JUDGMENT OF THE COURT (Eighth Chamber)

25 February 2021 (*)

(Reference for a preliminary ruling – Competition – Article 102 TFEU – Abuse of a dominant position – Division of competences between the European Commission and the national competition authorities – Regulation (EC) No 1/2003 – Article 11(6) – National competition authorities relieved of their competence – Principle ne bis in idem – Article 50 of the Charter of Fundamental Rights of the European Union)

In Case C-857/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), made by decision of 12 November 2019, received at the Court on 26 November 2019, in the proceedings

Slovak Telekom a.s.

v

Protimonopolný úrad Slovenskej republiky,

THE COURT (Eighth Chamber),

composed of N. Wahl, President of the Chamber, A. Prechal (Rapporteur), President of the Third Chamber, and J. Passer, Judge,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Slovak Telekom a.s., by J. Hajdúch, advokát,

– the Protimonopolný úrad Slovenskej republiky, by T. Menyhart, acting as Agent,

– the Slovak Government, by B. Ricziová, acting as Agent,

– the Italian Government, by G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato,

– the European Commission, by M. Farley, R. Lindenthal and L. Wildpanner, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the first sentence of Article 11(6) 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) and of Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Slovak Telekom a.s. ('ST') and the Protimonopolný úrad Slovenskej republiky (Antimonopoly Office of the Slovak Republic) ('the Slovak competition authority') concerning the legality of a decision imposing a fine on ST for having abused its dominant position, within the meaning of Article 102 TFEU, by applying tariffs on retail telecommunications markets and on the wholesale interconnection market which resulted in a margin squeeze.

Legal context

Regulation No 1/2003

3 Recitals 6, 8 and 17 of Regulation No 1/2003 are worded as follows:

'(6) In order to ensure that the [EU] competition rules are applied effectively, the competition authorities of the Member States should be associated more closely with their application. To this end, they should be empowered to apply [EU] law.

…

(8) In order to ensure the effective enforcement of the [EU] competition rules and the proper functioning of the cooperation mechanisms contained in this Regulation, it is necessary to oblige the competition authorities and courts of the Member States to also apply Articles [101 and 102 TFEU] where they apply national competition law to agreements and practices which may affect trade between Member States. …

…

(17) If the competition rules are to be applied consistently and, at the same time, the network is to be managed in the best possible way, it is essential to retain the rule that the competition authorities of the Member States are automatically relieved of their competence if the Commission initiates its own proceedings. Where a competition authority of a Member State is already acting on a case and the Commission intends to initiate proceedings, it should endeavour to do so as soon as possible. Before initiating proceedings, the Commission should consult the national authority concerned.'

4 Article 11(1) and (6) of Regulation No 1/2003 provides:

'1. The Commission and the competition authorities of the Member States shall apply the [EU] competition rules in close cooperation.

…

6. The initiation by the Commission of proceedings for the adoption of a decision under Chapter III shall relieve the competition authorities of the Member States of their competence to apply Articles [101 and 102 TFEU]. If a competition authority of a Member State is already acting on a case, the Commission shall only initiate proceedings after consulting with that national competition authority.'

5 Under Article 35(3) and (4) of Regulation No 1/2003:

'3. The effects of Article 11(6) apply to the authorities designated by the Member States including courts that exercise functions regarding the preparation and the adoption of the types of decisions foreseen

in Article 5. The effects of Article 11(6) do not extend to courts in so far as they act as review courts in respect of the types of decisions foreseen in Article 5.

4. Notwithstanding paragraph 3, in the Member States where, for the adoption of certain types of decisions foreseen in Article 5, an authority brings an action before a judicial authority that is separate and different from the prosecuting authority and provided that the terms of this paragraph are complied with, the effects of Article 11(6) shall be limited to the authority prosecuting the case which shall withdraw its claim before the judicial authority when the Commission opens proceedings and this withdrawal shall bring the national proceedings effectively to an end.'

