Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

25 February 2025 * [i]

(Reference for a preliminary ruling – Competition – Dominant position – Article 102 TFEU – Digital markets – Digital platform – Refusal of an undertaking in a dominant position which has developed a digital platform to allow access to that platform by a third-party undertaking which has developed an app, by ensuring that platform is interoperable with that app – Assessment of whether access to a digital platform is indispensable – Effects of the conduct at issue – Objective justification – Need for the undertaking in a dominant position to develop a template for a category of apps in order to allow access – Definition of the relevant downstream market)

In Case C-233/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 7 April 2023, received at the Court on 13 April 2023, in the proceedings

Alphabet Inc.,

Google LLC,

Google Italy Srl

v

Autorità Garante della Concorrenza e del Mercato,

interested parties:

Enel X Italia Srl,

Enel X Way Srl,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, F. Biltgen, K. Jürimäe, C. Lycourgos, I. Jarukaitis, M.L. Arastey Sahún, S. Rodin, A. Kumin, N. Jääskinen and D. Gratsias, Presidents of Chambers, E. Regan, I. Ziemele and O. Spineanu-Matei (Rapporteur), Judges,

Advocate General: L. Medina,

* Language of the case: Italian.

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 23 April 2024,

after considering the observations submitted on behalf of:

– Alphabet Inc., Google LLC and Google Italy Srl, by N. Latronico, M. Siragusa and M. Zotta, avvocati, and A. Lamadrid de Pablo, abogado,

– Enel X Italia Srl and Enel X Way Srl, by F. Cintioli and G. Lo Pinto, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by L. Fiandaca and F. Sclafani, avvocati dello Stato,

– the Greek Government, by V. Baroutas and K. Boskovits, acting as Agents,

– the European Commission, by G. Conte and C. Sjödin, acting as Agents,

– the EFTA Surveillance Authority, by C. Simpson and M. Sánchez Rydelski, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 September 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 102 TFEU.

2 The request has been made in proceedings between Alphabet Inc., Google LLC and Google Italy Srl, on the one hand, and the Autorità Garante della Concorrenza e del Mercato (Competition and Market Authority, Italy) ('the AGCM'), on the other, concerning that authority's decision to impose penalties on those companies for having infringed Article 102 TFEU, on account of the refusal to allow an app developed by a third-party undertaking for the purpose of providing services related to the charging of electric motor vehicles to be interoperable with the Android Auto digital platform ('Android Auto') offered by those companies.

Legal context

3 Article 102 TFEU provides:

'Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) 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

4 Google is a subsidiary of Alphabet, which controls Google Italy, which is established in Italy.

5 Google developed Android OS, an operating system for mobile devices from different manufacturers. That system, which is made available under an open source licence, may, in principle, be used free of charge and modified without the need for permission.

6 Android Auto, which Google launched in 2015, was developed for mobile devices running the Android OS operating system to enable their users to access apps on those devices, directly on the screen of the infotainment system of a motor vehicle.

7 In order to ensure that each app is interoperable with Android Auto, while avoiding conducting lengthy and costly tests for that purpose, Google offers solutions for entire categories of apps in the form of templates for each interoperability solution ('the template'). Those templates allow third-party developers to create versions of their own apps which are interoperable with Android Auto. In late 2018, templates were available for media and messaging apps. In order to meet the needs of users of navigation apps, Google also developed or acquired mapping and navigation apps, namely Google Maps and Waze, which are interoperable with Android Auto. In addition, Google has, in some cases, allowed third-party developers to develop personalised apps where there is no pre-determined template.

8 Enel X Italia Srl is part of the Enel Group, which manages more than 60% of the charging stations available for electric motor vehicles in Italy and provides services for such charging.

9 In May 2018, Enel X Italia launched the JuicePass app, available to users of mobile devices running the Android OS operating system and downloadable via Google Play. That app offers a set of features for charging electric motor vehicles. In particular, it enables users of the app to search for and book charging stations on a map, to transfer the search to the Google Maps app in order to navigate to the selected charging station, and to start, stop and monitor the charging session and the payment relating thereto.

10 In September 2018, Enel X Italia requested Google to take the action necessary to ensure that JuicePass would be interoperable with Android Auto, which Google refused to do, on the ground that multimedia and messaging apps were the only third-party apps interoperable with Android Auto. Following a further request by Enel X Italia, made in December 2018, Google refused once more, in January 2019, to take such action on security grounds and because of the need to allocate, in a rational manner, the resources necessary for the creation of a new template.

11 On 12 February 2019, Enel X Italia brought the matter before the AGCM, maintaining that Google's conduct, consisting of unjustifiably refusing to allow the JuicePass app to be used via Android Auto, constituted an infringement of Article 102 TFEU.

12 In October 2020, Google published a template for the design of experimental versions of electric vehicle charging apps interoperable with Android Auto.

13 By decision of 27 April 2021, the AGCM concluded that Google's conduct, which consisted of obstructing and delaying making JuicePass available on Android Auto, constituted an abuse of a dominant position within the meaning of Article 102 TFEU. The ACGM ordered Google, in particular, to publish the definitive version of the template for developing apps for charging electric motor vehicles and to develop any features indicated to be essential by Enel X Italia and which were missing from that version. The AGCM also imposed a fine of EUR 102 084 433.91 on Alphabet, Google and Google Italy on a joint and several basis.

