How *Android Auto* reshapes the law of refusal to deal (and what it means in practice)

Pablo Ibáñez Colomo*

* London School of Economics and College of Europe. Email: P.Ibanez-Colomo@lse.ac.uk. In accordance with the ASCOLA declaration of ethics, I am happy to clarify that I have nothing to disclose. This paper received the 2025 AdC Competition Policy Award granted by the Portuguese Competition Authority. I am grateful to the European Commission for having provided, pursuant to Regulation (EC) No 1049/2001, access to the observations submitted to the Court of Justice in the preliminary reference proceedings in Case C-233/23 *Alphabet Inc. and others v Autorità Garante della Concorrenza e del Mercato*. This paper builds on an intervention delivered in the context of a Lunch Talk organised by the Global Competition Law Centre on 16 May 2025 in Brussels. I am grateful to the chair and participants in the lunch talk for their comments, and to Jesús Calderón Argüello and Ioanna Kladi for sharing their thoughts on a previous version.

1. Introduction

The Court of Justice (hereinafter, the 'Court' or the 'ECJ') delivered its preliminary ruling in *Android Auto* in February 2025.[1] The questions referred by the *Consiglio di Stato* (the apex court in the Italian administrative law system) provided it with an opportunity to interpret the core concepts underpinning the *Magill*[2] and *Bronner*[3] doctrines. These two judgments define the instances where a refusal to deal with actual or potential competitors amounts to an abuse of a dominant position. The substantive conditions that these judgments laid down are notoriously difficult to meet for an authority or claimant. Disagreements about their meaning and scope thus occasionally arise, both at the EU[4] and the national levels. In *Android Auto*, the dispute related to the interpretation of two of the conditions, namely whether the infrastructure was indispensable to compete in an adjacent market, and whether the dominant firm's refusal to grant access to it would lead to the elimination of 'all competition' therein.[5]

It had never been in doubt in the proceedings at the national level that the lawfulness of the refusal at issue in *Android Auto* had to be assessed against the conditions defined in *Magill*. Such was, in fact, the analytical approach followed by the *Autorità garante della concorrenza e del mercato* (hereinafter, the 'Italian Competition Authority') in its 2021 decision.[6] The Court's analysis, by contrast, did not revolve around the *interpretation* of the

[1] Case C-233/23 *Alphabet Inc. and others v Autorità Garante della Concorrenza e del Mercato*, EU:C:2025:110.
[2] Case C-241/91 P and C-242/91 P *Radio Telefis Eireann (RTE) and Independent Television Publications Ltd (ITP) v Commission of the European Communities*, EU:C:1995:98.
[3] Case C-7/97 *Oscar Bronner GmbH & Co. KG v Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG and others*, EU:C:1998:569.
[4] See in particular Case C-245/24 *LUKOIL Bulgaria EOOD and LUKOIL Neftohim Burgas AD v Komisia za zashtita na konkurentsiata*, pending; Case C-48/22 P *Google LLC and Alphabet Inc.* v *European Commission* EU:C:2024:726; Case C-42/21 P *Lietuvos geležinkeliai AB* v *European Commission and Orlen Lietuva AB* EU:C:2023:12; Case C-165/19 P *Slovak Telekom a.s.* v *the Commission* EU:C:2021:239; Case C-52/09 *Konkurrensverket* v *TeliaSonera Sverige AB* EU:C:2011:83; and Case T-201/04 *Microsoft Corp. v Commission*, EU:T:2007:289. For a discussion, see Bo Vesterdorf, 'Article 82 EC:Where do we stand after the *Microsoft* judgement?' (2008) 1 Global Antitrust Review 1.
[5] *Android Auto* (n 1), para 24.
[6] AGCM Decision of 27 April 2021 in Case A 529, *Google/compatibilità app Enel X Italia con sistema Android Auto.*

Magill conditions. Instead, it focused on whether the *Bronner* doctrine was *applicable* in the first place (that is, whether it provided the appropriate benchmark to establish the legality of the refusal at issue in the case). To the extent that it did, the preliminary ruling reoriented the questions raised by the *Consiglio di Stato* to a more fundamental issue, namely the delineation of the boundaries of the refusal to deal doctrines.

The judgment in *Android Auto* reshaped the law in two main ways. First, it narrowed down the range of scenarios where the *Magill* and *Bronner* doctrines apply. Following *Android Auto*, the demanding conditions laid down in the two seminal rulings are only relevant whenever dominant firms operate fully closed systems – that is, systems where the firm is vertically and/or horizontally-integrated and does not share with third parties any of the activities that make up the system. Whenever a dominant undertaking devises systems that are totally or partially open, *Magill* and *Bronner* do not provide the appropriate substantive test to assess the lawfulness of a refusal. In such circumstances, it will be sufficient for an authority or claimant to show that the conduct is capable of having actual or potential exclusionary effects. Second, *Android Auto* expands the reach of intervention under Article 102 TFEU. In the aftermath of the ruling, a dominant firm can be compelled not just to share an input or infrastructure, but to change the operation of its system to accommodate the demands of the third party requesting access to it.

It is difficult to overestimate the impact of *Android Auto*. Under the traditional interpretation of the *Magill* and *Bronner* doctrines, core decisions about the operation of partially open systems were, in effect, presumptively lawful. The threshold for intervention was sufficiently high that the design of products (or systems) and the choice of business models were, absent exceptional circumstances, insulated from scrutiny. Following *Android Auto*, such choices will be challenged more frequently than in the past. What is more, access obligations will be more consequential insofar as they may be assorted with a duty to alter the operation of

the system. These substantive shifts have major economic and institutional implications. If refusals to deal become a routine aspect of public and private enforcement, courts and authorities will need to engage in the sort of regulatory-like intervention that they are not optimally equipped to administer. Remedial action in this sense includes the determination of access rates and the introduction of monitoring mechanisms to ensure compliance. The judgment in *Android Auto*, in fact, provides a glimpse of the sort of complexities with which courts and authorities are likely to be confronted in practice.

This article explains the transformation of the law resulting from *Android Auto* and discusses its practical consequences. It is submitted that the scope and significance of the shift may not have been fully appreciated. In this sense, a recurrent question that has arisen is that of whether the scope of the judgment is confined to digital platforms – at issue in the case – or has implications for other industries.[7] A close reading of the judgment suggests that the key criterion to determine the applicability of the *Magill* and *Bronner* doctrines is not so much the sector in which the behaviour takes place as whether sharing an input or infrastructure with a third party 'fundamentally' alters the 'economic model' of the dominant firm.[8] Accordingly, it is all but inevitable that the adjustment introduced in *Android Auto* will be relevant in other industries and in relation to non-digital activities.

The remainder of the article is structured as follows. Section 2 addresses the scope of *Magill* and *Bronner* before *Android Auto*. It places an emphasis on the fact that, under the traditional understanding of the doctrines, their applicability was ascertained by reference to the market concerned by the refusal. As a result, Article 102 TFEU was by and large deferential

[7] Some recent discussions of the judgment and its implications include Philipp Hornung, 'Essential facilities doctrine and digital ecosystems: case C-233/23 alphabet (android auto)' (2025) 16 Journal of European Competition Law & Practice, forthcoming; Christof Koolen, 'The Refusal to Allow Interoperability Between Android Auto and Third-Party Apps – A Deep Dive into *Enel X Italia v. Google*' (2022) 53 *IIC – International Review of Intellectual Property and Competition Law* 758; and Giuseppe Colangelo, 'Android Auto: The End of the Essential Facility Doctrine as We Know It' (Kluwer Competition Law Blog, 13 March 2025), available at https://legalblogs.wolterskluwer.com.