Regulation (EC) No 773/2004

6 Article 2(1) of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 and 102 TFEU] (OJ 2004 L 123, p. 18), as amended by Commission Regulation (EC) No 622/2008 of 30 June 2008 (OJ 2008 L 171, p. 3), ('Regulation No 773/2004'), provides:

'The Commission may decide to initiate proceedings with a view to adopting a decision pursuant to Chapter III of Regulation (EC) No 1/2003 at any point in time, but no later than the date on which it issues a preliminary assessment as referred to in Article 9(1) of that Regulation, a statement of objections or a request for the parties to express their interest in engaging in settlement discussions, or the date on which a notice pursuant to Article 27(4) of that Regulation is published, whichever is the earlier.'

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

7 On 26 September 2005, the Slovak competition authority brought proceedings against ST for abuse of a dominant position pursuant to Article 102 TFEU. The opening of those proceedings was notified to the European Commission and to the other competition authorities of the Member States in October 2005. In October 2007, the Slovak competition authority submitted to the Commission a draft decision declaring that ST had abused its dominant position.

8 On 21 December 2007, the Slovak competition authority adopted a decision by which it found that ST had abused its dominant position.

9 On 13 June 2008, the Commission sent requests for information to ST's competitors regarding certain commercial practices of ST.

10 From 13 to 15 January 2009, the Commission carried out an unannounced inspection at ST's premises, in cooperation with the Slovak competition authority.

11 On 8 April 2009, the Commission decided to initiate proceedings against ST, within the meaning of Article 11(6) of Regulation No 1/2003 and Article 2(1) of Regulation No 773/2004 ('the Commission's decision of 8 April 2009'). The Commission states, in that decision, that the proceedings in question concern, in particular, possible refusals to supply on the part of ST with respect to unbundled access to its local loops and other wholesale broadband access services and a margin squeeze as regards wholesale local loop access, other wholesale broadband access services, and retail access services in Slovakia.

12 On 9 April 2009, the Rada Protimonopolného úradu Slovenskej republiky (Board of the Antimonopoly Office of the Slovak Republic) amended the Slovak competition authority's decision of 21 December 2007 ('the decision of 9 April 2009'). By that decision, it imposed on ST a fine of 525 800 000 Slovak koruna (SKK) (EUR 17 453 362.54) on the ground that ST had abused its dominant position by adopting a margin squeeze strategy as regards the margins between the prices for retail telecommunications services and wholesale interconnection services. That board considers that those infringements were committed,

depending on the retail services in question, during periods – for the most long-lasting infringement – between 1 May 2001 and 9 April 2009, the date on which it adopted its decision.

13 ST brought an action against the decision of 9 April 2009 before the Krajský súd v Bratislave (Regional Court, Bratislava, Slovak Republic), claiming in particular that the authority that was competent to adopt that decision was the Telekomunikačný úrad Slovenskej republiky (Telecommunications Office of the Slovak Republic) and not the Slovak competition authority. By judgment of 11 January 2012, the Krajský súd v Bratislave (Regional Court, Bratislava) annulled the decision of 9 April 2009. The Slovak competition authority lodged an appeal on a point of law before the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic). By order of 11 February 2014, the referring court set aside the judgment of the Krajský súd v Bratislave (Regional Court, Bratislava) of 11 January 2012 and referred the case back to it.

14 On 7 May 2012, the Commission adopted a statement of objections and sent it to ST.

15 On 15 October 2014, the Commission adopted Decision C(2014) 7465 final relating to proceedings under Article 102 [TFEU] and Article 54 of the EEA Agreement (Case AT.39523 – Slovak Telekom). In Decision C(2014) 7465, the Commission stated that, between 12 August 2005 and 31 December 2010, the undertaking comprising Deutsche Telekom AG and ST had committed a single and continuous infringement of Article 102 TFEU, consisting, in essence, of a margin squeeze and a refusal-to-supply strategy as regards access to its local loops.

16 On 21 June 2017, pursuant to the order of 11 February 2014 referring the case back to it, the Krajský súd v Bratislave (Regional Court, Bratislava) delivered a second judgment, which dismissed ST's action. ST lodged an appeal on a point of law against that judgment before the referring court.

