ECLI:EU:C:2022:202

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

22 March 2022 (*)

(Reference for a preliminary ruling – Competition – Postal services – Tariff system adopted by a universal service provider – Fine imposed by a national postal regulator – Fine imposed by a national competition authority – Charter of Fundamental Rights of the European Union – Article 50 – Non bis in idem principle – Existence of the same offence – Article 52(1) – Limitations to the non bis in idem principle – Duplication of proceedings and penalties – Conditions – Pursuit of an objective of general interest – Proportionality)

In Case C-117/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium), made by decision of 19 February 2020, received at the Court on 3 March 2020, in the proceedings

bpost SA

v

Autorité belge de la concurrence,

intervening parties:

Publimail SA,

European Commission,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, K. Jürimäe (Rapporteur), C. Lycourgos, E. Regan, N. Jääskinen, I. Ziemele and J. Passer, Presidents of Chambers, M. Ilešič, T. von Danwitz, A. Kumin and N. Wahl, Judges,

Advocate General: M. Bobek,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 22 March 2021,

after considering the observations submitted on behalf of:

– bpost SA, by J. Bocken, S. Gnedasj, K. Verbouwe and S. Mathieu, avocats,

– the Belgian Government, by J.-C. Halleux, L. Van den Broeck and C. Pochet, acting as Agents, and by P. Vernet and E. de Lophem, avocats,

– the German Government, initially by J. Möller and S. Heimerl, and subsequently by J. Möller, acting as Agents,

– the Czech Government, by M. Smolek, J. Vláčil and I. Gavrilova, acting as Agents,

– the Greek Government, by L. Kotroni, acting as Agent,

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

– the Latvian Government, initially by K. Pommere and V. Kalniņa, and subsequently by K. Pommere, acting as Agents,

– the Polish Government, by B. Majczyna and M. Wiącek, acting as Agents,

– the Romanian Government, by E. Gane, R.I. Haţieganu and A. Wellman, acting as Agents,

– the European Commission, by H. van Vliet, P. Rossi, A. Cleenewerck de Crayencour and F. van Schaik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 September 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 50 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in proceedings between bpost SA and the Autorité belge de la concurrence (Belgian Competition Authority), the successor to the Conseil de la concurrence (Belgian Competition Council) (together ‘the Competition Authority’), concerning the lawfulness of a decision by which bpost was fined for abuse of a dominant position (‘the Competition Authority’s decision’).

Legal context

European Union law

3 The object of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14), as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 (OJ 2008 L 52, p. 3) ('Directive 97/67'), is the gradual liberalisation of the postal services market.

4 Recitals 8 and 41 of Directive 97/67 are worded as follows:

'(8) Whereas measures seeking to ensure the gradual and controlled liberalisation of the market and to secure a proper balance in the application thereof are necessary in order to guarantee, throughout the [European Union], and subject to the obligations and rights of the universal service providers, the free provision of services in the postal sector itself;

…

(41) Whereas this Directive does not affect the application of the rules of the Treaty, and in particular its rules on competition and the freedom to provide services'.

5 Article 12 of that directive provides, in particular, that Member States are to take steps to ensure that the tariffs for each of the services forming part of the universal service are transparent and non-discriminatory.

Belgian law

6 Articles 144*bis* and 144*ter* of the loi du 21 mars 1991 portant réforme de certaines entreprises publiques économiques (Law of 21 March 1991 on the reform of certain public commercial undertakings) (*Moniteur belge*, 27 March 1991, p. 6155), in the version applicable to the dispute in the main proceedings, transpose Article 12 of Directive 97/67 into the Belgian legal order.

7 Article 3 of the loi du 10 juin 2006 sur la protection de la concurrence économique (Law of 10 June 2006 on the protection of economic competition) (*Moniteur belge*, 29 June 2006, p. 32755), coordinated by the Royal Decree of 15 September 2006 (*Moniteur belge*, 29 September 2006, p. 50613), in the version applicable to the dispute in the main proceedings ('the Law on the protection of competition'), provides:

'Any abuse by one or more undertakings of a dominant position within the relevant Belgian market or in a substantial part of it shall be prohibited without a prior decision being necessary to that effect.