[8] *Android Auto* (n 1), para 46.

to dominant firm's decisions relating to the design of products (or systems) and the choice of business models. Section 3 examines how *Android Auto* redefines the scope of *Magill* and *Bronner*. Under the new understanding, the question is whether the input or infrastructure has been developed for the needs of the dominant firm's own business, irrespective of whether intervention would compel it to deal with rivals. Section 4, finally, ponders the potential implications of the reduced threshold for intervention for all actors in the system.

2. The scope of the *Magill* and *Bronner* doctrines before *Android Auto*

2.1. *The* Bronner *and* Magill *doctrines*

It has always been clear that a firm can abuse its dominant position by refusing to deal with (actual or potential) rivals in a related market. *Commercial Solvents*,[9] one of the very first decisions issued by the Commission under (what would become) Article 102 TFEU, concerned the withdrawal of supplies to a customer by a dominant firm that had decided to vertically integrate downstream. *CBEM-Télémarketing*,[10] a preliminary reference, revolved around a similar scenario, namely a strategy whereby an undertaking sought to keep for itself a market adjacent to the one in which it enjoyed a dominant position. While these cases accepted the principle that competition law can compel firms to deal with rivals with which they have chosen not to deal, they did not provide anything close to a structured legal framework setting out the conditions under which an abuse is deemed established.

[9] Case 6 and 7/73 *Istituto Chemioterapico Italiano S.p.A. and Commercial Solvents Corporation v Commission of the European Communities*, EU:C:1974:18.
[10] Case 311/84, *Centre belge d'études de marché – Télémarketing v SA Compagnie luxembourgeoise de télédiffusion and Information publicité Benelux*, EU:C:1985:394.

The adoption of a substantive test had to wait for the *Magill* judgment of 1995.[11] The Court identified a set of exceptional circumstances where a refusal to license an intellectual property right amounts to an abuse of a dominant position. According to the framework laid down in the ruling, such conduct is in breach of Article 102 TFEU where four conditions are met. First, the intellectual property right at issue is indispensable to operate in an adjacent market. Second, the refusal would lead to the elimination of all competition in the said adjacent market. Third, it prevents the emergence of a new product for which there is potential consumer demand. Fourth, and finally, the refusal lacks an objective justification. The *IMS Health* judgment of 2004 went on to clarify that these conditions are cumulative, not alternative.[12] In addition, the Court held that the refusal may occur in a 'hypothetical' market.[13] In other words, an abuse may exist even when the dominant undertaking had not licensed its intellectual property prior to the dispute.

IMS Health is valuable, above all, insofar as it provided the canonical definition of indispensability. An intellectual property right is indispensable, according to the Court, where there are no 'alternative solutions' for actual or potential competitors to enter the relevant market.[14] The question, in this sense, is whether it is 'impossible or at least unreasonably difficult' (not 'economically viable', that is) for such 'alternative solutions' to be developed. By the same token, it is not sufficient to show that lack of access to the intellectual property right is less advantageous for rivals. The asset, in other words, must be essential for competition

[11] *Magill* (n 2).
[12] Case C-418/01, *IMS Health GmbH & Co. OHG and NDC Health GmbH & Co. KG*, EU:C:2004:257, para 38.
[13] Ibid, para 44.
[14] Ibid, para 28: 'It is clear from paragraphs 43 and 44 of *Bronner* that, in order to determine whether a product or service is indispensable for enabling an undertaking to carry on business in a particular market, it must be determined whether there are products or services which constitute alternative solutions, even if they are less advantageous, and whether there are technical, legal or economic obstacles capable of making it impossible or at least unreasonably difficult for any undertaking seeking to operate in the market to create, possibly in cooperation with other operators, the alternative products or services. According to paragraph 46 of *Bronner*, in order to accept the existence of economic obstacles, it must be established, at the very least, that the creation of those products or services is not economically viable for production on a scale comparable to that of the undertaking which controls the existing product or service'.

to occur in the relevant adjacent market, and not simply convenient. Under this interpretation of the indispensability condition, it is irrelevant that rivals relying on a less advantageous alternative are not able to remain in the adjacent market.

The preliminary reference in *Bronner* raised the question of whether the conditions laid down in *Magill* also apply where tangible assets (as opposed to intellectual property) are at issue. The Court's answer in the ruling – as would be confirmed in subsequent judgments – suggests that a refusal to share tangible property with rivals in an adjacent market amounts to an abuse of dominance where the asset in question is indispensable within the meaning of *Magill* and where, in addition, the behaviour would lead to the elimination of all competition in the said market.[15] The consensus among commentators is that the so-called 'new product' condition does not apply where the property concerned by the refusal is tangible, as opposed to intangible.[16] This difference can be easily rationalised, considering the fact that rights over intellectual assets are typically granted for a limited period of time and that it is inherently more difficult, given their public good features, to assert exclusive use over them.[17]

2.2. *The scope of the* Magill *and* Bronner *doctrines*

It is not possible to fully appreciate the implications of *Android Auto* without discussing the precise scope of application of the *Magill* and *Bronner* doctrines as traditionally understood. One must emphasise, to begin with, that these two lines of case law concern exclusionary behaviour. In other words, they apply to a refusal to deal only insofar as the conduct can lead to the foreclosure of actual or potential competitors. As the law stands, it is not clear whether

[15] *Bronner* (n 3), para 41.
[16] Robert O'Donoghue and Jorge Padilla, *The Law and Economics of Article 102 TFEU* (Hart Publishing 2020) 657.
[17] For a discussion of these features and their implications for competition law analysis, see Pablo Ibáñez Colomo, *The New EU Competition Law* (Hart Publishing 2023), Chapter 4.

Article 102 TFEU can be relied upon to compel a dominant firm to deal with a third party operating in a market where the former is not active.[18] In any event, the refusal to deal doctrines do not provide support for a finding of abuse in such a context. A second point about the scope of *Magill* and *Bronner* follows logically from the preceding one. These two doctrines only apply in scenarios where one can identify two related markets. Typically, these markets are vertically related. In other words, there is, generally speaking, an upstream and a downstream market. One market (market A) is the one where the undertaking enjoys a dominant position and the refusal occurs. The other market (market B) is the one where the effects – the leveraging of the dominant position, that is – is manifested.

It is uncontroversial to state, third, that the dominant position may be enjoyed either in the upstream or the downstream market. By the same token, the leveraging effects giving rise to the application of Article 102 TFEU may flow either way. Thus, the refusal may relate to an input (for instance, a patent over an active ingredient) and the impact of the behaviour may be manifested in the market for the finished product (in this example, the medicine). This was the scenario at issue in *Magill* and *IMS Health*. Conversely, the undertaking may enjoy a dominant position in the downstream market (say, railway infrastructure) and leverage its market power upstream market (such as the provision of train services). This was, in essence, the factual background behind the dispute in *Bronner*. One undertaking allegedly enjoyed a dominant position in the market for the distribution of newspapers, whereas a competing publisher sought access to its distribution platform.