17 That court invited ST and the Slovak competition authority to submit their observations as regards compliance with the principle *ne bis in idem*, given that that authority and the Commission had found ST liable for abuse of a dominant position consisting of a margin squeeze for the period from 12 August 2005 to 21 December 2007.

18 Those observations revealed differing opinions on the part of ST and the Slovak competition authority concerning the existence of a breach of the principle *ne bis in idem*, the fact that the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) did not share the position that, in their respective decisions, the Slovak competition authority and the Commission had examined different products, and the fact that that court considered that the case at hand was different from that which had given rise to the judgment of the Court of Justice of 3 April 2019, *Powszechny Zakład Ubezpieczeń na Życie* (C-617/17, EU:C:2019:283).

19 In those circumstances the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the phrase "shall relieve the competition authorities of the Member States of their competence to apply Articles [101 and 102 TFEU" in the first sentence of Article 11(6) of Regulation No 1/2003] mean that the authorities of the Member States lose their powers to apply Articles [101 and 102 TFEU]?

(2) Does Article 50 (Right not to be tried or punished twice in criminal proceedings for the same criminal offence) of the [Charter] also apply to administrative offences consisting of the abuse of a dominant position within the meaning of Article 102 [TFEU] for which the Commission and the authority of a Member State have imposed sanctions separately and independently in the exercise of their competence under Article 11(6) of [Regulation No 1/2003]?'

Consideration of the questions referred

The first question

20 By its first question, the referring court asks, in essence, whether the first sentence of Article 11(6) of Regulation No 1/2003 must be interpreted as meaning that the competition authorities of the Member States are relieved of their competence to apply Articles 101 and 102 TFEU in the case where the Commission initiates proceedings for the purposes of adopting a decision finding that there has been an infringement of those provisions.

21 In that regard, it must be recalled that, in accordance with settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others*, C-197/18, EU:C:2019:824, paragraph 48 and the case-law cited).

22 Under the first sentence of Article 11(6) of Regulation No 1/2003, the competition authorities of the Member States lose their competence to apply Articles 101 and 102 TFEU in cases where the Commission initiates proceedings in order to adopt one of the decisions defined in Chapter III of that regulation; those decisions are aimed at finding an infringement of Articles 101 and 102 TFEU, requiring the undertakings in question to bring those infringements to an end, ordering interim measures following a prima facie finding of such infringements, making binding the commitments offered by undertakings, or finding Articles 101 and 102 TFEU to be inapplicable.

23 In accordance with Article 35 of Regulation No 1/2003, the phrase ‘competition authorities of the Member States’ in the first sentence of Article 11(6) of Regulation No 1/2003 refers to the administrative or judicial authorities designated by the Member States which prepare and adopt decisions applying Articles 101 and 102 TFEU and requiring that an infringement be brought to an end, ordering interim measures, accepting commitments, or imposing fines, periodic penalty payments or any other penalty provided for in their national law.

24 However, the loss of competence provided for in Article 11(6) of Regulation No 1/2003 does not extend to courts of the Member States in so far as they act as review courts in respect of those decisions. By contrast, it applies in situations where, pursuant to the applicable national law, an authority brings an action before a judicial authority that is separate from the prosecuting authority. In such a situation and where the conditions of Article 11(6) of Regulation No 1/2003 are met, that authority must withdraw its claim before the judicial authority and bring the national proceedings to an end.

25 The phrase ‘initiation by the Commission of proceedings’ in the first sentence of Article 11(6) of Regulation No 1/2003 is, for its part, defined neither by that regulation nor by Regulation No 773/2004.

26 Nevertheless, the Court has previously held, in respect of the concept of ‘initiation of a procedure’ set out in Article 9 of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles [101 and 102 TFEU] (OJ, English Special Edition 1959-1962, p. 87), which was the precursor to Regulation No 1/2003, that that concept concerns an authoritative act of the Commission, evidencing its intention to take a decision under that former regulation (see, to that effect, judgment of 6 February 1973, *Brasserie de Haecht*, 48/72, EU:C:1973:11, paragraph 16).