Such abuse may, in particular, consist in:

1° directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

2° limiting production, markets or technical development to the prejudice of consumers;

3° applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

4° making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.'

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

8 Bpost is the incumbent postal services provider in Belgium. It offers postal distribution services to the general public as well as to two particular categories of client, namely bulk mailers, which are end consumers, and mail preparation firms, which are consolidators that provide services upstream of the postal distribution service by preparing mail and delivering the mailings.

9 As from 2010, bpost established a new tariff system for the distribution of addressed advertising material and administrative mail items based on the 'per sender' model. According to that model, the quantity discounts granted to consolidators were no longer calculated on the basis of the total volume of mail items from all the senders to which they provided their services, but on the basis of the volume of mail items lodged individually by each sender.

10 By decision of 20 July 2011, the Institut belge des services postaux et des télécommunications (IBPT) (Belgian Institute for Postal Services and Telecommunications; 'the Postal Regulator') imposed a fine of EUR 2.3 million on bpost, pursuant to Article 144*bis* and point 5 of Article 144*ter*(1) of the Law of 21 March 1991 on the reform of certain public commercial undertakings, in the version applicable to the dispute in the main proceedings, for infringement of the non-discrimination rule in relation to tariffs ('the Postal Regulator's decision'). According to that decision, the new tariff system established by bpost from 2010 was based on an unjustified difference in treatment as between consolidators and direct clients. The Postal Regulator also indicated that the procedure that had led to the adoption of that decision had not addressed the application of competition law.

11 By judgment of 10 March 2016, the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium) annulled the Postal Regulator's decision on the ground that the pricing practice at issue was not discriminatory. That judgment, which has become final, was delivered following a reference for a preliminary ruling that gave rise to the judgment of 11 February 2015, *bpost* (C-340/13, EU:C:2015:77).

12 In the meantime, on 10 December 2012, by the Competition Authority's decision, that authority determined that bpost had committed an abuse of a dominant position prohibited by Article 3 of the Law on the protection of competition and by Article 102 TFEU. That abuse consisted in the adoption and implementation by bpost of its new tariff system in the period between January 2010 and July 2011. According to that decision, that tariff system had an exclusionary effect on consolidators and bpost's potential competitors and a loyalty building effect on its main clients that would increase barriers to entry to the market. bpost was fined EUR 37 399 786 for that abuse, the fine previously imposed by the Postal Regulator having been taken into account in the calculation of that amount. The procedure that led to the adoption of that decision did not address the existence of any discriminatory practices.

13 By judgment of 10 November 2016, the cour d'appel de Bruxelles (Court of Appeal, Brussels) annulled the Competition Authority's decision because it was contrary to the *non bis in idem* principle. That court found that the proceedings conducted by the Postal Regulator and by the Competition Authority concerned the same facts.

14 By judgment of 22 November 2018, the Cour de cassation (Court of Cassation, Belgium) set aside that judgment and referred the case back to the cour d'appel de Bruxelles (Court of Appeal, Brussels).

15 In the proceedings following that referral, bpost, the Competition Authority and the European Commission, the latter intervening as amicus curiae, discussed compliance with the *non bis in idem* principle and the requirements for its application.

16 In its request for a preliminary ruling, the referring court states that the proceedings conducted, respectively, by the Postal Regulator and by the Competition Authority lead to the imposition of administrative penalties of a criminal nature that are intended to punish different offences resulting from the infringement, in one case, of sectoral rules and, in the other, of competition law. In those circumstances, it considers it appropriate, in principle, to rely on the case-law of the Court relating to the *non bis in idem* principle in the field of competition law, as set out, in particular, in the judgment of 14 February 2012, *Toshiba Corporation and Others* (C-17/10, EU:C:2012:72). It follows from that case-law that, in order to verify whether two sets of proceedings relate to the same facts, it is necessary to examine whether three cumulative criteria are fulfilled, namely that the facts are the same, the offenders are the same and the legal interest protected is the same. The referring court emphasises, however, that the latter criterion is not applied in any field other than that of competition law.

17 The referring court states that the two sets of proceedings at issue in the main proceedings have their basis in different legislation intended to protect different legal interests. It notes that the proceedings conducted by the Postal Regulator were intended to ensure the liberalisation of the postal sector by means of rules on transparency and non-discrimination in relation to tariffs, while those conducted by the Competition Authority are intended to ensure free competition within the internal market by prohibiting, in particular, abuse of a dominant position. The criterion as to the legal interest protected being the same is necessary to ensure that competition law is applied effectively.