The range of conduct that falls within the scope of the two doctrines is a fourth aspect to consider. A close reading of the relevant rulings shows that the *Magill* and *Bronner* doctrines, as traditionally understood, encompassed both a refusal to start dealing and a refusal to continue dealing. The former comprises the scenarios at stake in both *Magill* and *Bronner* – that is, an

[18] O'Donoghue and Padilla (n 16) 681-682.

instance where access had never been granted to a would-be competitor. The latter, in turn, is at issue where the access had been given for some time before withdrawing it. Withdrawals of access were at issue in both *Commercial Solvents* and *CBEM-Télémarketing*. Even though the point has been occasionally discussed in the literature,[19] a refusal to continue dealing was also subject to the conditions laid down in *Magill* and *Bronner*. One should note, in this sense, that *CBEM-Télémarketing* is the first judgment to make an express reference to indispensability.[20] It is not a surprise that the legality of the withdrawal at stake in *Microsoft* was assessed against *Magill* by the (then) Court of First Instance.[21]

One must note, fifth, that the *Magill* and *Bronner* doctrines, prior to *Android Auto*, did not apply where the dominant firm was either voluntarily dealing with third parties in the market concerned by the refusal and/or where it was subject to a regulatory obligation to share its input or infrastructure with third parties. This point was addressed in *TeliaSonera* and *Slovak Telekom*. The first of these cases concerned an instance where a vertically-integrated firm was voluntarily providing access to its infrastructure to its downstream rivals. In unequivocal terms, the Court held that, in such an instance, it is not necessary to show that the conditions laid down in *Bronner* are met to prove an abuse to the requisite legal standard.[22] In *Slovak Telekom*, it clarified that the same principle applies where access is already provided by virtue of a regulatory duty.[23] In these two scenarios, it is sufficient to show that the behaviour (such as a 'margin squeeze'[24]) can have actual or potential anticompetitive effects on the relevant adjacent market.

This fifth point requires further elaboration, if only because of the implications of *Android Auto* for the scope of *Magill* and *Bronner*. Under the traditional understanding of the

[19] Ibid, 669.
[20] *CBEM-Télémarketing* (n 10), para 26.
[21] *Microsoft* (n 4).
[22] *TeliaSonera* (n 4), para 55.
[23] *Slovak Telekom* (n 4), paras 54-59.
[24] *TeliaSonera* (n 4), para 3.

two doctrines, it was immaterial that the dominant firm was dealing with third parties in other markets unconcerned by the refusal at issue in the case. This conclusion is inescapable when one pays attention to the facts of both rulings. In *Magill*, the dominant undertakings were licensing their copyright to daily newspapers. This factor did not carry any weight when ascertaining whether their refusal to license their intellectual property in a different market (weekly magazines) was abusive. In *Bronner*, the vertically-integrated firm was responsible for printing and distributing a rival publication. Again, the fact that access was being granted upstream of the value chain (printing) to another third party was irrelevant when ascertaining whether a refusal to give access in a different downstream market (distribution) amounted to an abuse of dominance.

2.3. *The rationale underpinning* Magill *and* Bronner

It is notorious that the conditions defined in *Magill* and *Bronner* – in particular the 'indispensability' and 'elimination of all competition' conditions – are particularly demanding for authorities and claimants. The rationale behind these strict tests, however, is persuasive. It was spelled out by Advocate General Jacobs in his Opinion in *Bronner*.[25] Compelling a firm to deal with rivals under Article 102 TFEU is problematic from two perspectives. From a fundamental rights standpoint, it seriously interferes with the dominant undertaking's right to property and with its freedom of contract.[26] From an economic perspective, imposing access obligations too readily on dominant firms might harm dynamic competition. While widening access to an input and infrastructure seems pro-competitive (it definitely leads to an immediate

[25] Opinion of Advocate General Jacobs in Case C-7/97 *Oscar Bronner GmbH & Co. KG* v *Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG and Others*, EU:C:1998:264.
[26] Ibid, paras 53-56.

increase in rivalry), it is likely to negatively affect firm's incentives to invest and innovate. As a result, it may reduce competition over the long run.[27]

Against this background, the strict conditions laid down in *Magill* and *Bronner* acknowledge that dynamic competition is more valuable than static, short-term competition. This position is consistent with the overwhelming theoretical and empirical evidence, which sees innovation as the driver of economic prosperity over the long run.[28] As a matter of principle, enhancing short-term competition at the expense of a dominant firm's incentives to invest and innovate is not warranted. By the same token, an undertaking can only be compelled to deal with rivals with which it has chosen not to deal when it can be shown that intervention would lead to a substantial improvement of static competition. Where intellectual property is involved, for instance, it is necessary to show that the would-be competitor will not simply produce a copy of an existing product, but a new one that satisfies unmet consumer demand.

The rationale spelled out by Advocate General Jacobs in *Bronner* was expressly embraced by the Court in *Slovak Telekom*.[29] In the scenario at issue in the case, the concern underpinning the refusal to deal doctrines, namely the need to preserve firms' incentives to invest and innovate, was not present. Where there is a sector-specific regime in place that imposes an access duty, any negative impact on dynamic competition is not attributable to intervention under competition law, but to the said regime. The same is true in a scenario similar to the one at issue in *TeliaSonera*. Where a dominant firm voluntarily chooses to deal with third parties in the relevant market, it cannot credibly claim that a duty to deal on fair terms and conditions with its upstream or downstream rivals would negatively affect its incentives to invest and innovate.

[27] Ibid, para 57.
[28] See, for a discussion of this literature and its implications for competition law analysis, Herbert Hovenkamp, 'Competition for Innovation' (2012) 3 Columbia Business Law Review 799.
[29] *Slovak Telekom* (n 4), paras 46-47.

2.4.*Product design and business models under* Magill *and* Bronner

A major implication of the traditional understanding of the *Magill* and *Bronner* doctrines is that dominant firms were largely free to choose the design of their products (or systems) and their business models. Article 102 TFEU would only interfere with such aspects of a corporate strategy in genuinely exceptional circumstances. It makes sense to elaborate on what is meant by product design and business model to explain this point further. The expression product design encompasses any decisions pertaining to, inter alia, the extent of vertical and horizontal integration of a firm's activities, the degree of openness to third parties (that is, whether the firm deals with third parties, and if so, how much) and the range of goods or services that it offers. This concept is best illustrated by reference to a specific example. Consider, for instance, a firm running a mobile operating system, which raises issues similar to those at stake in *Android Auto*.

In this example, the undertaking must choose whether to vertically-integrate downstream (and thus manufacture its own devices, as Apple does) or license its product to third parties instead (which is the strategy that a firm like Microsoft traditionally followed). Similarly, it must make up its mind about whether to allow third party applications to run on the system or to exclusively rely on in-house products. More generally, it may have to decide which features interoperate with its system. It is sufficient to think of mobile operating systems to realise the range of choices that are open to a firm. For instance, some categories of applications may negatively affect the reputation and integrity of the platform and may not be included as a result. Under the traditional understanding of *Magill* and *Bronner*, Article 102 TFEU showed deference to the undertaking in relation to all these decisions.

A business model, in turn, can be defined as the strategy that an undertaking follows to monetise the value of its assets. It is intimately linked to, and sometimes follows from, product

design choices. If a firm running an operating system decides to vertically integrate downstream and offer devices integrating its product, for instance, it may be able to monetise the value of its operating system via the sale of devices. This is, in fact, the core monetisation strategy followed by firms like Apple. Alternatively, the firm may decide to license its operating system in exchange for a fee (which was Microsoft's traditional business model) or rely on advertising revenue (which represents the lion's share of Google's income) instead. Other monetisation strategies include charging a commission to third-party application providers. Again, all of these decisions were, by and large, insulated from scrutiny under the traditional understanding of *Magill* and *Bronner*. Absent exceptional circumstances, a dominant firm could not be compelled to start licensing its operating system to third parties.