14 Those companies brought an action against that AGCM decision before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), which dismissed that action in its entirety.

15 Those companies brought an appeal against that judgment before the Consiglio di Stato (Council of State, Italy), which is the referring court.

16 The referring court indicates that the AGCM was of the view that, in response to Enel X Italia's request, Google failed to provide the appropriate IT solutions and had thereby unjustifiably impeded and delayed the availability of the JuicePass app on Android Auto. The referring court states that the AGCM found that Google's conduct was, on account of its dominant position, significant as regards the protection of competition and market dynamics, since Google played a central role, specifically, in enabling professional users, in the present case developers, to gain access to the public, comprised of end users of apps. In particular, the specific app types and characteristics which can be published on Android Auto and the timing of the definition and provision of the necessary programming tools depend exclusively on Google.

17 The referring court also states that, according to the AGCM, there is genuine competition between the Google Maps and JuicePass apps, since those two apps offer search and navigation services relating to electric motor vehicle charging stations. According to the AGCM, there is also potential competition between those apps, because JuicePass offers features which are new, but which could in future be integrated into Google Maps. The referring court adds that the AGCM was of the view that, in view of the partial overlap between those apps and the integration of the Google Maps app into Android Auto, whereas the JuicePass app had been excluded from the Google Maps app, it was necessary to regard Google's refusal as a refusal to ensure interoperability, equivalent to a refusal to supply, which had resulted in a breach of the principle of equal conditions of competition, resulting from an unfair advantage being provided to Google's app, to the detriment of the app of one of Google's competitors.

18 Before the referring court, Alphabet, Google and Google Italy submit, inter alia, that the AGCM did not examine correctly the conditions for assessing whether a refusal to supply is abusive and they criticise that authority, in essence, for having failed to carry out an analysis of whether access to Android Auto was indispensable for the JuicePass app. They also claim that Google's conduct was justified by objective and legitimate considerations.

19 In addition, those companies maintain that, given that their conduct at issue concerns access to Android Auto, it was necessary, in order to find an abuse of a dominant position, to define the relevant market on which Android Auto operates and to find that that app was dominant on that market. Moreover, they are of the view that the AGCM did not identify the relevant downstream market or Google's dominant position on that market, but that it merely identified a 'competitive environment' in which navigation apps compete with electric vehicle charging apps, without carrying out the analysis necessary to conclude that such a 'competitive environment' constitutes a relevant market in terms of competition law. Lastly, they submit that it is not possible to maintain that Google Maps and JuicePass compete with one another.

20 The referring court states that, in view of the effects which Google's conduct is capable of having in the particular economic sector of which it forms part, that conduct is capable of constituting an abusive refusal to supply and of infringing Article 102 TFEU.

21 The referring court notes that Google dominates the market via the Android OS operating system and Google Play, and Android Auto is merely an evolution of that operating system for the infotainment system of a motor vehicle. Access to Android Auto appears to be 'indispensable' to allow Enel X Italia to offer to end users apps which are easy and safe to use while such users are driving such a vehicle. In that regard, the rapid development in the digital sector – which may result in products or services initially designed solely to facilitate the use of goods already in existence becoming considered 'necessary' – must not be disregarded.

22 According to the referring court, Google's conduct appears potentially to be capable of eliminating competition on the market. In the light of the characteristics of digital markets, it could be argued that, if access to Android Auto had not been made possible for the JuicePass app, that app would have lost its appeal to consumers and that such conduct could have resulted in users being prevented from enjoying a better product for which there is potential demand. In addition, it appears conceivable that an existing generic app, namely Google Maps, could incorporate the specific functions of JuicePass. Moreover, Google's refusal to allow Enel X Italia does not appear to be supported by actual objective justifications.

23 In order to give a ruling in the proceedings before it, the referring court therefore considers it necessary to obtain guidance on the interpretation of Article 102 TFEU, and primarily on the case-law resulting from the judgment of 26 November 1998, *Bronner* (C-7/97, EU:C:1998:569) concerning refusals of access to the infrastructure of an undertaking in a dominant position. In that regard, the referring court considers that that case-law does not appear to be directly applicable in the present case and asks whether the specific characteristics of the functioning of digital markets justify departing from the conditions laid out in that judgment in a situation such as that before it or, at the very least, interpreting them in a flexible manner. The referring court is also uncertain as to how competition authorities must define the relevant markets in a refusal to supply case such as the case before it.

24 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the requirement that the product that is the subject of a refusal to supply be indispensable be interpreted, for the purposes of Article 102 TFEU, as meaning that access must be indispensable to the exercise of a particular activity in a neighbouring market, or is it sufficient that access be indispensable for a more convenient use of the product or service

offered by the undertaking requesting access, especially where the essential function of the product that is the subject of the refusal to supply is to make it easier and more convenient to use existing products or services?

(2) Is it possible, in the context of conduct constituting a refusal to supply, to consider behaviour to be abusive, within the meaning of Article 102 TFEU, in a situation where, notwithstanding the lack of access to the requested product, (i) the undertaking requesting access was already active in the market and had continued to grow within that market throughout the period of the alleged abuse and (ii) other operators competing with the undertaking requesting access to the product had continued to operate in the market?

