SLAUGHTER AND MAY/

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QUICK LINKS

Court of Justice rules that digital platforms can be required to ensure third-party interoperability, despite lack of "indispensability"

On 25 February 2025, the European Court of Justice (CJ) delivered its ruling in the *Android Auto* case. The Court held that a dominant platform's refusal to enable interoperability between its platform and a third-party app – where such interoperability would enhance the app's attractiveness to consumers – can in certain circumstances constitute an abuse of a dominant position.

Background

Google's 'Android Auto' enables users of Android mobile devices to access apps on those devices via the screen of their vehicle's infotainment system. To enable app developers to build apps that are interoperable with Android Auto, Google offers interoperability solutions for certain categories of apps in the form of 'templates', and in some cases allows app developers to develop personalised apps where there is no pre-determined template.

In 2018, Enel X launched its JuicePass app in Italy, making it available to users of Android mobile devices via Google Play. The app enables drivers to locate and reserve charging stations for electric vehicles, and to transfer to the Google Maps app to navigate to the desired charging station. When Google declined to enable interoperability between JuicePass and Android Auto – citing security and resourcing reasons amongst others – the Italian Competition Authority (AGCM) fined it over €102 million on the basis that the conduct constituted an unlawful refusal to supply under Article 102 TFEU. Google contested the decision, ultimately leading the Italian Council of State to seek a preliminary ruling on certain questions from the CJ.

The Court of Justice's ruling

Relevance of Bronner criteria

The key issue in the case was the interpretation of the long-established *Bronner* line of case law concerning refusals by dominant undertakings to grant access to their infrastructure. The CJ in *Bronner* held that a refusal by a dominant undertaking to grant access to infrastructure that it had developed solely for the purposes of its own business can only constitute an abuse where (among other things) that infrastructure is *indispensable* for the requesting party's business.

The Italian court in *Android Auto* essentially sought clarification on the position where the infrastructure is not *indispensable* for the commercial operation of JuicePass, but nevertheless makes the app more attractive to users.

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The CJ in its ruling draws a distinction between, on the one hand, the classic *Bronner-type* refusal to grant access to infrastructure that the dominant undertaking developed solely for the purposes of its own business and, on the other, a refusal to grant access to infrastructure developed not only for the dominant undertaking's own business needs but also with a view to opening that infrastructure up to third parties. In the former scenario, the requirement that the infrastructure must be *indispensable* in order for a refusal of access to be abusive is justified as preserving the dominant undertaking's freedom of contract and right to property, as well as dominant companies' investment incentives. In contrast, the CJ found that those same justifications do not apply where the dominant undertaking developed the infrastructure with a view to opening it up to third parties – it is therefore not a pre-requisite to finding an abuse in such a scenario that access to the infrastructure be indispensable for the requesting undertaking's business.

Is absence of a template a justification for refusing access?

The referring court sought clarity on whether a dominant undertaking can justify its refusal to ensure interoperability between its digital platform and a third-party app by citing the absence of a template enabling such compatibility, or whether it might be obliged to develop that template. At the time of Enel X's request to make its electric vehicle charging app compatible with Android Auto, Google had not yet developed a template for electric vehicle charging apps.

The CJ held that the absence of a template may be a justification where to grant such interoperability by means of a template would compromise the integrity or security of the platform or be impossible for other technical reasons. Absent such concerns, the absence of a template cannot in itself constitute a justification for the dominant undertaking's refusal to grant access – the undertaking must develop the necessary template within a reasonable timeframe and may charge a fair and proportionate fee for this development.

Implications

The ruling adds to the growing body of case law addressing abuses of dominance in the platform economy, expanding the existing case law on when a refusal by a dominant undertaking to grant access may constitute an abuse. However, the ruling leaves several questions unanswered and further litigation in this area is likely.

OTHER DEVELOPMENTS

ANTITRUST

CMA imposes settlement fines on banks for UK bond collusion

On 21 February 2025, the UK Competition and Markets Authority (CMA) reached a settlement with four banks which agreed to pay fines totalling £104.5 million following an investigation into suspected anti-competitive arrangements related to gilts, a specific type of UK government bond.

The CMA issued five separate bilateral infringement decisions which found that five pairs of banks unlawfully shared competitively sensitive information. These decisions were addressed to: Citigroup (Citi), Deutsche Bank, HSBC, Morgan Stanley and Royal Bank of Canada. Of these banks, only Deutsche Bank benefitted from immunity from any fine as it had alerted the CMA to its participation in the unlawful conduct under the CMA's leniency policy.