3. How *Android Auto* reshapes the *Magill* and *Bronner* doctrines

3.1. *Proceedings at the national level and preliminary reference*

3.1.1. Interpretation of *Magill* by the Italian Competition Authority

The facts in *Android Auto*[30] evoke those of a canonical refusal to deal scenario. Android Auto is a platform that gives access to selected features of Google's Android operating system via an automobile's infotainment system. At the time of the facts (mid to late 2018), Android Auto was interoperable with third-party applications providing two categories of services: media and messaging. Enel, the incumbent electricity operator in Italy, had developed an application allowing users of electric vehicles to find charging points, book slots in advance and pay for

[30] For an overview of the facts, see *Android Auto* (n 1), paras 4-13.

the use of its services.[31] While this product was available via mobile operating systems (including Android), it had not been selected to feature in Android Auto. Enel's interoperability request was refused by Google. The latter explained, as mentioned above, that only two categories of applications were available on Android Auto.[32] Google invoked, following a second access request, capacity constraints. It is useful to clarify, in this regard, that providing access to every new category of applications necessitates the development of a so-called template.[33]

In its decision, the Italian Competition Authority found that the refusal amounted to an abuse of a dominant position. Several aspects of this conclusion warrant elaboration. To begin with, the lawfulness of the behaviour was assessed against the conditions laid down in *Magill* (as clarified in *IMS Health*), at least formally speaking. In this sense, the Italian Competition Authority sought to establish, in particular, that the 'indispensability', the 'elimination of all competition' and the 'new product' conditions were all met. Second, the very facts of the case suggested that an orthodox application of the *Magill* doctrine would lead, in all likelihood, to the conclusion that the refusal was not abusive within the meaning of Article 102 TFEU. One should note, in this sense, that Enel's application had already been launched and could be downloaded and used from mobile phones. This very fact cast doubt about the indispensable nature of Android Auto and about its potential to eliminate all competition.

In response to the factual peculiarities of the case, third, the Italian Competition Authority advanced a heterodox interpretation of the *Magill* conditions. As far as indispensability is concerned, it interpreted the criterion very narrowly. Instead of disputing the fact that the application was widely available and that it could be accessed via mobile phones, the Italian Competition Authority argued that access via Android Auto was indispensable in a

[31] Ibid, para 9.
[32] Ibid, para 10.
[33] Ibid.

very specific context, that is, while driving a vehicle. It noted, in this sense, that interacting with the application via the automobile's infotainment system was the only way for drivers to do so in an 'easy and safe' way.[34] It also pointed out that briefly stopping the vehicle to use the application via a mobile phone was not an adequate alternative – in seeming disregard of the definition of indispensability laid down in *IMS Health*.[35]

Proving that the refusal would lead to the elimination of all competition was challenging in the circumstances of the case. On the one hand, it was not even clear whether Google was a competitor to Enel. Remarkably, the Italian Competition Authority did not even attempt to draw the boundaries of the market in which the exclusionary effects would be manifested. Instead of identifying an adjacent market (as an orthodox approach to the doctrines and Article 102 TFEU at large would have required), it referred to a 'competitive space' ('*spazio competitivo*') which would be shared by Enel's application and one of Google's application (Google Maps).[36] It is not difficult to see why the Italian Competition Authority did not go as far as to claim that these two products compete with one another. Enel's application provides services to users of electric vehicles, whereas the latter is, in essence, a mapping service. On the other hand, the facts of the case did not obviously indicate that exclusion was a likely prospect.[37] This said, the Italian Competition Authority claimed that the competitive advantage resulting from access to Android Auto would be sufficient to tip the balance against Enel's application.[38]

The 'new product' condition was also construed narrowly in the decision. This criterion was deemed met insofar as the refusal to provide access to Android Auto prevented customers

[34] AGCM Decision in *Android Auto* (n 6), para 376 ('*La definizione e la messa a disposizione da parte di Google di strumenti di programmazione per* app *compatibili con Android Auto costituisce una condizione indispensabile affinché gli sviluppatori terzi possano offrire agli utenti finali* app *utilizzabili in maniera facile e sicura quando i medesimi utenti sono alla guida* […]').
[35] Ibid, para 381.
[36] Ibid, paras 300-311.
[37] Ibid, paras 377-378 (indicating that Enel's application was being downloaded by end-users) and 380 (which related to the evidence suggesting that the said application was being used via smartphone).
[38] Ibid, paras 383-386.

from accessing an innovative application via their automobile's system.[39] Such an interpretation of the 'new product' condition departs from the traditional understanding in at least two ways. In the first place, the Italian Competition Authority did not identify a specific product the emergence of which would be prevented. Instead, it pointed to a number of innovative features that Enel's application would provide. In the second, and arguably most obviously, the said innovative features were already available to end-users without the need to gain access to Android Auto. The alleged 'new product' was thus not objectively unavailable (as it was in *Magill*). Instead, the fulfilment of this condition was contingent on the exclusionary effects resulting from the practice. As acknowledged in the decision, this approach is reminiscent of that followed by the (then) Court of First Instance in *Microsoft*.[40]

It has been explained above that providing access to Android Auto required Google to invest in the development of a new template. The question, against this background, was whether the refusal to deal could be deemed objectively justified, in particular considering the editorial choices that the design of a system involves and that the demand for applications such as the one offered by Enel do not necessarily warrant the requisite investment. When interpreting this condition, the Italian Competition Authority made three valuable points, which would be addressed again in the proceedings before the ECJ. It argued, to begin with, that the need to devote resources to the development of a template cannot justify, in and of itself, a refusal.[41] This said, the decision concedes that it may be appropriate to demand Enel to contribute to such investments. The Italian Competition Authority suggested, in a different vein, that only technical reasons could warrant a refusal.[42]

[39] Ibid, paras 387-392.
[40] Ibid, para 392. See also *Microsoft* (n 4), paras 643 and 647.
[41] Ibid, para 398.
[42] Ibid, para 399.

By the same token, finally, the authority implied that Google's conduct could not be justified on editorial grounds alone.[43] Accordingly, once it is shown that the other *Magill* conditions are met, the dominant undertaking is no longer entitled to assert control over the design of its products or systems. This position has major practical consequences. It can be counted as one of the most significant innovations introduced in the case. The Italian Competition Authority suggested that, even when the dominant firm is not in a position to provide immediate access to its infrastructure (for instance, it may need to invest in its adaptation), it cannot confine itself to denying access. In such a context, the dominant firm must, inter alia, provide a realistic timeline so that the third party can get an approximate idea of when the necessary investment will be undertaken.

3.1.2. Remedy

The significance of the Italian Competition Authority's analysis cannot be fully appreciated without taking into account the nature of the remedy imposed on Google. Under the traditional understanding of the *Magill* and *Bronner* doctrines, a dominant firm could be compelled to share its input or infrastructure with a third party. *Android Auto* takes intervention a step further. The Italian Competition authority required Google not just to provide interoperability between Enel's application and its platform, but also to modify the latter so that it could support the functionalities that Enel deemed indispensable (including, among others, the possibility of booking charging stations in advance, starting the charging process and remotely selecting the charging point).[44] According to this expansive interpretation of the case law, the dominant firm

[43] Ibid, paras 394 and 399.
[44] Ibid, para 444.

would not just be under a duty to deal with third parties but to adapt, where necessary, its assets so that they can accommodate the demands of a third party.