(3) Must Article 102 TFEU, in the context of abuse consisting in a refusal to grant access to an allegedly indispensable product or service, be interpreted as meaning that the fact that the product or service did not exist at the time of the request to supply must be taken into consideration as an objective justification for that refusal, or, at least, is a competition authority required to conduct an analysis, based on objective elements, of the time needed for a dominant undertaking to develop the product or service in respect of which access has been requested, or must the dominant undertaking, given the responsibility it has within the market, be required to inform the undertaking requesting access of the time required to develop the product?

(4) Must Article 102 TFEU be interpreted as meaning that a dominant undertaking that has control over a digital platform may be required to modify its own products, or to develop new ones, so that those who so request may access such products? In that case, is a dominant undertaking required to consider the general requirements of the market or the requirements of a single undertaking requesting access to the allegedly indispensable input, or, at least, given the special responsibility it has within the market, to lay down in advance objective criteria for reviewing the requests that it receives and for ranking them in order of priority?

(5) Must Article 102 TFEU, in the context of abuse consisting in a refusal to grant access to an allegedly indispensable product or service, be interpreted as meaning that a competition authority is required to define and identify in advance the relevant downstream market to which the abuse applies, and can this market also be only potential?'

Admissibility of the request for a preliminary ruling

25 Enel X Italia is of the view that the request for a preliminary ruling is inadmissible on the ground that an answer from the Court to the questions referred is not necessary for the resolution of the dispute in the main proceedings. The referring court has already formed an opinion on the approach which it intends to take and is not making a request to the Court in order to dispel doubts regarding the interpretation of Article 102 TFEU, but rather in order to adopt a decision confirming that opinion and which can serve as a reference in future proceedings which raise questions identical to those raised in the main proceedings.

26 In accordance with settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a

preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, C-548/21, EU:C:2024:830, paragraph 46 and the case-law cited).

27 It follows that a question referred for a preliminary ruling relating to EU law enjoys a presumption of relevance. The Court may refuse to rule on such a question only where it is quite obvious that the interpretation of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the question submitted to it (judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, C-548/21, EU:C:2024:830, paragraph 47 and the case-law cited).

28 In the present case, it is apparent from the order for reference that, first, the dispute in the main proceedings concerns the application of Article 102 TFEU on account of Google's refusal to respond favourably to a request sent to it by a third-party undertaking in order to allow an app which that undertaking had developed to be interoperable with a digital platform developed by Google and, second, the referring court is uncertain as to the interpretation of Article 102 TFEU in the case of such a refusal. The referring court's questions relate more specifically, in essence, first of all, to the concept of whether access to the product or service which is the subject of a refusal to supply is 'indispensable', next, to the question of the effects of the conduct at issue on the part of the undertaking holding a dominant position, then to the concept of 'objective justification' and any obligations to which that undertaking is subject and, lastly, to the definition of the market on which anticompetitive effects might occur.

29 Furthermore, the referring court sets out the precise reasons which resulted in it having uncertainties regarding the interpretation of Article 102 TFEU and why it considered it necessary to refer questions to the Court for a preliminary ruling.

30 In those circumstances, it is not self-evident that the requested interpretation of Article 102 TFEU bears no relation to the actual facts of the main action or its purpose or that the problem raised is hypothetical.

31 Furthermore, it must be noted that, as is recalled, in essence, in point 18 of the Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ C, C/2024/6008), the wording of which is identical to the wording of point 18 of the recommendations published in 2019 (OJ 2019 C 380, p. 1), the referring court's formulation of certain considerations relating to the answers to be given to the questions referred does not call into question the admissibility of those questions.

32 Consequently, the request for a preliminary ruling is admissible.

Consideration of the questions referred

The first question

33 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. It is for the Court to extract from all the information provided by the national court, in particular from the grounds of the order for reference, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 30 April 2024, *M.N. (EncroChat)*, C-670/22, EU:C:2024:372, paragraph 78 and the case-law cited).

34 In the present case, as is apparent from the request for a preliminary ruling, the referring court starts from the premiss that Android Auto is a piece of infrastructure in the digital sector and that, on the date when the conduct alleged against the applicants in the main proceedings took place – which consisted of refusing to permit an app developed by a third-party undertaking to be interoperable with Android Auto – Google was in a dominant position on the market to which Android Auto belongs. In that regard, it must be recalled that, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to determine and assess the facts in the case before it (judgment of 18 April 2024, *Heureka Group (Online price comparison services)*, C-605/21, EU:C:2024:324, paragraph 66 and the case-law cited).

35 It is also apparent from that request that the referring court is uncertain whether, having regard to the specific characteristics of the functioning of the digital markets concerned by a situation such as that at issue in the main proceedings and having regard to the function of a digital platform such as Android Auto, there is no justification for disregarding or, at the very least, interpreting in a flexible manner the conditions set out, inter alia, in the judgment of 26 November 1998, *Bronner* (C-7/97, EU:C:1998:569), in order to apply Article 102 TFEU to conduct consisting of a refusal, by an undertaking in a dominant position which has developed a digital platform, to allow, at the request of a third-party undertaking, access to that platform by ensuring that that platform is interoperable with an app developed by that third-party undertaking, namely, in essence, a refusal to ensure that that platform is interoperable with that app.

