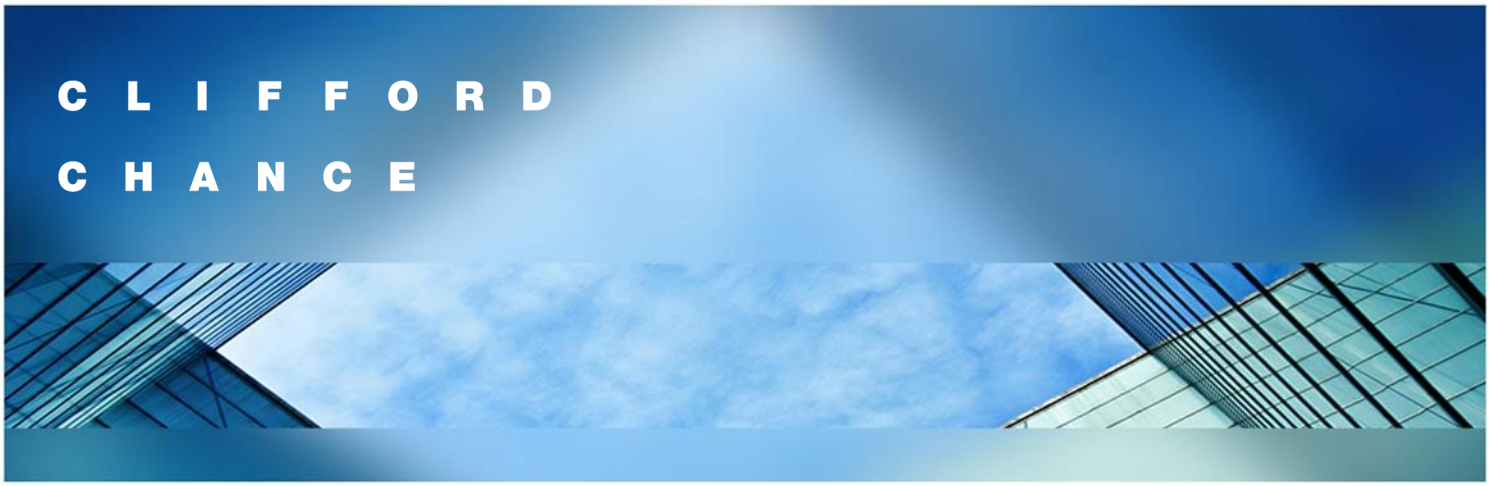

EU'S HIGHEST COURT IN ANDROID AUTO: DOMINANT DIGITAL PLATFORMS' POSITIVE OBLIGATION TO FACILITATE INTEROPERABILITY FOR APP USERS' CONVENIENCE - NO INDISPENSABILITY REQUIRED

On September 25, 2025, Europe's highest court, the Court of Justice of the EU (**CJEU**), issued its judgment in *Google Android Auto*. The CJEU effectively held that a dominant digital platform can be required to develop inexistent interoperability information against appropriate remuneration to allow third-party digital app developers to feature on its platform, unless a refusal to do so is objectively justified based on security or technical grounds. According to the CJEU, because digital platforms are created to be shared with third parties, the exacting standard of "indispensability to compete" of traditional EU law on access to a dominant firm's proprietary infrastructure does not apply.

Key issues

- A dominant digital platform's abusive refusal to supply interoperability information to access its platform does not require a showing that access is indispensable to compete.
- Continued success of the third-party developer requesting interoperability information despite the lack of access to this information does not preclude a finding of liability of the conduct to restrict competition.
- Unless a dominant digital platform can invoke reasons of platform integrity, security or other technical impossibility by way of objective justification for the refusal, it can be required to develop a previously inexistent interoperability template to enable access.
- A finding of abuse of refusal of access by a dominant digital platform does not require a precise definition of the relevant affected product or geographic market.

BACKGROUND

The Italian competition authority had found that Google abused dominance, in breach of Article 102 of the Treaty on the Functioning of the EU (**TFEU**), by not allowing Italian electricity provider Enel's electric vehicle charging station locator and booking app on the Android Auto platform, to the benefit of Google Maps. Google Maps did not include charging station mapping functionality at the time, but represented potential competition, as it could do so in the future. The Italian Authority considered Google's refusal to allow the version of the app Enel developed, and refusal to provide a template for developing a version of the app that would be allowed, constituted an abusive refusal to supply under the 2007 General Court (**GC**) *Microsoft* judgment and 1998 CJEU *Bronner* criteria, based on Google Android's dominance as a licensable mobile operating system. Google appealed the Decision twice, leading the second Italian appeals court to ask the CJEU for a ruling on the interpretation of EU law on refusal to supply. The Italian court asked the CJEU for answers to the following questions about the application of EU refusal to supply law:

1. Does access to the dominant firm's interoperability template require a showing that this interoperability information is indispensable for the third-

party developer to compete to find an abusive refusal to supply, or is enhanced consumer attractiveness of the app sufficient?