27 By analogy to that concept, the phrase ‘initiation by the Commission of proceedings’ in the first sentence of Article 11(6) of Regulation No 1/2003 must be interpreted as concerning, from a formal point of view, an act of the Commission by which it announces to an undertaking its intention to bring proceedings in order to adopt one of the decisions referred to in Chapter III of that regulation. That act must occur within the period laid down in Article 2(1) of Regulation No 773/2004.

28 Furthermore, it follows from the Court’s case-law that the phrase ‘initiation by the Commission of proceedings’ delimits, from a substantive point of view, the extent to which the Commission relieves the

competition authorities of the Member States of their competence. It has been previously held that the Commission relieving the competition authorities of the Member States of their competence, referred to in Article 11(6) of Regulation No 1/2003, relates to the facts that are the subject of the proceedings initiated by the Commission (see, to that effect, order of 29 January 2020, *Silgan Closures and Silgan Holdings* v *Commission*, C-418/19 P, not published, EU:C:2020:43, paragraphs 73 and 75).

29 Thus, the act by which the Commission announces to an undertaking its intention to initiate proceedings in order to adopt one of the decisions referred to in Chapter III of that regulation must specify the infringements of Articles 101 and 102 TFEU allegedly committed by one or more undertakings during one or more periods on one or more product markets and one or more geographical markets which that act concerns.

30 It follows that, where, pursuant to the first sentence of Article 11(6) of Regulation No 1/2003, the Commission initiates proceedings against one or more undertakings for an alleged infringement of Article 101 or 102 TFEU, the competition authorities of the Member States are relieved of their competence to bring proceedings against the same undertakings for the same, allegedly anticompetitive, practices occurring on the same product and geographical market or markets during the same period or periods.

31 Such an interpretation of the first sentence of Article 11(6) of Regulation No 1/2003 is supported by the context of that provision. That provision comes under Chapter IV of that regulation concerning cooperation between the Commission and the competition authorities of the Member States. In that chapter, Article 11(1) of that regulation provides that the Commission and the competition authorities of the Member States are to apply the EU competition rules in close cooperation. It is to that end that Article 11(6) of that regulation provides not only that the initiation by the Commission of proceedings for the purpose of adopting a decision under Chapter III of Regulation No 1/2003 is to relieve the competition authorities of the Member States of their competence to apply Articles 101 and 102 TFEU, but also that, if a national competition authority is already acting on a case, the Commission is to initiate proceedings only after consulting with that national competition authority.

32 Finally, this interpretation of the first sentence of Article 11(6) is borne out by the objective pursued by that regulation. As is apparent from recitals 6 and 8 thereof, the regulation seeks to ensure that the EU competition rules are applied effectively by empowering the competition authorities of the Member States to apply that law in parallel with the Commission. The parallel application of those rules must, however, also be consistent and ensure that the network of public authorities in charge of the implementation of those rules is managed in the best possible way. As recital 17 of that regulation states, it is in order to ensure those objectives that there is provision for the national competition authorities to be relieved of their competence in favour of the Commission where the latter initiates proceedings. Furthermore, the parallel application of those rules cannot be at the expense of undertakings. National competition authorities being relieved of their competence makes it possible to protect the undertakings from parallel proceedings brought by those authorities and the Commission (see, to that effect, judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 18, and order of 29 January 2020, *Silgan Closures and Silgan Holdings* v *Commission*, C-418/19 P, not published, EU:C:2020:43, paragraph 73).

33 It follows from this, in the present case, that, since the proceedings initiated on 26 September 2005 by the Slovak competition authority against ST were brought by a competition authority of a Member State, within the meaning of Article 35 of Regulation No 1/2003, the Commission's decision of 8 April 2009 to initiate proceedings against ST, within the meaning of Article 2(1) of Regulation No 773/2004, did not relieve that authority, pursuant to the first sentence of Article 11(6) of Regulation No 1/2003, of its competence to apply Article 102 TFEU, unless that decision concerned the same anticompetitive practices allegedly committed by ST on the same product market or markets and on the same geographical market or markets during the same period or periods as those that were already the subject of the proceedings before that authority.