36 Accordingly, it must be held that, by its first question, the referring court is asking, in essence, whether Article 102 TFEU must be interpreted as meaning that the refusal, by an undertaking in a dominant position which has developed a digital platform, to ensure, at the request of a third-party undertaking, that that platform is interoperable with an app developed by that third-party undertaking is capable of constituting an abuse of a dominant position even though that platform is not indispensable for the commercial operation of that app on a downstream market, but is such as to make that app more attractive to consumers.

37 In that connection, it is important to recall that Article 102 TFEU prohibits any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it, in so far as it may affect trade between Member States. The purpose of that provision is to prevent competition from being restricted to the detriment of the public interest, individual undertakings and consumers, by sanctioning the conduct of undertakings in a dominant position that has the effect of hindering competition on the merits and is thus likely to cause direct harm to

consumers, or which causes them harm indirectly by hindering or distorting that competition (judgment of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraph 87 and the case-law cited).

38 Such conduct covers any practice which, on a market where the degree of competition is already weakened precisely because of the presence of one or more undertakings in a dominant position, through recourse to means different from those governing normal competition between undertakings, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition (judgment of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraph 88 and the case-law cited).

39 As regards practices consisting in a refusal to grant access to infrastructure developed by a dominant undertaking for the purposes of its own business and owned by it, it is apparent from the case-law of the Court that such a refusal may constitute an abuse of a dominant position provided not only that that refusal is likely to eliminate all competition in the market in question on the part of the entity requesting access and that such a refusal is incapable of being objectively justified, but also that the infrastructure, in itself, is indispensable to carrying on that entity's business, inasmuch as there is no actual or potential substitute in existence for that infrastructure (see, to that effect, judgments of 26 November 1998, *Bronner*, C-7/97, EU:C:1998:569, paragraph 41, and of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraph 89 and the case-law cited).

40 In that regard, it should be recalled that the imposition of those conditions, in paragraph 41 of the judgment of 26 November 1998, *Bronner* (C-7/97, EU:C:1998:569), was justified by the specific circumstances of that case, which consisted in a refusal by a dominant undertaking to give a competitor access to infrastructure that it had developed for the needs of its own business, to the exclusion of any other conduct (judgments of 25 March 2021, *Deutsche Telekom* v *Commission*, C-152/19 P, EU:C:2021:238, paragraph 45, and of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraph 90 and the case-law cited).

41 A finding that a dominant undertaking abused its position due to a refusal to conclude a contract with a competitor has the consequence of forcing that undertaking to conclude a contract with that competitor. Such an obligation is especially detrimental to the freedom of contract and the right to property of the dominant undertaking, since an undertaking, even if dominant, remains, in principle, free to refuse to conclude contracts and to use the infrastructure it has developed for its own needs (judgments of 25 March 2021, *Deutsche Telekom* v *Commission*, C-152/19 P, EU:C:2021:238, paragraph 46, and of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraph 91).

42 Furthermore, while, in the short term, an undertaking being held liable for having abused its dominant position due to a refusal to conclude a contract with a competitor has the consequence of encouraging competition, by contrast, in the long term, it is generally favourable to the development of competition and in the interest of consumers to allow a company to reserve for its own use the infrastructure which it has developed for the needs of its business. If access to a production, purchasing or distribution facility were allowed too easily, there would be no incentive for competitors to develop competing facilities. In addition, a dominant undertaking would be less inclined to invest in efficient facilities if it could be bound, at the mere request of its competitors, to share with them the benefits deriving from its own investments (see, to that effect,

judgments of 25 March 2021, *Deutsche Telekom* v *Commission* (C-152/19 P, EU:C:2021:238, paragraph 47, and of 25 March 2021, *Slovak Telekom* v *Commission*, C-165/19 P, EU:C:2021:239, paragraph 47).

43 Therefore, it is, in particular, the need for undertakings in a dominant position to continue to have an incentive to invest in developing high-quality products or services, in the interest of consumers, which, as the Advocate General stated, in essence, in point 30 of her Opinion, justifies applying the conditions referred to in paragraph 39 of the present judgment where an undertaking in a dominant position has developed infrastructure for the needs of its own business and owns that infrastructure.

44 By contrast, as the Advocate General observed in point 35 of her Opinion, where a dominant undertaking has developed infrastructure not solely for the needs of its own business but with a view to enabling third-party undertakings to use that infrastructure, the condition laid down by the Court of Justice in paragraph 41 of the judgment of 26 November 1998, *Bronner*, C-7/97, EU:C:1998:569), relating to whether that infrastructure is indispensable for carrying on the business of the entity applying for access, in that there is no actual or potential substitute for that infrastructure, does not apply.

45 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 being classified as abusive, as provided for in Article 102 TFEU, to cases in which that refusal makes it impossible for that third-party undertaking to carry on its business, by developing a viable offer on a neighbouring market.

46 It is sufficient to state, in that regard, that, where the cost of developing such infrastructure has been assumed by the undertaking in a dominant position not solely for the needs of its own business but with a view to that infrastructure being able to be used by third-party undertakings, the fact of requiring the undertaking in a dominant position to provide access to that infrastructure to a third-party undertaking does not fundamentally alter the economic model which applied to the development of that infrastructure.