While there were no judgments providing support for the imposition of a remedy going beyond a mere access duty, the Commission's administrative practice did hint at such forms of intervention. The most obvious precedents in this sense are the commitment decisions adopted in the energy sector, in particular *Eni*.[45] Even though the decision in *Eni* did not formally establish an infringement, the Commission's preliminary assessment suggested that, by failing to invest in capacity, the owner of the infrastructure had abused its dominant position. This interpretation of Article 102 TFEU is remarkable in that it suggests that an undertaking may be under a duty not just to share its infrastructure but to expand its capacity, where necessary, so that rivals can compete with it in an adjacent market. This reading of the provision amounts to turning what was assumed to be an objective justification (lack of capacity) into the very infringement that requires remedial intervention.[46]

3.1.3. Action for annulment and preliminary reference

Google brought a challenge against the Android Auto decision before the *Tribunale Amministrativo Regionale* of Lazio, which acts as a first-instance review court in the Italian system. In its judgment of July 2022, the *Tribunale* dismissed the action in its entirety.[47] The first-instance ruling was appealed by Google to the *Consiglio di Stato*, which referred a number of points of law to the Court. The five questions[48] cover all aspects discussed above, namely the interpretation of the indispensability condition, whether the 'elimination of all competition'

[45] *ENI* (Case COMP/39.315) Commission Decision of 29 September 2010.
[46] Ibáñez Colomo (n 17), Chapter 6.
[47] Judgment of the Tribunale Amministrativo Regionale per il Lazio of 6 April 2022, *Google Italy s.r.l. and others v Autorità garante della concorrenza e del mercato.*
[48] *Android Auto* (n 1), para 24.

criterion is met where a product is offered without access to an infrastructure, whether a dominant firm can be compelled to modify its own product to accommodate the needs of a third party (and, similarly, whether it can be subject to a deadline to meet the access request) and, finally, whether the abusive nature of a refusal can be established without defining the relevant adjacent market.

3.2. *The Court's ruling in* Android Auto

As mentioned in the introduction, the Court delivered its ruling in *Android Auto* in February 2025. Arguably, the single most remarkable aspect of the judgment is the way in which the ECJ reformulated the questions raised by the *Consiglio di Stato*. What was a reference about the *interpretation* of *Magill* was turned into a clarification of the instances in which the *Bronner* doctrine – and more precisely the 'indispensability' and 'elimination of all competition' conditions – is *applicable*. In other words, the Court examined whether the analytical framework against which the Italian Competition Authority had assessed the legality of the conduct was the appropriate one. It concluded that it was not. The reorientation of the preliminary ruling from *interpretation* to *applicability* follows the approach advocated by the Commission in the observations it submitted in the case.[49] The Commission's angle was embraced by Advocate General Medina in her Opinion.[50]

By reformulating the first question referred by the *Consiglio di Stato*, the Court was in a position to (re)define the instances where the lawfulness of a refusal must be examined against the conditions laid down in *Magill* and/or *Bronner*. The ECJ held, in essence, that it is not necessary to show that access to an infrastructure is indispensable where the operator runs

[49] Written observations submitted by the Commission in Case C-233/23 *Alphabet Inc. and others v Autorità Garante della Concorrenza e del Mercato.*
[50] Opinion of Advocate General Medina in Case C-233/23 *Alphabet Inc. and others v Autorità Garante della Concorrenza e del Mercato*, ECLI:EU:C:2024:694.

a (partially or totally) open system. Accordingly, where an undertaking has designed a platform 'not solely for the needs of its own business but with a view to enabling third-party undertakings to use that infrastructure',[51] the *Magill* and/or *Bronner* doctrines are not relevant. Such would be the case, the judgment implies, of an operating system comparable to the one developed by Google and, more generally, of a digital platform that accommodates products and services offered by third parties. Under this understanding of the two doctrines, it is immaterial that the dominant undertaking had never given access to the specific product or service at issue in the case. The fact that the platform operator provides interoperability to products in one category (A) means that it can no longer invoke the *Magill* or *Bronner* doctrines to refuse access to products in another category (B).

The logic behind the narrowing of the scope of the doctrine deserves to be explained at some length. In the judgment, the Court refers to the *Slovak Telekom* judgment, which made explicit the position of Advocate General Jacobs in *Bronner*. As discussed above, the ECJ held that the 'indispensability' and 'elimination of all competition' conditions seek to preserve firms' incentives to invest and innovate and, in addition, minimise interference with their right to property and their freedom to deal with whom they please. The ruling in *Android Auto* does not question this case law. The novelty of the Court's approach comes from the fact that it limits its scope to instances where the dominant undertaking runs a fully closed system. Thus, whenever a firm designs a product or system that is partially open to third parties, a duty to deal in another market is not deemed to 'fundamentally' alter its economic model. By the same token, the 'indispensability' and 'elimination of all competition' conditions will not be the benchmark against which the lawfulness of the refusal is assessed.

[51] *Android Auto* (n 1), para 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 [*Bronner*], 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'.

Redefining the scope of the *Magill* and *Bronner* doctrines has important practical consequences, which became apparent in *Android Auto* itself. An immediate implication is that the dominant undertaking may not be in a position to provide immediate access to its infrastructure for the simple reason that the necessary investments have not been undertaken. The Court's position in relation to these points is very much line with the Italian Competition Authority's understanding of the concept of objective justification. First, once it is shown that the behaviour is prima facie abusive, the dominant firm cannot invoke, as a valid objective justification, the fact that it needs to invest in the adaptation or expansion of its infrastructure to accommodate a third party.[52] Second (and in the same vein), the undertaking cannot deny access on purely editorial grounds. The refusal may only be justified for technical reasons or where the integrity or security of the infrastructure would be compromised.[53]

On the other hand, third, the Court acknowledges that investing in the adaptation or the expansion of the infrastructure may come at an expense for the dominant firm. It clarifies, in this sense, that the third party requesting access may be asked to make an 'appropriate financial contribution' to the costs involved in accommodating its demands. Such a financial contribution must be 'fair and proportionate' and must, moreover, allow the dominant undertaking to derive an 'appropriate benefit' from it.[54] The Court also accepts that, where the adaptation or the expansion of the infrastructure is needed, it may be necessary to foresee 'a reasonable period of time' before access can be effectively provided.[55] The ruling suggests that it is for the dominant undertaking to provide a timeline to the third party. By the same token, the failure to do so can be considered to be an indicator that the refusal is not objectively justified.[56]

[52] Ibid, para 74.
[53] Ibid, para 73.
[54] Ibid, para 76.
[55] Ibid, para 74.
[56] Ibid, para 77.

Finally, and arguably more importantly, the Court makes it clear that access must be granted in such a way that it takes into account the 'needs' of the firm requesting access.[57] This reference echoes Enel's demands in the context of the administrative procedure at the national level. As explained above, the latter sought to ensure that Google would not just provide access to its platform, but that a number of functionalities that it deemed essential for the appropriate operation of its application would be made available via Android Auto. Holding that the dominant firm controlling the infrastructure must account for the needs of a third party alters the nature of intervention under Article 102 TFEU. A duty to provide access becomes, in essence, the outcome of a dialogue between the dominant firm and the requesting firm. As part of this process, the latter may thus demand changes to the way the infrastructure operates and interacts with complementary products.

