period starts to run, the duration and the rules for suspension or interruption of that period must be adapted to the specificities of competition law and the objectives of the implementation of the rules of that right by the persons concerned, so as not to undermine completely the full effectiveness of Article 102 TFEU.
- 48 It follows that the duration of the limitation period cannot be short to the extent that, combined with the other rules on limitation, it renders the exercise of the right to claim compensation practically impossible or excessively difficult.
- 49 Short limitation periods that start to run before the person injured by the infringement of EU competition law is able to ascertain the identity of the infringer may render the exercise of the right to claim compensation practically impossible or excessively difficult.
- 50 It is indispensable, in order for the injured party to be able to bring an action for damages, for it to know who is liable for the infringement of competition law.
- 51 The same applies to a short limitation period that cannot be suspended or interrupted for the duration of proceedings following which a final decision is made by the national competition authority or by a review court.
- 52 The appropriateness of a limitation period, having regard to the requirements of the principle of effectiveness, is of particular importance both in respect of actions for damages brought independently of a final decision of a national competition authority and for actions brought following such a decision. With regard to the latter, if the limitation period, which starts to run before the completion of the proceedings following which a final decision is made by the national competition authority or by a review court, is too short in relation to the duration of these proceedings and cannot be suspended or interrupted during the course of such proceedings, it is not inconceivable that that limitation period may expire even before those proceedings are completed. In that case, any person suffering harm would find it impossible to bring actions based on a final decision finding an infringement of EU competition rules.
- 53 In that context, it must be held that a limitation period of three years, such as that at issue in the main proceedings, which, first, starts to run from the date on which the injured party was aware of its right to compensation, even if the infringer is not known and, secondly, may not be suspended or interrupted in the course of proceedings before the national competition authority, renders the exercise of the right to full compensation practically impossible or excessively difficult.
- 54 As regards the principle of equivalence, it is apparent, in the present case, that that principle has not been disregarded, since it is undisputed that the national rules on the limitation period are applicable both to actions for damages based on EU law and those based on national law and that their applicability does not depend on whether the right to claim full compensation for the harm results from an infringement of national competition rules or EU competition law.
- 55 In the light of the foregoing considerations, the answer to the second question and the part of the fourth question relating to the compatibility of national legislation such as Article 498(1) of the Civil Code with EU law is that Article 102 TFEU and the principle of effectiveness must be interpreted as precluding national legislation which, first, provides that the limitation period in respect of actions for damages is three years and starts to run from the date on which the injured party was aware of its right to compensation, even if unaware of the identity of the person liable and, secondly, does not include

any possibility of suspending or interrupting that period during proceedings before the national competition authority.

***The third question and the second part of the fourth question***

56 By its third question and the part of the fourth question relating to the compatibility of national legislation such as Article 623 of the Civil Procedure Code with EU law, the referring court asks, in essence, whether Article 102 TFEU and the principles of equivalence and effectiveness preclude national legislation which provides that the definitive finding of an infringement of competition law in infringement proceedings before the national competition authority is not binding on the assessment of the national court before which an action for damages has been brought as to the existence of an infringement of competition law or which merely establishes a rebuttable presumption in that regard.

57 In that regard, it should be noted that, according to settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 20 December 2017, *Núñez Torreiro*, C-334/16, EU:C:2017:1007, paragraph 38 and the case-law cited).

58 In the present case, it is apparent from the file before the Court that the Tribunal da Concorrência, Regulação e Supervisão (Competition, Regulation and Supervision Court) partially annulled the Competition Authority's decision of 14 June 2013, on the ground that Article 102 TFEU was not applicable to Sport TV Portugal's conduct, since it had not been shown that the commercial practice at issue might affect trade between Member States within the meaning of that article. On 11 March 2015, the Tribunal da Relação de Lisboa (Court of Appeal, Lisbon) upheld the judgment delivered by the Tribunal da Concorrência, Regulação e Supervisão (Competition, Regulation and Supervision Court).

59 It follows that the subject matter of the case before the referring court is not an action for damages brought following a final decision finding an infringement of Article 102 TFEU made by a national competition authority or a review court.

60 Thus, it is quite obvious that the interpretation of Article 102 TFEU and the principles of equivalence and effectiveness sought in the third question and the part of the fourth question relating to the compatibility of national legislation such as Article 623 of the Civil Procedure Code with EU law bears no relation to the actual facts of the main action or its purpose and that, accordingly, those questions are inadmissible.

*The first question*

61 In view of the answers given to the second to sixth questions, there is no need to answer the first question.

**Costs**

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

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

- 1. 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 must be interpreted as meaning that that directive is not applicable to the dispute in the main proceedings.**

- 2. Article 102 TFEU and the principle of effectiveness must be interpreted as precluding national legislation which, first, provides that the limitation period in respect of actions for damages is three years and starts to run from the date on which the injured party was aware of its right to compensation, even if unaware of the identity of the person liable and, secondly, does not include any possibility of suspending or interrupting that period during proceedings before the national competition authority.**

[Signatures]

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\* Language of the case: Portuguese.