18 Nevertheless, the referring court considers that, given the uncertainty regarding the relevance of that criterion in the light of the case-law of the Court, it is necessary to obtain further clarification from the Court in that respect.

19 In addition, the referring court is doubtful as to the conditions for any duplication of proceedings on the basis of a limitation of the *non bis in idem* principle, in the light of the case-law derived from the judgments of 20 March 2018, *Menci* (C-524/15, EU:C:2018:197); of 20 March 2018, *Garlsson Real Estate and Others* (C-537/16, EU:C:2018:193); and of 20 March 2018, *Di Puma and Zecca* (C-596/16 and C-597/16, EU:C:2018:192).

20 In those circumstances the cour d'appel de Bruxelles (Court of Appeal, Brussels) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the *non bis in idem* principle, as guaranteed by Article 50 of the Charter, be interpreted as not precluding the competent administrative authority of a Member State from imposing a fine for infringing EU competition law, in a situation such as that of the present case, where the same legal person has already been finally acquitted of an offence for which an administrative fine had been imposed on it by the national postal regulator for an alleged infringement of postal legislation, on the basis of the same or similar facts, in so far as the criterion that the legal interest protected

must be the same is not satisfied because the case at issue relates to two different infringements of different legislation applicable in two separate fields of law?

(2) Must the *non bis in idem* principle, as guaranteed by Article 50 of the Charter, be interpreted as not precluding the competent administrative authority of a Member State from imposing a fine for infringing EU competition law, in a situation such as that of the present case, where the same legal person has already been finally acquitted of an offence for which an administrative fine had been imposed on it by the national postal regulator for an alleged infringement of postal legislation, on the basis of the same or similar facts, on the grounds that a limitation of the *non bis in idem* principle is justified by the fact that competition legislation pursues a complementary general interest objective, that is to say, protecting and maintaining a system of undistorted competition within the internal market, and does not go beyond what is appropriate and necessary in order to achieve the objective that such legislation legitimately pursues, and/or in order to protect the right and freedom to conduct business of those other operators under Article 16 of the Charter?'

Consideration of the questions referred

21 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 50 of the Charter must be interpreted as precluding a legal person from being fined for an infringement of EU competition law where, on the same facts, that person has already been the subject of a final decision following proceedings relating to an infringement of sectoral rules concerning the liberalisation of the relevant market.

Preliminary observations

22 It should be recalled that the *non bis in idem* principle 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), which is now laid down in Article 50 of the Charter.

23 That provision contains a right which corresponds to that provided for in Article 4 of Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. In that regard, it must be pointed out that, in so far as the Charter contains rights which correspond to rights guaranteed by that convention, Article 52(3) of the Charter provides that their meaning and scope are to be the same as those laid down by that convention. It is therefore necessary to take account of Article 4 of Protocol No 7 to that convention for the purpose of interpreting Article 50 of the Charter, without prejudice to the autonomy of EU law and that of the Court of Justice of the European Union (see, to that effect, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraphs 23 and 60).

24 Article 50 of the Charter provides that 'no one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law'. Therefore, the *non bis in idem* principle prohibits a duplication both of proceedings and of penalties of a criminal nature for the purposes of that article for the same acts and against the same person (judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 25 and the case-law cited).

25 As regards the assessment as to whether the proceedings and penalties concerned are criminal in nature, which is a matter for the referring court, it must be noted that three criteria are relevant. The first is the legal classification of the offence under national law, the second is the intrinsic nature of the offence, and the third is the degree of severity of the penalty which the person

concerned is liable to incur (see, to that effect, judgments of 5 June 2012, *Bonda*, C-489/10, EU:C:2012:319, paragraph 37, and of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraphs 26 and 27).

26 It should be pointed out in that regard that the application of Article 50 of the Charter is not limited to proceedings and penalties which are classified as 'criminal' by national law, but extends regardless of such a classification to proceedings and penalties which must be considered to have a criminal nature on the basis of the two other criteria referred to in the preceding paragraph (see, to that effect, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 30).