3.3. *Reassessing* Magill *and* Bronner *against the* Android Auto *standard*

The significance of the substantive shift – and the resulting shrinking of the scope of the refusal to deal doctrines – is best illustrated by characterising the facts at issue in *Magill* and *Bronner* in light of the substantive standard adopted in *Android Auto*. The two seminal cases are notable in that the undertakings were, at the time of the facts, already dealing with rivals in other markets unconcerned by the practice at issue. Strictly speaking, therefore, they had not kept their assets for themselves, as they were dealing with third parties in markets unconcerned by the refusal. As explained above, the dominant undertakings in *Magill* were licensing their copyright to daily newspapers (but not to weekly magazines). In spite of this fact, the Court found their refusal to be abusive only because the intellectual property had been found to be indispensable for competition in the adjacent market. Similarly, the allegedly dominant

[57] Ibid, para 74.

undertaking in *Bronner* was printing and distributing a rival's publication. This factor did not influence the choice of the substantive standard. The Court held, in unequivocal terms, that the refusal would only be abusive if the infrastructure to which access was requested were found to be indispensable to compete on market where the effects of the abuse would be manifested.

Magill and *Bronner* would not be decided in the same way today. Indispensability would not be required to establish an abuse in either case. This conclusion follows from the way *Android Auto* has reinterpreted what it means for a dominant undertaking to develop an input or infrastructure 'solely for the needs of its own business'. Under the traditional understanding of the refusal to deal doctrines (enshrined in *Magill* and *Bronner*), whether or not an asset had been developed 'solely for the needs' of the firm was assessed by reference to the market concerned by the refusal. Accordingly, it was immaterial that the undertaking was dealing with rivals in other markets. So long as the dominant firm had chosen to keep for itself the economic activity at issue in the case, the 'indispensability' and 'elimination of all competition' conditions were applicable. Following *Android Auto*, by contrast, keeping an input or infrastructure 'solely for the needs of [the undertaking's] own business' means something else. It means that the undertaking has not shared its assets with a third party in any market, irrespective of whether it is concerned by the refusal at issue in the case. Under the *Android Auto* doctrine, sharing assets to some undertakings in one market excludes the application of *Magill* and *Bronner* across the board.

As a result of the reinterpretation of the case law, the rationale behind the applicability of the doctrines has also changed. Under the traditional understanding, the crucial consideration was whether intervention would compel a firm to deal with third parties with which it had chosen not to deal – and thus whether it would interfere with the firm's right to property and its freedom of contract. This point became apparent in the appeal judgment in *Google Shopping*, where the ECJ rejected the applicability of the *Bronner* doctrine on these very

grounds.[58] Under *Android Auto*, by contrast, the central factor appears to be the design choice made by the dominant undertaking. Where the product or system has been conceived as an open one, the 'indispensability' and 'elimination of all competition' conditions cease to apply. In such circumstances, the interference with the firm's right to property and freedom of contract would no longer be a decisive consideration.

4. Implications of *Android Auto*

4.1. *Reach of the shift: beyond digital platforms*

4.1.1. Generalities

An immediate question that arises when reading *Android Auto* is whether the shift it heralds is only relevant for digital platforms. Nothing in the reasoning of the Court suggests that the change in approach it introduces is confined to a particular sector or activity. The core of the ruling makes it clear that the crucial question, when ascertaining the applicability of the *Magill* and *Bronner* doctrines, is whether the system has been designed 'for the needs of [the dominant firm's] own business'. There should be little doubt that this criterion is of particular importance in the context of digital platforms. So-called Big Tech typically run systems that are partially open and partially closed. It is not unusual that these operators keep some activities for themselves (for instance, the app store) while they allow third parties to provide their services via their platforms (applications, in particular, are typically offered by non-affiliated developers). For the reasons explained below, moreover, it is the industry where the implications of the ruling are likely to be felt more acutely.

[58] *Google Shopping* (n 4), para 99.

4.1.2. Beyond digital platforms: intellectual property licensing

However relevant for digital platforms, it is not difficult to think of other factual scenarios of systems that are partially open to third parties. The one at issue in *Magill* shows, in this sense, that the licensing of intellectual property often follows a pattern that is similar to the one considered in *Android Auto*. It is not unusual for the holders of intellectual property rights to deal with third parties in relation to some uses but not all of them. 'Field-of-use' restrictions, for instance, are a frequent feature in agreements providing for the licensing of technology.[59] To the extent that the intellectual property is not kept solely for the needs of the licensor's own business, the reasoning in *Android Auto* suggests that a would-be competitor would no longer need to show that the asset in question is indispensable within the meaning of *Magill* and *IMS Health*. In such circumstances, according to the Court, the 'economic model' of the licensor would not be 'fundamentally' altered.

It is also relatively commonplace for the holder of an intellectual property right to decide the level of the value chain at which the license is granted. This question has gained some prominence in relation to the licensing of so-called standard-essential patents, which has given rise to a steady stream of disputes at the EU and national levels.[60] A specific – and recurrent – issue revolves around whether the holder of one such patent is under a duty to license its intellectual property to would-be licensees at all levels of the value chain or whether, instead, it gets to choose the level at which to share its asset. It seems unquestionable, in the aftermath of *Android Auto*, that the patent holder, in such a scenario, would no longer be able to invoke the *Magill* doctrine. Insofar as it has chosen to voluntarily license its intellectual

[59] Guidelines on the application of Article 101 of the Treaty on the Functioning of the European Union to technology transfer agreements [2014] OJ C89/3, paras 208-215.
[60] For an overview of these cases, see Igor Nikolic, *Licensing Standard Essential Patents: FRAND and the Internet of Things* (Hart Publishing 2021).

property with third parties,[61] the only substantive question, as far as the application of Article 102 TFEU is concerned, is whether the refusal is capable of having anticompetitive effects in the relevant downstream market.

4.1.3. Beyond digital platforms: withdrawal of access

A third factual scenario that shows why *Android Auto* is relevant beyond digital platforms arises where a firm decides to stop dealing with rivals in a given market. It has already been pointed out that *Bronner* (as much as the substantive standard applied at first instance in *Microsoft*) suggests that, under the traditional understanding of the refusal to deal doctrines, a decision not to continue sharing an input or infrastructure was treated in the same way as a refusal to start dealing. Following *Android Auto*, the indispensability condition is no longer applicable where the dominant firm ceases dealing with third parties with which it had previously chosen to deal. In such an instance, past conduct would preclude the dominant firm from arguing that it had developed the relevant assets for the 'needs of its own business'. By the same token, the very fact that it had chosen to deal with third parties would suggest that it could not credibly claim that doing so would 'fundamentally' affect its 'economic model'.

As the case law and administrative practice show, cases concerning a decision to stop dealing with a past customer are far from infrequent. More importantly for the purposes of this discussion, it is not unusual for this behaviour to be adopted in non-digital markets. Experience suggests that it is likely to be observed in industries where the core regulatory challenge is the existence of a bottleneck that may be indispensable or quasi-indispensable for competition in an adjacent market. The facts in *TeliaSonera* and *Slovak Telekom*, in particular, are not

[61] In such scenarios, the patent holder will typically have committed to licensing its technology on fair, reasonable and non-discriminatory terms. See in this sense Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements Text with EEA relevance [2011] OJ C11/1, para 285.

fundamentally different from a decision to stop sharing access to an input. A 'margin squeeze' and, more generally, a constructive refusal to deal, could be aptly characterised, in effect, as a withdrawal of access to an infrastructure. Following *Android Auto*, all these practices will be subject to the same treatment under Article 102 TFEU.

4.2.*From product design to product co-design*

The significance of the substantive shift becomes apparent when one considers how *Android Auto* affects dominant firms' ability to design their products (or systems) as they see fit. It has been explained above that the traditional understanding of *Magill* and *Bronner* gave undertakings ample leeway, absent exceptional circumstances, in two crucial respects: which features to include in a product or system and which features to open to third parties (and, by the same token, which to keep for itself). Following *Android Auto*, as soon as a dominant firm has opened some features to third parties, it must accept to deal with third parties in relation to the features it has chosen not to offer. This change, however significant, is not the most consequential one. As the very facts of the preliminary ruling show, the dominant firm can be compelled to alter the operation of the system to add new features on the terms and conditions requested by the third party seeking access.