34 In order to determine whether that is the case, it must be recalled that, while the interpretation of the scope of the Commission's decision of 8 April 2009 is a matter for the Court (see, to that effect, judgment of 27 February 2018, *Western Sahara Campaign UK*, C-266/16, EU:C:2018:118, paragraph 44 and the case-law cited), it is for the referring court to assess the scope of a decision of a national competition authority such as that contested by the appellant in the main proceedings. Nevertheless, the Court, which is called on to provide answers of use in the context of a reference for a preliminary ruling, may provide guidance based on the documents in the file of the case in the main proceedings and on the written and oral observations which have been submitted to it, in order to enable the referring court to give judgment in the specific case before it (see, to that effect, judgment of 24 September 2020, *YS* (*Occupational pensions of managerial staff*), C-223/19, EU:C:2020:753, paragraph 58).

35 As is apparent from the Commission's decision of 8 April 2009, the Commission initiated proceedings against ST for alleged abuses of a dominant position on the market for wholesale broadband access services such as the provision of wholesale access to the unbundled local loop. In that decision, the Commission stated, in particular, that the alleged abusive practices to be assessed concerned margin squeezes as regards wholesale access to the unbundled local loop and to other broadband access services and their corresponding retail services in Slovakia.

36 By contrast, it is apparent from the file submitted to the Court that the proceedings before the Slovak competition authority concerned ST's alleged abuses of a dominant position on the wholesale and retail markets for telephone services and low-speed (dial-up) internet access services.

37 In the light of those elements, and subject to verification by the referring court, it appears that the proceedings conducted by the Commission and by the Slovak competition authority against ST had as their subject abuses of a dominant position allegedly committed by ST on separate product markets.

38 In the light of all the foregoing considerations, the answer to the first question is that the first sentence of Article 11(6) of Regulation No 1/2003 must be interpreted as meaning that the competition authorities of the Member States are relieved of their competence to apply Articles 101 and 102 TFEU in the case where the Commission initiates proceedings for the purposes of adopting a decision finding an infringement of those provisions in so far as that formal act relates to the same alleged infringements of Articles 101 and 102 TFEU, committed by the same undertaking or undertakings on the same product market or markets and the same geographical market or markets during the same period or periods as those concerned by the proceeding or proceedings previously brought by those authorities.

The second question

39 By its second question, the referring court asks, in essence, whether the principle *ne bis in idem*, as enshrined in Article 50 of the Charter, must be interpreted as meaning that it applies to infringements of competition law, such as the abuse of a dominant position referred to in Article 102 TFEU, where those infringements are sanctioned separately and independently by the Commission and by a competition authority of a Member State in the exercise of their competences under Article 11(6) of Regulation No 1/2003.

40 In that regard, it should be recalled that the principle *ne bis in idem* is a fundamental principle of EU law (judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 59). That principle has also been laid down in Article 50 of the Charter as regards criminal proceedings and penalties.

41 It is apparent from the Court's settled case-law that the principle *ne bis in idem* must be observed in proceedings which may lead to the imposition of fines under competition law. That principle thus precludes an undertaking from being found liable or proceedings being brought against it afresh on the grounds of anticompetitive conduct for which it has been penalised or declared not liable by an earlier

decision that can no longer be challenged (judgment of 14 February 2012, *Toshiba Corporation and Others*, C-17/10, EU:C:2012:72, paragraph 94 and the case-law cited).

42 It follows that the application of the principle *ne bis in idem* in proceedings under competition law is subject to a twofold condition, namely, first, that there is a prior definitive decision (the '*bis*' condition) and, second, that the prior decision and the subsequent proceedings or decisions concern the same anticompetitive conduct (the '*idem*' condition).

43 As the Court has previously held, the application of the '*idem*' condition is, in turn, subject to the threefold sub-condition that the facts must be the same, the offender the same and the legal interest protected the same (see, to that effect, judgment of 14 February 2012, *Toshiba Corporation and Others*, C-17/10, EU:C:2012:72, paragraph 97). Under the principle *ne bis in idem*, the same person cannot therefore be sanctioned more than once for a single unlawful course of conduct designed to protect the same legal asset (judgment of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 338).