47 It follows that, in order to establish whether the conditions laid down by the Court in paragraph 41 of the judgment of 26 November 1998, *Bronner* (C-7/97, EU:C:1998:569), apply to a case concerning a refusal of access to infrastructure, it is necessary to establish whether that infrastructure (i) was developed by the undertaking in a dominant position solely for the needs of its own business and (ii) is owned by that undertaking in a dominant position or whether, on the contrary, that infrastructure was developed in order to enable third-party undertakings to use it, which is evidenced by the fact that that undertaking in a dominant position has already granted such access to such third-party undertakings.

48 In the present case, it is apparent from the order for reference that Google granted access to Android Auto to third-party undertakings, and that Google made that digital platform compatible for categories of apps, and for specific apps which those third-party undertakings had developed. A digital platform intended to enable the use, on the motor vehicle infotainment system, of apps developed in particular by third parties and downloaded on users' mobile devices cannot be regarded as having been created solely for the needs of that undertaking in a dominant position.

49 Accordingly, subject to verification by the referring court, it appears that Android Auto was not developed by Google solely for the needs of its own business, since access to that digital platform is open to third-party undertakings, such that the condition laid down by the Court in paragraph 41 of the judgment of 26 November 1998, *Bronner* (C-7/97, EU:C:1998:569), relating to the indispensability to the business of the entity applying for access, is not applicable for the purpose of examining whether the refusal, by an undertaking which has developed a digital platform, to allow access to that platform by a third-party undertaking which has developed an app, by ensuring that platform is interoperable with that app, constitutes an abuse of a dominant position within the meaning of Article 102 TFEU.

50 It follows that that refusal is capable of constituting an abuse of a dominant position even though that digital platform is not indispensable for the commercial operation of the app concerned on a downstream market, in the sense that there is no actual or potential substitute for its use by means of that platform.

51 In such a situation, as the Advocate General observed, in essence, in points 46 and 48 of her Opinion, it is necessary to establish, in the light of the case-law referred to in paragraphs 38 and 39 of the judgment in *Bronner*, whether the refusal by the dominant undertaking, which owns the digital platform concerned, to allow a third-party undertaking which has developed an app to access that platform, by ensuring that platform is interoperable with that app, has the actual or potential effect of excluding, obstructing or delaying the development on the market of a product or service which is at least potentially in competition with a product or service supplied or capable of being supplied by the undertaking in a dominant position and constitutes conduct which restricts competition on the merits, and is thereby capable of causing harm to consumers.

52 Having regard to all the foregoing considerations, it must be held that the answer to the first question is that Article 102 TFEU must be interpreted as meaning that the refusal, by an undertaking in a dominant position which has developed a digital platform, to ensure, at the request of a third-party undertaking, that that platform is interoperable with an app developed by that third-party undertaking is capable of constituting an abuse of a dominant position even though that platform is not indispensable for the commercial operation of that app on a downstream market, but is such as to make that app more attractive to consumers, where that platform has not been developed by the undertaking in a dominant position solely for the needs of its own business.

The second question

53 By its second question, the referring court is asking, in essence, whether Article 102 TFEU must be interpreted as meaning that the fact that both the undertaking which developed an app and requested an undertaking in a dominant position to ensure that the digital platform owned by such dominant undertaking is interoperable with its app, and competitors of the first undertaking continued to be active on the market to which that app belongs and grew their position on that market, even though they did not benefit from such interoperability, is such as to indicate in itself that the refusal by the undertaking in a dominant position to act on that request was incapable of having anticompetitive effects.

54 In that regard, in order to find, in a given case, that conduct must be categorised as ‘abuse of a dominant position’ within the meaning of Article 102 TFEU, it is necessary, as a rule, to demonstrate, through the use of methods other than those which are part of competition on the merits between undertakings, that that conduct has the actual or potential effect of restricting

that competition by excluding equally efficient competing undertakings from the market or markets concerned, or by hindering their growth on those markets, although the latter may be either the dominated markets or related or neighbouring markets, where that conduct is liable to produce its actual or potential effects (judgment of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraph 165 and the case-law cited).

55 The characterisation of a practice of a dominant undertaking as abusive does not mean that it is necessary to demonstrate that the result of a practice of such an undertaking, intended to drive its competitors from the market concerned, has been achieved and, accordingly, to prove an actual exclusionary effect on the market. The purpose of Article 102 TFEU is to penalise abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it, irrespective of whether such a practice has proved successful (see, to that effect, judgment of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 53 and the case-law cited).

56 Accordingly, a competition authority may find that there has been an infringement of Article 102 TFEU by establishing that, during the period in which the conduct in question was implemented, that conduct had, in the circumstances of the case, the ability to restrict competition on the merits, despite its lack of effect (judgment of 19 January 2023, *Unilever Italia Mkt.Operations*, C-680/20, EU:C:2023:33, paragraph 41).

57 However, that demonstration must, in principle, be based on tangible evidence which establishes, beyond mere hypothesis, that the practice in question is actually capable of producing such effects, since the existence of doubt in that regard must benefit the undertaking which engages in such a practice (judgment of 19 January 2023, *Unilever Italia Mkt.Operations*, C-680/20, EU:C:2023:33, paragraph 42 and the case-law cited).

58 The maintaining of the same degree of competition on the market concerned, or even the growth of competition on that market, does not necessarily mean that the conduct in question is incapable of having anticompetitive effects, since such absence of effects could stem from other causes and be due, inter alia, to changes which occurred on the relevant market since that conduct began or to the fact that the undertaking in a dominant position was unable to complete the strategy underpinning such conduct (judgment of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 54). In particular, first, whether the conduct at issue is abusive cannot depend on the ability of competitors on the market concerned to mitigate such effects and, second, it cannot be ruled out that, in the absence of that conduct, competition on that market could have grown even further.