As a result of this substantive shift, dominant firms will frequently lose the ability to design their (partially open) products or systems as they see fit. Where anticompetitive effects can be expected, the undertaking will have to accept that third parties become actively involved in their design. The operation of the product or system, in other words, becomes a cooperative venture, as opposed to a unilateral one. Negotiations with third parties will determine the degree of modularity and the conditions of access to the input or infrastructure. It is not difficult to think of scenarios where negotiations with third parties would lead to the re-design of

products or systems. One question that courts and authorities have examined in various guises relates to whether the operators of digital platforms can keep some activities for themselves. In *Apple Pay*, for instance, the Commission considered whether Apple could claim exclusivity over the payment functionality of its system.[62] It seems clear, after *Android Auto*, that the refusal to deal doctrines are not an obstacle to the opening of other layers to third parties.

One can also think of scenarios where third parties seek to renegotiate the terms of access so that they meet their requirements or preferences. Disagreements between dominant firms and customers demanding tailored conditions of access are not unusual. Some high-profile cases involving digital platforms and developers correspond exactly to this scenario. Consider the example of the ongoing dispute between video game developer Epic and Google on the other side of the Atlantic.[63] At its heart, the case is about Epic's attempt to create a different user experience and distribution method that would by-pass the requirements imposed by Google on third-party developers (including the way in-app purchases are performed and how users interact with the application). Again, there should be little doubt, following *Android Auto*, that the *Magill* and *Bronner* doctrines would not be an obstacle to the redefinition of the terms and conditions of access demanded by a third-party developer such as Epic.

Along the lines of what has already been discussed, it would be incorrect to assume that these scenarios are only likely to arise in digital markets. Utilities industries show that comparable cases may well develop in other sectors. In *Eni*, already discussed, the undertaking accepted, in effect, to expand capacity to accommodate rivals' needs. It would not be difficult to imagine similar claims to change or expand the operation of an infrastructure after *Android Auto*. Financial markets, to which the Commission devoted significant attention during the 2010s, often feature factual settings where similar disputes can realistically arise. *Standard &*

[62] *Apple – Mobile Payments* (Case AT.40452) Commission Decision of 11 July 2024.
[63] *Epic Games, Inc. v. Google LLC*, No. 24-6256 (9th Cir. July 31, 2025).

Poor's, which was decided by means of a commitments decision in 2011,[64] is an eloquent example.[65] One of the practices raising concerns in the case was the requirement to purchase additional data in order to gain access to standardised identification numbers for US securities. The Commission expressed the view, in its decision, that there was no objective reason why access to the latter should be conditional on the licensing of the former.[66]

4.3. *Business models after* Android Auto

It has been explained above that integrated firms keep some activities for themselves as a means to monetise the value of their assets. Accordingly, a refusal to deal, rather than a naked attempt at exclusion, is often a means to guarantee the financial viability of a system. As a result of the substantive choices made in *Android Auto*, Article 102 TFEU will interfere more frequently and more profoundly with these monetisation strategies. In particular, dominant undertakings will not always be able to invoke *Magill* and *Bronner* to prevent entry in the markets or activities on which monetisation relies. Suppose that the financial viability of a system depends on the commissions earned when distributing third-party applications via an app store. Following *Android Auto*, the undertaking may have to accept that alternative app stores compete with it for the same revenue (and therefore that the profitability of this stream is eroded).

By limiting the ability of integrated entities to claim exclusivity over some revenue-generating activities, *Android Auto* has significant distributional consequences. The redistribution of rents resulting from the judgment occurs along two axes. It occurs, first,

[64] *Standard & Poor's* (Case COMP/39.592) Commission Decision of 15 November 2011.
[65] It makes sense to mention that the case dealt with exploitation concerns, rather than exclusion. This said, the basis setting is similar to the one found in digital markets. For other cases in the financial sector, see *CDS Information Market* (Case AT.39745) Commission Decision of 20 July 2016.
[66] *Standard & Poor's* (n 63), para 35.

between the operator of the system and third-party business users. The former may have to give up exclusivity over a particular revenue stream, which is to be shared with the latter once it is subject to a duty to deal. One can expect redistribution to occur, second, between the operator of the system and end-users. As the ability to monetise some services on an exclusive basis is weakened, the loss of revenue may be compensated by an increase in prices elsewhere. If, for instance, the operator of a mobile system loses revenue coming from the distribution of third-party apps, it may seek to make up for this decrease by increasing the price of the devices it sells to consumers.

What *Android Auto* did not fully clarify, however, is the extent to which intervention under Article 102 TFEU can interfere with the business model(s) developed by a dominant undertaking. The judgment makes it clear that an obligation to deal cannot go as far as to 'fundamentally' alter it.[67] However, it fails to provide indications allowing courts and authorities to draw the line between 'fundamental' and 'non-fundamental' alterations. The consequences of this point of law should not be underestimated. An example helps shed light on its potential significance. Consider an undertaking that runs an operating system. The operating system may be open to third parties in relation to the firm's upstream activities (it may, for instance, allow applications developed by third parties to interoperate with it), but closed in relation to downstream activities (in particular, it may refuse to license the operating system to third parties). In this example, the undertaking's business model relies on the sale of devices to end-users on an exclusive basis. By refusing to license its operating system, the firm would be rejecting other monetisation strategies (such as the charging a fee for the licensing of the operating system).

The question that would emerge in such a scenario is whether the openness of the operating system at the upstream level means that the undertaking cannot invoke *Magill* and

[67] *Android* (n 1), para 46. See also the discussion above.

Bronner to refuse to license its operating system at the downstream level. One could argue, on the one hand, that, to the extent that the undertaking has voluntarily chosen not to keep upstream activities for the needs of its own business, it can no longer rely on the 'indispensability' and 'elimination of all competition' conditions. By the same token, the firm will have to accept that a new business model (based on the licensing of the operating system) emerges alongside the original one (based on the sale of devices). According to this interpretation of the judgment, compelling a firm to adopt a new monetisation strategy would not 'fundamentally' alter the economic model. After all, intervention would not preclude the firm from selling devices to end-users.

Under an alternative interpretation of *Android Auto*, intervention under Article 102 TFEU could not go as far as a to require an undertaking to accept a business model departing from the one it had originally chosen. Imposing a new monetisation strategy on the firm would amount to a fundamental alteration within the meaning of the judgment. From this perspective, a dominant undertaking can be expected to bear the consequences of the business model it has chosen, but not more. Thus, if a firm relies on the sale of devices to monetise its assets and opens its system to third-party application developers to increase the attractiveness of the said devices, it must accept the involvement of third parties in the design of its system at the upstream level. The undertaking, however, would still be in a position to select its monetisation strategy and thus refuse to license its operating system to downstream would-be rivals.

4.4.*Relationship with sectoral regulation*

Android Auto may have implications beyond digital markets. However, it would be impossible to make sense of the judgment without taking them into account. The decision of the Italian Competition Authority is best interpreted as an expression of the challenges that the rise of Big

Tech and the resulting challenge pose for EU competition law. In this sense, the expansive and unorthodox interpretation of the *Magill* doctrine could be reasonably read[68] as an attempt to adjust Article 102 TFEU to the specific issues raised by the emergence of dominant – if not quasi-monopolistic – positions in digital markets. Similarly, one cannot ignore that the decision in *Android Auto* was issued at a time when sector-specific regulation – what would become the Digital Markets Act[69] – was close to being adopted at the EU level. The declared ambition of this sectoral regime is to make up for the inability of competition law to respond swiftly and effectively to some of the economic and technological features of digital markets.