44 However, in the present case, the principle *ne bis in idem* does not apply.

45 If, as follows from paragraph 37 of the present judgment, the proceedings conducted by the Slovak competition authority and by the Commission and the decisions taken following those proceedings relate to anticompetitive practices on separate product markets, the principle *ne bis in idem* does not apply, since the sub-condition that the facts must be the same is not met and the '*idem*' condition is consequently not satisfied.

46 In that regard, it should be noted that, in the decision of 15 October 2014, the Commission found, in particular, an abuse of a dominant position on the part of ST consisting in a margin squeeze on the wholesale market in respect of unbundled access to the local loop and on the retail mass market in respect of broadband services offered at a fixed location in Slovakia, whereas, subject to verification by the referring court, it appears from the file submitted to the Court that the Slovak competition authority found abuses of a dominant position committed by ST consisting in a margin squeeze on, first, markets for the provision of voice telephony services and the market for wholesale interconnection services on the markets for call origination and termination on ST's public network at a fixed location, and second, on the market for low-speed internet access services and the relevant market for wholesale interconnection, namely for the provision of wholesale dial-up access by analogue line and integrated services digital network line via ST's public telephone network at a fixed location. Thus, it appears that those abuses do not relate to the same product markets.

47 Having said that, if the verification to be carried out by the referring court should show that the proceedings conducted by the Slovak competition authority and the resulting decision have as their subject the same anticompetitive practices committed by ST on the same product markets and the same geographical markets during the same period as those referred to in the Commission's decision, with the result that the '*idem*' condition is met, the principle *ne bis in idem* would still not apply as the '*bis*' condition would not be satisfied. In such a situation, as has been stated in paragraph 30 of the present judgment, the view would have to be taken that the Slovak competition authority was relieved, pursuant to the first sentence of Article 11(6) of Regulation No 1/2003, of its competence to apply, in the present case, Article 102 TFEU.

48 Consequently, the answer to the second question is that the principle *ne bis in idem*, as enshrined in Article 50 of the Charter, must be interpreted as meaning that it applies to infringements of competition law, such as the abuse of a dominant position referred to in Article 102 TFEU, and precludes an undertaking from being found liable or proceedings from being brought against it afresh on the grounds of anticompetitive conduct for which it has been penalised or declared not liable by an earlier decision that can no longer be challenged. By contrast, that principle does not apply where proceedings are brought against or sanctions imposed on an undertaking separately and independently by a competition authority of a Member State and the Commission for infringements of Article 102 TFEU relating to separate product

markets or separate geographical markets, or where a competition authority of a Member State is relieved of its competence pursuant to the first sentence of Article 11(6) of Regulation No 1/2003.

Costs

49 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 (Eighth Chamber) hereby rules:

1. **The first sentence of Article 11(6) 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] must be interpreted as meaning that the competition authorities of the Member States are relieved of their competence to apply Articles 101 and 102 TFEU in the case where the European Commission initiates proceedings for the purposes of adopting a decision finding an infringement of those provisions in so far as that formal act relates to the same alleged infringements of Articles 101 and 102 TFEU, committed by the same undertaking or undertakings on the same product market or markets and the same geographical market or markets during the same period or periods as those concerned by the proceeding or proceedings previously brought by those authorities.**

2. **The principle *ne bis in idem*, as enshrined in Article 50 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it applies to infringements of competition law, such as the abuse of a dominant position referred to in Article 102 TFEU, and precludes an undertaking from being found liable or proceedings from being brought against it afresh on the grounds of anticompetitive conduct for which it has been penalised or declared not liable by an earlier decision that can no longer be challenged. By contrast, that principle does not apply where proceedings are brought against or sanctions imposed on an undertaking separately and independently by a competition authority of a Member State and the European Commission for infringements of Article 102 TFEU relating to separate product markets or separate geographical markets, or where a competition authority of a Member State is relieved of its competence pursuant to the first sentence of Article 11(6) of Regulation No 1/2003.**

[Signatures]

---

* Language of the case: Slovak.