This conduct took place on various dates between 2009 and 2013, where individual traders at each of the banks shared information in separate bilateral online Bloomberg chatrooms. They exchanged information relevant to the pricing of UK government bonds, specifically gilts and gilt asset swaps. In each infringement decision, the CMA found a single and repeated 'by object' infringement – that the conduct had the object of restricting or distorting competition within the UK. The CMA did not make any finding as to whether the infringing conduct had the effect of preventing, restricting or distorting competition.

The four banks – Citi, HSBC, Morgan Stanley, and RBC have since implemented extensive compliance measures to ensure this does not happen again. In agreeing to settle with the CMA, these banks have agreed to pay the fines, bringing the investigation to a close. Citi received the greatest fine reduction as they had applied for leniency

during the CMA's investigation, receiving a 35 per cent leniency discount and a 20 per cent reduction for settling in advance of the CMA issuing its Statement of Objections. The other three banks received a 10 per cent fine reduction for settling after the CMA issued its Statement of Objections.

GENERAL COMPETITION

European Commission launches Clean Industrial Deal

On 26 February 2025, the European Commission launched a Communication on the Clean Industrial Deal (CID), a joint roadmap for competitiveness and decarbonisation. The CID builds on the Commission's Competitiveness Compass launched on 29 January 2025 (see a previous edition of this newsletter), as remarked by EU Competition Commissioner Teresa Ribera at a press conference outlining the CID.

The CID outlines actions to turn decarbonisation into a growth driver for European industries, with a particular focus on energy-intensive industries such as steel, metals, and chemicals, and the clean-tech sector. It identifies six business drivers for industry to succeed in the EU: (i) access to affordable energy; (ii) boosting clean supply and demand; (iii) mobilising public and private investments; (iv) powering the circular economy; (v) fostering international partnerships; and (vi) upskilling workers with quality jobs and ensuring social fairness.

The CID introduces, *inter alia*, several competition, foreign subsidy and State aid measures to achieve this goal. In particular, the Commission will revise its merger guidelines to ensure the better integration in its analysis of the impact of mergers on the affordability of sustainable products and on clean innovation, or on creating efficiencies that bring sustainable benefits. The revised merger guidelines are also to consider innovation, resilience, and the investment intensity of competition in certain strategic sectors. As regards antitrust, the Commission indicated that it "*stands ready*" to provide informal guidance to companies on the compatibility of cooperation projects, especially those supporting EU priorities like innovation, decarbonisation, and economic security. Additionally, by January 2026, the Commission has committed to adopt guidelines on key concepts underpinning the EU Foreign Subsidies Regulation (FSR) and provide clarification on its application of the rules. In particular, the guidelines will cover the assessment of distortive effects of foreign subsidies, and guidance as to which mergers that fall below the thresholds of the FSR should be reviewed. Furthermore, the Commission has made clear it will make use of its *ex officio* investigation powers in strategic sectors.

The Commission also introduced several new initiatives in relation to State aid, notably the adoption of a new Clean Industrial Deal State Aid Framework by June 2025, which Commissioner Ribera stated, "*will simplify and expedite support for renewable energy, industrial decarbonisation, and the manufacturing of clean tech products, ensuring effective use of public funds and encouraging private sector involvement*". The new Framework will introduce "*off-the-shelf*" options for Member States to easily demonstrate compatibility as well as a wider use of simplified methods to set aid amounts instead of complex individual assessments. The Framework also allows for separate support schemes for technologies such as wind and solar, as well as to further facilitate support to non-fossil energy flexibility measures. The Commission is also to update its rules for investments as regards clean-tech products, such as batteries and renewable technologies. Additionally, the Commission aims to review the General Block Exemption Regulation by 2027. For further details on the CID, see our Blog Post.

ACCC's compliance and enforcement priorities for 2025-26

On 20 February 2025, the Australian Competition and Consumer Commission (ACCC) outlined its compliance and enforcement priorities for the financial year 2025-26.

The ACCC will focus on promoting competition and protecting consumers in sectors that affect the cost of living and doing business, as well as tackling the growing concerns around anti-competitive conduct in the digital economy. Key priorities include:

- Competition issues in the supermarket and retail market, focusing on firms with market power and conduct that impacts small business. This follows the Australian Government's announcement last year that it intends to monitor all mergers in the Australian supermarket sector (see a previous edition of this newsletter here);

- Competition, product safety, consumer and fair-trading issues in the digital economy, focusing on misleading or deceptive advertising in influencer marketing, online reviews, in-app purchases and unsafe consumer products;
- Unfair contract terms in consumer and small business contracts, focusing on harmful cancellation terms, including those associated with automatic renewals, early termination fee clauses, and non-cancellation clauses.

Other priority areas include essential services (e.g. telecommunications, electricity and gas) and aviation, as well as environmental claims and sustainability issues such as greenwashing. The ACCC's announcement aims to raise awareness and encourage businesses operating in these specific sectors to proactively comply with competition and consumer laws.

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