The Court judgment in *Android Auto* defines the substantive and institutional relationship between EU competition law and sector-specific regulation. The choices made ensure that Article 102 TFEU will continue to play a pre-eminent role even after the adoption of the Digital Markets Act. By reducing the scope of the *Magill* and *Bronner* doctrines, EU competition law can correct any deficiencies in sector-specific regulation by acting as a safety net (that is, as an alternative avenue to attain certain outcomes) and as a gap-filling instrument (that is, one that corrects the relative inflexibility of ad hoc regimes like the Digital Markets Act).[70] Such a substantive choice should not come as a surprise when put in perspective. The Court has consistently sought to strengthen the role of EU competition law in regulated industries. Accordingly, *Android Auto* is best understood as the continuation of a long line of case law, with landmarks that include *Deutsche Telekom* (where it held that Article 102 TFEU can apply alongside sector-specific regulation unless the latter leaves no scope for manoeuvre to the dominant undertaking[71]), *TeliaSonera* and *Slovak Telekom*.

[68] Juliane Kokott and Mariya Serafimova, 'Balancing Innovation and Competition in Dynamic Industries' (2025) 75 *Wirtschaft und Wettbewerb* 123.
[69] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act) [2022] OJ L 265/1.
[70] Ibáñez Colomo (n 17), Chapter 3.
[71] Case C-280/08 P *Deutsche Telekom AG v European Commission*, EU:C:2010:603.

Experience shows that the interpretation and enforcement of Article 102 TFEU is not immune to its interaction with sector-specific regulation. Whenever EU competition law applies as a safety net or as a gap-filling instrument, its substantive standards tend to converge with those of the regime it complements. This phenomenon has been observed, for instance, in the energy sector, where the Commission tested new theories of harm that were consistent with the liberalisation ambitions of the legislation introduced at the time.[72] In many respects, the reinterpretation of Article 102 TFEU in *Android Auto* embraces the themes and ethos of the Digital Markets Act. To the extent that it does, it exemplifies a trend towards the adjustment of the substantive standards of the EU competition law regime to the specificities of various economic sectors.

The decentralisation of economic power (that is, contestability) and the redistribution of rents across the digital value chains (that is, fairness) are the two leading objectives underpinning the Digital Markets Act. On the one hand, the regime seeks to ensure that so-called gatekeepers do not obtain a 'disproportionate advantage' vis-à-vis business users (such as third-party application developers).[73] On the other, it is designed to create the conditions where the said business users are in a position to overcome the barriers to entry and expansion and thus meaningfully challenge gatekeepers' positions in the segments they control.[74] The reinterpretation of *Android Auto* by the Court is consistent with these ambitions. By narrowing down the instances where indispensability can be invoked, the judgment paves the way for contestability in digital markets. The distributional effects of the judgment, moreover, are very much aligned with the fairness ethos underlying the Digital Markets Act.

[72] Ibáñez Colomo (n 17), Chapter 6.
[73] Digital Markets Act (n 68), Recital 33.
[74] Ibid, Recital 32.

4.5. *Administrability and the rise of private enforcement*

One of the most significant side effects of *Magill* and *Bronner*, as traditionally understood, is that they insulated national courts, by and large, from the administration of the regulatory-like remedies that a finding of abuse demands in a refusal to deal case. It is not a secret that courts are not ideally equipped to design and implement access remedies (including determining the terms and conditions of access), let alone monitor compliance over time with the support of an ad hoc apparatus. Following *Android Auto*, an obligation to deal is not necessarily tied to the 'indispensability' and 'elimination of all competition conditions'. As a consequence, national judges are likely to be required to administer complex remedies more frequently than they were in the past. *Android Auto* is eloquent about the sort of demands that will be placed upon them. A court may be asked to determine whether the compensation required from a platform operator is appropriate, whether the delay in providing access is objectively justified and whether the needs of the third party requesting access have been duly taken into account. This shift will occur in a context where private enforcement is markedly on the rise across the EU and, arguably more importantly, is gaining in sophistication.

If, as one would reasonably expect, undertakings test the potential and boundaries of *Android Auto* to advance their private interests, national courts will need to develop substantive, procedural and institutional tools to design, implement and monitor access duties on a relatively regular basis. Even then, it is not entirely clear whether, and if so how effectively, they will be able to navigate this new reality. The issue has never been given serious consideration in EU law,[75] at least until recently.[76] In general, complex remedies have been imposed by competition

[75] Pablo Ibáñez Colomo, 'Remedies in EU Antitrust Law' (2025) 21 *Journal of Competition Law & Economics* 137.

[76] As an indicator that remedies are likely to be given more consideration in the new economic and technological landscape, see *Ex post evaluation of the implementation and effectiveness of EU antitrust remedies: Final Report* (European Union 2025), available at https://competition-policy.ec.europa.eu/.

authorities without paying attention to their effective administration. The experience of the Commission with the remedies in the aftermath of *Google Shopping*,[77] which remained contentious long after the decision was adopted, signalled the importance of this aspect of law and policy-making.

5. Conclusions

In many ways, *Android Auto* encapsulates the contemporary transformation of EU competition law. First, it signals the shift in enforcement priorities towards digital markets and, specifically, the regulation of the terms and conditions of access to platforms like operating systems, online marketplaces and search engines. Second, it exemplifies a trend towards the expansion of the reach of Article 102 TFEU. Competition authorities have reacted to allegations about the ineffectiveness of the provisions by pushing the boundaries of, when not directly overruling, past doctrines. *Magill* and *Bronner* epitomised the limits of Article 102 TFEU more than any other aspect of the legacy case law. The scope of the two judgments has now been significantly reduced across the board, irrespective of the sector concerned. Third, the ruling shows how much the lines between competition law and regulation have become blurred.

Android Auto embraces core aspects of the Digital Markets Act, in the sense that it contributes to decentralising power within complex systems and to the redistribution of rents within them. Insofar as it does, it can be expected to have a significant impact on the interpretation and enforcement of Article 102 TFEU. Under the *Magill* and *Bronner* doctrines, as traditionally understood, dominant firms were largely unconstrained in their ability to design products and system. After *Android Auto*, this exercise will often become a cooperative one. The framework sketched in the judgment suggest that third parties may require, as part of the

[77] See Ibáñez Colomo (n 17), Chapter 8, for a discussion.

negotiation with the dominant firm, the introduction of new products and services and, in the same vein, the modification of the input or infrastructure to which access is requested. In addition, the judgment has major distributional consequences. Dominant undertakings may need to share some revenue streams with third parties.

The demanding test laid down in *Magill* and *Bronner* was justified on two grounds. Compelling a firm to deal with rivals interferes with its right to property and freedom of contract and, in addition, is likely to negatively affect incentives to invest and innovate and thus the dynamic dimension of competition. There was, arguably, an implicit but equally compelling third justification: competition law institutions struggle with the administration of the sort of remedies that a duty to deal demands. Articles 101 and 102 TFEU were never conceived to effectively mimic the day-to-day work of a regulatory agency. These limits, however, did not play any role in *Android Auto*. At a time when private enforcement is gaining in importance and sophistication, it is likely that constraints of competition law institutions will be tested far more often than they were. It remains to be seen how national courts and authorities address this challenge.