59 In the present case, the fact relied on by Google that Enel X Italia and its competitors continued to be present on the market to which the JuicePass app at issue belongs, or that their presence increased, does not in itself mean that Google's refusal to grant access to Android Auto was incapable of having anticompetitive effects. That fact, provided that it is actually established, which it is for the referring court to ascertain, may nevertheless constitute evidence that Google's conduct at issue in the main proceedings was incapable of having the alleged exclusionary effects.

60 In that regard, as regards an app related to motor vehicle charging services, such as that at issue in the main proceedings, any evidence adduced to demonstrate the attractiveness to users of electric motor vehicles of an app such as JuicePass, which includes, in particular, the features described in paragraph 9 of the present judgment, may be relevant, despite the fact that that app could not be used on those vehicles' infotainment systems via Android Auto.

61 Having regard to all the foregoing considerations, the answer to the second question is that Article 102 TFEU must be interpreted as meaning that the fact that both the undertaking which developed an app and requested an undertaking in a dominant position to ensure that the digital platform owned by such dominant undertaking is interoperable with its app, and competitors of the first undertaking continued to be active on the market to which that app belongs and grew their position on that market, even though they did not benefit from such interoperability, does not in itself indicate that the refusal by the undertaking in a dominant position to act on that request was incapable of having anticompetitive effects. It is necessary to assess whether that conduct on the part of the undertaking in a dominant position 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 third and fourth questions

62 As a preliminary point, first, it is apparent from the request for a preliminary ruling that Google received a request from Enel X Italia for an app developed by Enel X Italia to be usable via Android Auto, which involved Google developing a template making it possible to ensure that apps related to electric vehicle charging services are interoperable with that platform. It is true, as the referring court has explained, that Google subsequently developed a template for the design of experimental versions of electric vehicle charging apps to be used on Android Auto, after the matter came before the AGCM but before that authority adopted its decision. However, on the date of the request to Google there was no template for the category of apps related to the charging services for such vehicles.

63 Consequently, the referring court's uncertainties which led it to ask the third and fourth questions concern (i) the effect, for the purposes of classifying the conduct at issue as an abuse of a dominant position, within the meaning of Article 102 TFEU, of there being no template for the category of apps related to electric vehicle charging services making it possible to ensure those apps are interoperable with Android Auto, on the date of the request for that access, and (ii) whether there is any obligation to develop such a template.

64 Second, it must be stated that, by the last part of the fourth question, the referring court is asking, in essence, whether Article 102 TFEU must be interpreted as meaning that, in the event that an undertaking in a dominant position is required to develop a template for a category of apps in order to allow access to a digital platform which it owns, requested by a third-party undertaking, by ensuring the apps concerned and that platform are interoperable, and in view of the special responsibility which that undertaking in a dominant position has on the market, that undertaking must, when faced with multiple requests for access from third-party undertakings, establish objective criteria for examining those apps and prioritising them.

65 However, it is not apparent either from the request for a preliminary ruling or from the documents before the Court that requests, including simultaneous requests, from third-party undertakings were addressed to Google for the purpose of developing templates making it possible to ensure Android Auto was interoperable with apps developed by those undertakings.

66 Although questions referred for a preliminary ruling which relate to EU law enjoy a presumption of relevance, the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the

effective resolution of a dispute (judgment of 14 January 2021, *The International Protection Appeals Tribunal and Others*, C-322/19 and C-385/19, EU:C:2021:11, paragraph 53 and the case-law cited).

67 Consequently, in so far as the last part of the fourth question is, in reality, seeking to obtain an advisory opinion from the Court, it is inadmissible.

68 Third, it should be observed that other aspects of the third and fourth questions concern the objective justifications which an undertaking in a dominant position may rely on in relation to conduct, consisting of a refusal to supply or to develop a template for apps developed by third-party undertakings allowing those apps to be used via a digital platform owned by that undertaking in a dominant position, which may fall within the scope of the prohibition laid down in Article 102 TFEU and the burden of proof borne by that undertaking and by the competent competition authority respectively.

69 In those circumstances, it must be held that, by its third and fourth questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 102 TFEU must be interpreted as meaning that, where conduct consisting, on the part of an undertaking in a dominant position, in refusing to permit an app developed by a third-party undertaking to be interoperable with a digital platform owned by the undertaking in a dominant position is capable of being classified as abuse, within the meaning of that provision, that undertaking may usefully rely, as objective justification for its refusal, on there being no template making it possible to ensure that interoperability on the date on which the third-party undertaking requested such access, or whether the undertaking in a dominant position may be required to develop that template. In addition, the referring court is asking whether, in the latter situation, Article 102 TFEU must be interpreted as meaning that the undertaking in a dominant position is required, first, to take into consideration the general needs of the market or the needs of the undertaking requesting that access and, second, to inform that undertaking of the time necessary to develop that model or whether the competition authority is required to verify, on the basis of objective evidence, the time necessary for the undertaking in a dominant position to develop such a template.

70 It is apparent from the Court's case-law relating to Article 102 TFEU that it is open to an undertaking in a dominant position to provide justification for behaviour that is liable to be caught by the prohibition laid down in that article (judgments of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 40, and of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 201 and the case-law cited).