27 In the present case, however, it is sufficient to note, as the referring court makes clear, that the two sets of proceedings referred to in the main action are proceedings for the imposition of administrative penalties of a criminal nature, meaning that the criminal classification of those proceedings, in the light of the criteria referred to in paragraph 25 of the present judgment, is not in question.

28 The application of the *non bis in idem* principle is subject to a twofold condition, namely, first, that there must be a prior final decision (the '*bis*' condition) and, secondly, that the prior decision and the subsequent proceedings or decisions must concern the same facts (the '*idem*' condition).

The 'bis' condition

29 As regards the '*bis*' condition, in order for a judicial decision to be regarded as having given a final ruling on the facts subject to a second set of proceedings, that decision must not only have become final but must also have been taken after a determination has been made as to the merits of the case (see, by analogy, judgment of 5 June 2014, *M*, C-398/12, EU:C:2014:1057, paragraphs 28 and 30).

30 In the present case, it is apparent from the findings of the referring court that the Postal Regulator's decision was annulled by a judgment which has acquired the force of *res judicata* and according to which bpost was acquitted in the proceedings brought against it under rules governing the postal sector. Subject to verification by the referring court, it thus appears that the first proceedings were disposed of by a final decision, within the meaning of the case-law recalled in the preceding paragraph.

The 'idem' condition

31 As regards the '*idem*' condition, it follows from the very wording of Article 50 of the Charter that that provision prohibits the same person from being tried or punished in criminal proceedings more than once for the same offence.

32 As the referring court indicates in its request for a preliminary ruling, the two sets of proceedings at issue in the main action are directed against the same legal person, bpost.

33 According to the Court's settled case-law, the relevant criterion for the purposes of assessing the existence of the same offence is identity of the material facts, understood as the existence of a set of concrete circumstances which are inextricably linked together and which have resulted in the final acquittal or conviction of the person concerned. Therefore, Article 50 of the Charter prohibits the imposition, with respect to identical facts, of several criminal penalties as a result of different proceedings brought for those purposes (judgments of 20 March 2018, *Menci*, C-524/15,

EU:C:2018:197, paragraph 35, and of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193, paragraph 37 and the case-law cited).

34 Moreover, it is apparent from the case-law of the Court that the legal classification under national law of the facts and the legal interest protected are not relevant for the purposes of establishing the existence of the same offence, in so far as the scope of the protection conferred by Article 50 of the Charter cannot vary from one Member State to another (judgments of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 36, and of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193, paragraph 38).

35 The same is true of the application of the *non bis in idem* principle laid down in Article 50 of the Charter in the field of EU competition law, inasmuch as, as the Advocate General noted in points 95 and 122 of his Opinion, the scope of the protection conferred by that provision cannot, unless otherwise provided by EU law, vary from one field of EU law to another.

36 In that regard, it must also be stated that, in the light of the case-law referred to in paragraph 33 of the present judgment, the '*idem*' condition requires the material facts to be identical. By contrast, the *non bis in idem* principle is not intended to be applied where the facts in question are not identical but merely similar.

37 Identity of the material facts must be understood to mean a set of concrete circumstances stemming from events which are, in essence, the same, in that they involve the same perpetrator and are inextricably linked together in time and space (see, to that effect, ECtHR, 10 February 2009, *Sergey Zolotukhin v. Russia*, CE:ECHR:2009:0210JUD001493903, § 83 and 84, and ECtHR, 20 May 2014, *Pirttimäki v. Finland*, CE:ECHR:2014:0520JUD003523211, § 49 to 52).

38 In the present case, it is for the referring court to determine whether the facts in respect of which the two sets of proceedings were initiated under sectoral rules and competition law, respectively, are identical. To that end, it is for that court to examine the facts taken into account in each of those proceedings, as well as the infringement period alleged.

39 Should the referring court consider that the facts which are the subject of the two sets of proceedings at issue in the main action are identical, that duplication would constitute a limitation of the fundamental right guaranteed by Article 50 of the Charter.

Justification for a possible limitation of the fundamental right guaranteed by Article 50 of the Charter.

40 A limitation of the fundamental right guaranteed by Article 50 of the Charter may be justified on the basis of Article 52(1) thereof (judgments of 27 May 2014, *Spasic*, C-129/14 PPU, EU:C:2014:586, paragraphs 55 and 56, and of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 40).

