COURT OF JUSTICE
OF THE EUROPEAN UNION

PRESS RELEASE No 19/25
Luxembourg, 25 February 2025

Judgment of the Court in Case C-233/23 | Alphabet and Others

A refusal by an undertaking in a dominant position to ensure that its platform is interoperable with an app of another undertaking, which thereby becomes more attractive, can be abusive

The refusal can be justified by the fact that there is no template for the category of apps concerned, where to grant interoperability would compromise the security or integrity of the platform

The refusal by an undertaking in a dominant position, which has developed a digital platform, to allow access to that platform, by refusing to ensure that that platform is interoperable with an app developed by a third-party, can constitute an abuse of a dominant position, even though the platform is not indispensable to the commercial operation of the app. Such abuse may be found where the platform has been developed with a view to enabling third-parties to use it and where it is such as to make the app more attractive to consumers. The refusal can however be justified by the fact that there is no template for the category of apps concerned at the time of the access request by the third-party undertaking, where to grant such interoperability would compromise the security or the integrity of the platform, or where it would be impossible for other technical reasons to ensure that interoperability. Otherwise, the dominant undertaking must develop such a template, within a period which is reasonable and necessary for that purpose and in return for, depending on the circumstances, appropriate financial consideration.

In 2018, Enel [1] launched, in Italy, the JuicePass app, which enables drivers to find and reserve charging stations for their electric vehicles. In order to facilitate navigation to such charging stations, Enel requested Google [2] to make the app compatible with Android Auto, Google's system which makes it possible to access smartphone apps directly on the vehicle's onboard screen. Third party developers can adapt their apps to Android Auto using templates provided by Google. Google refused to take the action necessary to ensure JuicePass would be interoperable with Android Auto [3]. The Competition and Market Authority, Italy (AGCM), therefore imposed a fine of more than €102 million on Google, finding that that behaviour constituted an abuse of a dominant position. Google disputed that decision before the Council of State, Italy, which made a reference for a preliminary ruling to the Court of Justice.

The Court finds that **the refusal by an undertaking in a dominant position** which has developed a digital platform, **to ensure that that platform is interoperable with an app developed by a third-party undertaking can constitute an abuse of a dominant position.**

Such an abuse of a dominant position is not limited to the situation where the platform is indispensable for carrying on the business of the entity applying for access [4]. There can also be abuse where, as appears to be the situation in the present case**, the undertaking in a dominant position did not develop the platform solely for the needs of its own business, but with a view to enabling third-party undertakings to use it and where that platform is not indispensable for the commercial operation of an app developed by a third-party undertaking but is such as to make that app more attractive to consumers [5].**

The refusal of access can have anticompetitive effects even if the third-party undertaking which developed the app and its competitors continued to be active on the market to which that app belongs and grew their position on that market without benefitting from interoperability with that platform. It is necessary, in that regard, to assess whether the refusal was such as to hinder competition on the market concerned being maintained or to hinder its growth, taking into account all the relevant factual circumstances.

The refusal by an undertaking in a dominant position to ensure that an app is interoperable with a digital platform **may be justified** by the fact that there is no template for the category of apps concerned and where to grant such interoperability by means of such a template would compromise the integrity or security of the platform concerned, or where it would be impossible for other technical reasons to ensure interoperability by developing such a template.

However, **if that is not the case, the undertaking in a dominant position must develop such a template within a reasonable period**, in return for, depending on the circumstances, appropriate financial consideration. In that context, it is necessary to take account of the needs of the third-party undertaking which requested that development, the actual cost of the development and the right of the undertaking in a dominant position to derive an appropriate benefit from it.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

The full text, and as the case may be, the abstract of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "Europe by Satellite" ✆ (+32) 2 2964106.

[1] More specifically, Enel X Italia, which is part of the Enel group, and which manages more than 60 % of the charging stations available for electric motor vehicles in Italy and provides services for such charging.

[2] Google Italy Srl is the Italian subsidiary of Google LLC, which, in turn, is owned by Alphabet Inc. The three undertakings together are referred to as Google.

[3] First of all, Google stated, in so far as there was no specific template, that multimedia and messaging apps were the only third-party apps compatible with Android Auto. Google later justified its refusal on the basis of security concerns and the need to allocate, in a rational manner, the resources necessary for the creation of a new template.

[4] Condition set out by the Court in the judgment of 26 November 1998, *Bronner*, C-7/97 (see also press release No 72/98).

[5] In such a situation, neither the preservation of the freedom of contract and the right to property of the undertaking in a dominant position nor the need for that undertaking to continue to have an incentive to invest in developing high-quality products or services justify limiting a refusal to provide access to the infrastructure in question to a third-party undertaking from being classified as abusive in situations in which the '*Bronner*' condition, relating to the indispensability to the carrying on of the business of the entity requesting access, is satisfied.