2. Does the third-party developer's continued success despite the lack of access to the interoperability template preclude a finding of liability of the conduct to restrict competition (necessary for a finding of infringement of Article 102 TFEU)?
3. Is the lack of existence of the interoperability template requested to be considered as an objective justification for the refusal?
4. Can a dominant digital platform be required to modify its product or develop new ones to access the digital platform's offering? (The CJEU took the third and fourth question together and reformulated them as asking whether a dominant digital platform can invoke the non-existence of the relevant interoperability template as an objective justification for its refusal, or whether the undertaking in a dominant position can be required to develop such a model).
5. Does an authority have to define the market affected by the abusive conduct precisely?

FINDINGS OF THE CJEU

In answering these questions, the CJEU extensively drew from the opinion of the Advocate General:

Answer to the first question: a dominant digital platform's abusive refusal to supply interoperability information to access its platform does not require a showing that access is indispensable to compete. The CJEU had previously formulated conditions for a finding of an abusive refusal to supply access to infrastructure in its 1998 *Bronner* judgment. In that case, an independent newspaper sought access to a dominant newspaper distributor's distribution network, which it used for its own newspapers. Among the conditions *Bronner* imposed was the requirement that access to the network be indispensable for the requestor to carry on its business on a downstream market.

In previous cases the CJEU had limited the scope of applicability of *Bronner* by making clear it did not apply to cases where third-party access is made impossible as a result of the dominant undertaking's destruction of an asset (*Lithuanian Railways*), or where the modalities of integration, rather than access itself were at issue (*Google Shopping*). In *Android Auto*, the CJEU considered the conditions of application of *Bronner* itself and the extent to which they applied without reservation to denial of access to digital platforms.

Under the facts, Enel continued to be successful despite not having access to an interoperability template for its app; the interoperability template and access to Android Auto would just have made the app more attractive to consumers. The referring Italian Court therefore asked whether the indispensability condition was met if access to the interoperability framework was indispensable for a more convenient use of the product or service, thereby making it more attractive to consumers.

The CJEU reinterpreted that question as asking whether indispensability was necessary to find an abusive refusal to grant access to a digital platform. Following the earlier opinion of the Advocate General, it distinguished *Bronner*

on the basis that unlike Bronner's distribution network, a digital platform is created to be accessed by third parties. Ordering access to a network created for own use other than in the case of indispensability would constitute an impingement on the right to property and freedom of contract, reducing undertakings' incentives to invest in that network. That is not the case for digital platforms, where investments were made in the knowledge that they would be shared with third parties. A requirement to provide access in that circumstance would, according to the CJEU, "*not fundamentally alter the economic model which applied to the development of that infrastructure*."

Android Auto suggests that for a dominant platform's refusal to allow access of a third party app to be abusive, "*by ensuring that platform is interoperable with that app*," the following conditions must be met: (i) the platform provider must be dominant; (ii) there must be a refusal; (iii) it must have the actual or potential effect of excluding, obstructing or delaying the development on the market of the product or service which is at least potentially in competition with a product supplied or capable of being supplied by the dominant platform provider; and (iv) the conduct restricts competition on the merits and is thereby capable of causing harm to consumers.

Answer to the second question: continued success of the third-party developer requesting interoperability information despite the lack of access to this information does not preclude a finding of liability of the conduct to restrict competition. The CJEU recalled that Article 102 TFEU does not require a demonstration of actual exclusionary effects; its purpose is to penalize abuse by a dominant undertaking, irrespective of whether such a practice has proved successful. It noted that maintaining the same degree of competition on the market, or even the growth of competition, does not necessarily mean that the dominant undertaking's conduct is incapable of having anti-competitive effects, as the absence of effects could stem from other causes. It could be due, for example, to changes in the relevant market since the conduct began or to the dominant undertaking's inability to complete its anticompetitive strategy. The CJEU noted that it is possible that competition may have increased even further in the absence of the dominant undertaking's conduct.

The continued success of the requesting third party could nonetheless, together with other elements, constitute evidence that the dominant firm's conduct was incapable of having the alleged exclusionary effects. At the same time, it could also constitute evidence of the attractiveness to consumers of inclusion of the app on the platform to which the app was being denied access.

Answer to the third and fourth question: unless a dominant digital platform can invoke reasons of platform integrity, security or other technical impossibility by way of objective justification for the refusal, it can be required to develop a previously inexistent interoperability template to enable access. The CJEU accepts that the dominant platform can charge a fee for this development. The fact that there is no template for the category of apps concerned or the difficulties involved in its development, which the platform may face, cannot in themselves constitute an objective justification for that dominant platform's refusal to grant access. In contrast, reasons related to the degree of technical difficulty in developing the template for the category of apps concerned, resource constraints, or regulatory constraints, can constitute objective justifications for delays in platform access.