71 In particular, an undertaking may demonstrate, to that end, either that its conduct is objectively necessary, or that the exclusionary effect produced may be counterbalanced or even outweighed by advantages in terms of efficiency which also benefit the consumer (judgments of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 41, and of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 202 and the case-law cited).

72 In the first place, the referring court asks whether an undertaking in a dominant position which refuses a third-party undertaking access to a digital platform, and in so far as that refusal is capable of having anticompetitive effects, may usefully rely as objective justification for its refusal on there being no template for a category of applications making it possible to ensure those apps

are interoperable with that platform on the date on which that access was requested or whether that undertaking may be required to develop that template in order to enable that third-party undertaking to obtain such access.

73 As the Advocate General observed, in essence, in points 64 and 65 of her Opinion, the refusal by the undertaking in a dominant position to ensure that an app is interoperable with a digital platform on the ground that there is no template for the category of apps concerned may be objectively justified where to grant such interoperability by means of such a template would, in itself and in the light of the properties of the app for which interoperability is sought, compromise the integrity or security of the platform concerned, or where it would be impossible for other technical reasons to ensure that interoperability by developing such a template.

74 By contrast, outside such situations, the fact that there is no template for the category of apps concerned or the difficulties involved in its development which the undertaking in a dominant position may face cannot in themselves constitute an objective justification for that undertaking's refusal to grant access. Nonetheless, taking into consideration all the relevant circumstances in that regard, the need to devote a reasonable period of time to that development and therefore not to be able immediately to implement the requested interoperability may be regarded as objectively necessary and proportionate, taking into account both the needs of the undertaking requesting access to the platform of the undertaking in a dominant position and the difficulties encountered by that undertaking in developing that template.

75 In that regard, of particular relevance are (i) the degree of technical difficulty in developing the template for the category of apps concerned, which permits the access requested, (ii) constraints related to the fact that it is impossible for it to equip itself, within a short time, with some of the resources, in particular human resources, necessary to develop that template in the light of the needs of the undertaking requesting that access, or even (iii) constraints external to the undertaking in a dominant position which have an impact on its ability to develop that template, such as, for example, constraints relating to the applicable regulatory framework.

76 Nevertheless, as the Advocate General indicated, in essence, in points 74 and 75 of her Opinion, the development of such a template ensuring the requested interoperability is likely to represent a cost for the undertaking in a dominant position. Article 102 TFEU does not, however, preclude that undertaking from requiring an appropriate financial contribution from the undertaking which requested interoperability. Such contribution must be fair and proportionate, allowing the undertaking in a dominant position, having regard to the actual cost of such development, to derive an appropriate benefit from it. The setting of the amount of that contribution is without prejudice to that contribution being taken into account in any application of other rules of EU law governing, as the case may be, the remuneration of the undertaking in a dominant position in respect of the acquisition, by the undertaking which requested interoperability, of end users for its app.

77 Lastly, a failure by the undertaking in a dominant position to respond to a request from a third-party undertaking seeking to have that dominant undertaking ensure the digital platform which it owns is interoperable with an app developed by that third-party undertaking could constitute evidence that the refusal to ensure such interoperability is not objectively justified.

78 In the second place, it must be stated that, while the burden of proving that there are circumstances constituting an infringement of Article 102 TFEU is borne by the competition authorities, either at EU or national level, it is, however, as has been recalled in paragraphs 70

and 71 of the present of the present judgment, for the concerned undertaking in a dominant position to put forward any objective justification and to submit arguments and evidence in that regard.

79 Once the undertaking in a dominant position has satisfied that requirement, it then falls to the competition authority concerned, where it proposes to make a finding of an abuse of a dominant position, to demonstrate that the arguments and evidence relied on by the undertaking cannot prevail and, consequently, that the justification relied upon cannot be accepted.

80 In that regard, in a situation such as that at issue in the main proceedings, it is for the competent competition authority, taking account in particular the reasons disclosed by the undertaking in a dominant position to the third-party undertaking in order to justify the refusal to ensure that an app developed by that third-party undertaking is interoperable with a digital platform owned by the undertaking in a dominant position, and taking into consideration all the relevant circumstances, to ascertain whether the refusal by that undertaking in a dominant position to develop a template for the category of apps concerned, which would allow such interoperability, was objectively necessary and to assess whether that refusal was proportionate.

81 In the light of all the foregoing considerations, the answer to the third and fourth questions is that Article 102 TFEU must be interpreted as meaning that, where conduct consisting, on the part of an undertaking in a dominant position, in refusing to ensure that an app developed by a third-party undertaking is interoperable with a digital platform owned by the undertaking in a dominant position is capable of being classified as abuse, within the meaning of that provision, the undertaking in a dominant position may usefully rely, as objective justification for its refusal, on there being no template making it possible to ensure that interoperability on the date on which the third-party undertaking requested such access, where to grant such interoperability by means of such a template would, in itself and in the light of the properties of the app for which interoperability is sought, compromise the integrity or security of the platform concerned, or where it would be impossible for other technical reasons to ensure that interoperability by developing such a template. If that is not the case, the undertaking in a dominant position is required to 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, taking into account 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.