41 In accordance with the first sentence of Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. According to the second sentence of Article 52(1) thereof, subject to the principle of proportionality, limitations on those rights and freedoms may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

42 In the present case, it is for the referring court to verify whether, as it appears from the information in the file available to the Court, the involvement of each of the national authorities concerned which, it is claimed, gave rise to a duplication of proceedings and penalties, was provided for by law.

43 Such a possibility of a duplication of proceedings and penalties respects the essence of Article 50 of the Charter, provided that the national legislation does not allow for proceedings and penalties in respect of the same facts on the basis of the same offence or in pursuit of the same objective, but provides only for the possibility of a duplication of proceedings and penalties under different legislation.

44 As regards the question whether the limitation of the fundamental right guaranteed by Article 50 of the Charter arising from a duplication of proceedings and penalties under sectoral rules and competition law meets an objective of general interest, it should be noted that the two sets of legislation at issue in the main proceedings pursue distinct legitimate objectives.

45 Thus, the object of the sectoral rules at issue in the main proceedings, which transposed Directive 97/67, is the liberalisation of the internal market for postal services.

46 As regards the Law on the protection of competition and Article 102 TFEU which underpin the Competition Authority's decision, it must be pointed out that the latter article is a provision that pertains to a matter of public policy which prohibits abuse of a dominant position and pursues the objective – which is indispensable for the functioning of the internal market – of ensuring that competition is not distorted in that market (see, to that effect, judgments of 13 July 2006, *Manfredi and Others*, C-295/04 to C-298/04, EU:C:2006:461, paragraph 31, and of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraphs 20 to 22).

47 It is therefore legitimate, for the purposes of guaranteeing the ongoing liberalisation of the internal market for postal services, while ensuring the proper functioning of that market, for a Member State to punish infringements, on the one hand, of sectoral rules concerning the liberalisation of the relevant market and, on the other, of the rules applicable to competition law, as recital 41 of Directive 97/67 envisages.

48 As regards compliance with the principle of proportionality, it requires that the duplication of proceedings and penalties provided for by the national legislation does not exceed what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation, its being understood that, when there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 46 and the case-law cited).

49 In that regard, it must be stated that public authorities can legitimately choose complementary legal responses to certain conduct that is harmful to society through different procedures forming a coherent whole so as to address different aspects of the social problem involved, provided that the accumulated legal responses do not represent an excessive burden for the individual concerned (see, to that effect, ECtHR, 15 November 2016, *A and B v. Norway*, CE:ECHR:2016:1115JUD002413011, § 121 and 132). Consequently, the fact that two sets of proceedings are pursuing distinct objectives of general interest which it is legitimate to protect cumulatively can be taken into account, in an analysis of the proportionality of the duplication of proceedings and penalties, as a factor that would justify that duplication, provided that those

proceedings are complementary and that the additional burden which that duplication represents can accordingly be justified by the two objectives pursued.

50 National rules which provide for the possible duplication of proceedings and penalties under sectoral rules and competition law are capable of achieving the objective of general interest of ensuring that each of the two sets of legislation concerned is applied effectively, since they are pursuing the distinct legitimate objectives referred to in paragraphs 45 and 46 of the present judgment. On that basis, it will be for the referring court to assess, in the light of the national provisions that gave rise to the proceedings initiated respectively by the Postal Regulator and by the Competition Authority, whether the duplication of penalties of a criminal nature can be justified, in the dispute in the main proceedings, by the fact that the proceedings initiated by those authorities pursue complementary aims relating to different aspects of the same unlawful conduct (see, to that effect, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 44).

51 With regard to the strict necessity of such duplication of proceedings and penalties, it is necessary to assess whether there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the different authorities, whether the two sets of proceedings have been conducted in a manner that is sufficiently coordinated and within a proximate timeframe and whether any penalty that may have been imposed in the proceedings that were first in time was taken into account in the assessment of the second penalty, meaning that the resulting burden, for the persons concerned, of such duplication is limited to what is strictly necessary and the overall penalties imposed correspond to the seriousness of the offences committed (see, to that effect, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraphs 49, 52, 53, 55 and 58, and ECtHR, 15 November 2016, *A and B v. Norway*, CE:ECHR:2016:1115JUD002413011, § 130 to 132).