The initial burden of proving such circumstances justifying a delay, as for any objective justification, lies with the dominant platform.

Answer to the fifth question: a finding of abuse of refusal of access by a dominant digital platform does not require a precise definition of the relevant affected product or geographic market. The CJEU recalls that in applying Article 102 TFEU, a precise definition of the product market and the geographic market is not necessarily required to identify the downstream market, and that in certain circumstances it is sufficient that a potential or even hypothetical market can be identified.

OBSERVATIONS ON THE JUDGMENT

Android Auto might be seen in the broader context of a thirty plus-year long European tradition of acknowledging the importance of interoperability as a means to ensure competition in the digital sector, which harks back to the 1980s IBM Undertaking, was a key feature in the long-running EU Microsoft saga, and plays a key role in the EU Digital Markets Act (**DMA**).

However, contrary to prior interoperability cases involving software, the CJEU reviewed this case as a denial of access to infrastructure rather than a refusal to supply an input (interoperability information). In its preliminary ruling request, the Italian court cited the 1998 CJEU *Bronner* and 2004 GC *Microsoft* judgments as authority on which its request relied; the CJEU focused on applying *Bronner* (relating to access to infrastructure) as relevant CJEU law. It is perhaps unsurprising that the CJEU did not refer to *Microsoft*, a case from the lower-tier General Court. But the approach followed in *Microsoft* of focusing on the supply of interoperability information might have seemed more on-point here, as Enel's app was already in the Android App Store, but needed access to the interoperability framework to be used in Android Auto, where a charging station location is arguably the most useful. This approach of the CJEU echoes the view reflected in *Google Shopping* that digital platforms are akin to infrastructure. Had the CJEU focused on the duty to supply interoperability information as an input, it might have found it more difficult to rationalise a departure from established EU refusal to supply law based on the specific features of digital platforms. The GC *Microsoft* judgment remains relevant EU law for access to interoperability information of platforms that is not intended to be shared (as was the case for Microsoft's workgroup server operating system interfaces). But *Android Auto* dispels the notion for the future that the more stringent *Microsoft* criteria apply to third party app access to and interoperability with digital platforms generally intended to support them.

Incidentally, Google's dominance was not an issue before the CJEU because it did not feature among the referring Italian court's questions. Neither the Italian referring court nor the CJEU questioned that Android was the relevant market in which Google was dominant, rather than a specific market for Android Auto or any market for the relevant interoperability information, even though it was Android Auto to which access was being denied, and the inability to access Android Auto was due to Android Auto interoperability information not being supplied.

The judgment arguably is innovative in that it imposes a positive obligation on the dominant platform to develop an interoperability template to facilitate interoperability, which seems to go beyond the obligation in *Microsoft* merely to document existing interfaces. The referring Italian court included in its

formulation of the first question the query whether dominant platforms can be required to "modify its own products, or to develop new ones." A positive answer to the second part of that query (*i.e.*, dominant firms can be required to develop new products) could have been very far reaching – *e.g.*, it would have opened the door to requiring digital platforms to create new versions of their platform software just to accommodate the user attractiveness of third-party applications. The CJEU in *Android Auto* suggests that the onus to ensure access through the availability of interoperability with third party apps is at least shared by the dominant platform, by suggesting an abuse exists "*by [failing to ensure] that platform is interoperable with that app*." However, the CJEU does seem carefully to have circumscribed the dominant platform's obligation to supplying an interoperability template. It falls short of answering positively to the referring Italian court's explicit invitation to foresee the possibility that dominant platforms are required to modify or develop new products to ensure interoperability.

Still, overall, *Android Auto* can thus be characterized as very enforcer and complainant-friendly in several ways: (i) it effectively holds that to bring a case for refusal of access against a dominant digital platform, an enforcer no longer needs to show indispensability to compete - it can suffice to show consumer attractiveness of inclusion on the platform; (ii) it appears to accept a reasonably speculative notion of potential competition of the dominant platform provider's own product; (iii) it reaffirms that continued success of competitors on the market despite the refusal is not fatal, and reaffirms that the affected downstream market need not be defined with precision; and (iv) it allows for the imposition of an obligation to facilitate interoperability through development and appears to limit objective justifications for digital platforms' refusal abuse under Article 102 TFEU narrowly to security and technical integrity or impossibility.

In general, as a significant victory for claimants and regulators, it could embolden them to test the boundaries of *Android Auto* by bringing cases against digital platforms for a range of platform access issues that go beyond the supply of interoperability information. The true breadth and significance of *Android Auto* are thus likely to be tested in the future and will be difficult to anticipate until then.

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