The fifth question

82 By its fifth question, the referring court is asking, in essence, whether Article 102 TFEU must be interpreted as meaning that, in order to assess whether there is an abuse consisting of a refusal, by an undertaking in a dominant position, to ensure that an app developed by a third-party undertaking is interoperable with a digital platform owned by the undertaking in a dominant position, a competition authority is required to define the downstream market on which that refusal is capable of having anticompetitive effects, even if that market is only a potential market.

83 It must be borne in mind that the definition of the relevant market, in the application of Article 102 TFEU, is, as a general rule, a prerequisite for any assessment of whether the undertaking concerned holds a dominant position (see, to that effect, judgment of 21 February 1973, *Europemballage and Continental Can* v *Commission*, 6/72, EU:C:1973:22, paragraph 32), the objective being to define the boundaries within which it must be assessed

whether that undertaking is able to behave, to an appreciable extent, independently of its competitors, customers and consumers (see, to that effect, judgments of 9 November 1983, *Nederlandsche Banden-Industrie-Michelin* v *Commission*, 322/81, EU:C:1983:313, paragraph 37, and of 27 June 2024, *Commission* v *Servier and Others*, C-176/19 P, EU:C:2024:549, paragraph 381).

84 In order to assess whether a refusal such as that described in paragraph 82 of the present judgment is abusive, it is necessary to distinguish two markets, namely (i) the market to which the digital platform belongs and on which the undertaking which owns it holds a dominant position, that market generally constituting the upstream market, and (ii) the market on which the app is used by the undertaking requesting that app to be interoperable with that platform for the production of another product or the provision of another service and on which the anticompetitive effects of the conduct of the undertaking in a dominant position are capable of occurring, that market constituting a neighbouring market, in particular a downstream market.

85 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. In certain circumstances, it is sufficient that a potential or even hypothetical market can be identified (judgment of 29 April 2004, *IMS Health*, C-418/01, EU:C:2004:257, paragraph 44). Where the downstream market concerned is still developing or is evolving rapidly and, therefore, its scope is not fully defined on the date on which the undertaking in a dominant position implements the allegedly abusive conduct, it is sufficient for the competition authority to identify that market, even if it is only a potential market. That authority must then, taking account of the characteristics and the potential scope of that market, demonstrate that that conduct is capable of having anticompetitive effects on that same market, even if only potential competition exists on that market between the products or services of the undertaking in a dominant position and – in the case of conduct consisting of that dominant undertaking refusing the interoperability, as requested by a third-party undertaking, with a digital platform owned by the undertaking in a dominant position – the products or services of the undertaking requesting that interoperability.

86 In the light of the foregoing considerations, Article 102 TFEU must be interpreted as meaning that, in order to assess whether there is an abuse consisting of a refusal, by an undertaking in a dominant position, to ensure that an app developed by a third-party undertaking is interoperable with a digital platform owned by the undertaking in a dominant position, a competition authority may confine itself to identifying the downstream market on which that refusal is capable of having anticompetitive effects, even if that downstream market is merely a potential market, since such identification does not necessarily require a precise definition of the product and geographic market in question.

Costs

87 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:

1. **Article 102 TFEU must be interpreted as meaning that the refusal, by an undertaking in a dominant position which has developed a digital platform, to ensure, at the request of a third-party undertaking, that that platform is interoperable with an app developed by that third-party undertaking is capable of constituting an abuse of a dominant position even though that platform is not indispensable for the commercial operation of that app on a downstream market, but is such as to make that app more attractive to consumers, where that platform has not been developed by the undertaking in a dominant position solely for the needs of its own business.**

2. **Article 102 TFEU must be interpreted as meaning that the fact that both the undertaking which developed an app and requested an undertaking in a dominant position to ensure that the digital platform owned by such dominant undertaking is interoperable with its app, and competitors of the first undertaking continued to be active on the market to which that app belongs and grew their position on that market, even though they did not benefit from such interoperability, does not in itself indicate that the refusal by the undertaking in a dominant position to act on that request was incapable of having anticompetitive effects. It is necessary to assess whether that conduct on the part of the undertaking in a dominant position 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.**

3. **Article 102 TFEU must be interpreted as meaning that, where conduct consisting, on the part of an undertaking in a dominant position, in refusing to ensure that an app developed by a third-party undertaking is interoperable with a digital platform owned by the undertaking in a dominant position is capable of being classified as abuse, within the meaning of that provision, the undertaking in a dominant position may usefully rely, as objective justification for its refusal, on there being no template making it possible to ensure that interoperability on the date on which the third-party undertaking requested such access, where to grant such interoperability by means of such a template would, in itself and in the light of the properties of the app for which interoperability is sought, compromise the integrity or security of the platform concerned, or where it would be impossible for other technical reasons to ensure that interoperability by developing such a template. If that is not the case, the undertaking in a dominant position is required to 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, taking into account 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.**

4. **Article 102 TFEU must be interpreted as meaning that, in order to assess whether there is an abuse consisting of a refusal, by an undertaking in a dominant position, to ensure that an app developed by a third-party undertaking is interoperable with a digital platform owned by the undertaking in a dominant position, a competition authority may confine itself to identifying the downstream market on which that refusal is capable of having anticompetitive effects, even if that downstream market is merely a potential market, since such identification does not necessarily require a precise definition of the product and geographic market in question.**

[Signatures]

[i] The wording of paragraph 39 of this document has been amended since it was first put online.