52 Admittedly, as the Advocate General indicated in point 109 of his Opinion, a full assessment of necessity as described in the preceding paragraph and, consequently, the overall analysis of the question as to whether the duplication of proceedings can be justified under Article 52(1) of the Charter, can only be undertaken in full *ex post*, given the nature of some of the factors to be taken into account.

53 However, the protection derived from the twofold condition governing the application of the *non bis in idem* principle, as referred to in paragraph 28 of the present judgment, subject to the possible justification under Article 52(1) of the Charter of a limitation of the rights that may flow from that principle in a specific case, respects the essence of Article 50 of the Charter. As is apparent from paragraph 51 of the present judgment, reliance on such justification requires that it be established that the duplication of the proceedings in question was strictly necessary, taking account in that context, in essence, of the existence of a sufficiently close connection in substance and time between the two sets of proceedings involved (see, to that effect, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 61, and, by analogy, ECtHR, 15 November 2016, *A and B v. Norway*, CE:ECHR:2016:1115JUD002413011, § 130). Accordingly, any justification for a duplication of penalties is subject to conditions which, when satisfied, are intended in particular to limit, albeit without calling into question the existence of '*bis*' as such, the functionally distinct character of the proceedings in question and therefore the actual impact on the persons concerned of the fact that those proceedings against them are brought cumulatively.

54 It is for the referring court to ascertain, in the light of all of the circumstances of the dispute in the main proceedings, whether the conditions referred to in paragraph 51 of the present judgment

are satisfied in this case. In order to provide the referring court with a useful answer, the following points must nevertheless be made.

55 First, it should be noted that the existence of a provision of national law providing, as does Article 14 of the loi du 17 janvier 2003 relative au statut du régulateur des secteurs des postes et des télécommunications belges (Law of 17 January 2003 on the statute of the regulator of the Belgian postal and telecommunications sectors) (*Moniteur belge*, 24 January 2003, p. 2591), which it is for the referring court to verify, for cooperation and the exchange of information between the authorities concerned, would constitute an appropriate framework for ensuring the coordination to which reference is made in paragraph 51 of the present judgment. Whether such coordination did in fact take place in this instance is also a matter for the referring court to ascertain.

56 Secondly, subject to an assessment by the referring court, it must be observed that the file submitted to the Court of Justice contains indications of a sufficiently close connection in time between the two sets of proceedings conducted and between the decisions taken pursuant to the sectoral rules and to competition law. Thus, the Postal Regulator and the Competition Authority appear to have conducted their proceedings – at least partly – in parallel. The two authorities adopted their decisions on dates that were close, that is to say, on 20 July 2011 and 10 December 2012, respectively, which attests, given the complexity of competition investigations, to their being sufficiently closely connected in time.

57 Lastly, the fact that the fine imposed in the second set of proceedings is larger than that imposed in the first, by a final decision, does not in itself show that the duplication of proceedings and penalties was disproportionate with regard to the legal person concerned, given, in particular, that the two sets of proceedings may constitute complementary and connected, but nevertheless distinct, legal responses to the same conduct.

58 In the light of all of the foregoing considerations, the answer to the questions referred is that Article 50 of the Charter, read in conjunction with Article 52(1) thereof, must be interpreted as not precluding a legal person from being fined for an infringement of EU competition law where, on the same facts, that person has already been the subject of a final decision following proceedings relating to an infringement of sectoral rules concerning the liberalisation of the relevant market, provided that there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the two competent authorities; that the two sets of proceedings have been conducted in a sufficiently coordinated manner within a proximate timeframe; and that the overall penalties imposed correspond to the seriousness of the offences committed.

Costs

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

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

Article 50 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 52(1) thereof, must be interpreted as not precluding a legal person from being fined for an infringement of EU competition law where, on the same facts, that person has already been the subject of a final decision following proceedings relating to an infringement of sectoral rules concerning the liberalisation of the relevant market, provided that there are

clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the two competent authorities; that the two sets of proceedings have been conducted in a sufficiently coordinated manner within a proximate timeframe; and that the overall penalties imposed correspond to the seriousness of the offences committed.

[Signatures]

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* Language of the case: French.