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COMPETITION LAW REVIEW

Interoperability as a catalyst for competition and innovation

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Interoperability as a long-standing problem in competition law

The antitrust procedures in the 1970s and 1980s against IBM have profoundly shaped the way technology markets are dealt with in competition law. The core problem at the time was that IBM held de facto standards for the entire computer industry, so manufacturers of peripherals depended on IBM's interface information to bring compatible products to market. While attempts to enforce antitrust law failed in the US, IBM made informal commitments to the European Commission that it would make interface information available to competitors in good time. The European Commission stressed the importance of interface information for competition, whereas courts in the US held that even a company like IBM is under no duty to help competitors. Since then, there has been ongoing debate about whether intervention with respect to interface information may be necessary to promote competition and innovation, and if so, to what extent.

The next important step was the *Microsoft* case of the 2000s, specifically in relation to the market for server software. This time, both jurisdictions concluded that a standard-setting company must disclose interface information, albeit to varying extents and with differing intensities. While in the US, access was only granted in relation to communication protocols installed on client computers, there was no such restriction in the EU. And while in the US the case was closed by a consent decree, the proceedings in the EU ended with a contentious decision imposing a heavy fine upheld by the court. Again, the different outcomes were based on differing assessments of the relationship between economic freedom and competition law: While in the US, server-to-server protocols were considered components of the main product that shall not be accessible to competitors, in the EU any interface information necessary for interoperability must be made available even if it relates to the main market in question.

Android Auto: The leading case in Europe now

A third case, the *Android Auto* judgment of the European Court of Justice (ECJ) of February 2025, has just clarified the situation further. Android Auto is an app in the Alphabet/Google mobile ecosystem that allows users to place apps from an Android mobile device on a vehicle's screen and then operate them using the car's own instruments, such as the steering wheel buttons or voice control. However, this only applies to supported applications. Enel X Italia, which operates most electric charging stations in Italy, wanted to integrate its charging app (for finding and reserving charging stations) into Android Auto. Initially, Alphabet/Google did not provide a software template for this. The ECJ rules that the refusal of a dominant platform operator to ensure interoperability with a third-party app may constitute an abuse even if access to the platform is not essential for the commercial use of the app. It is sufficient that the platform is capable of making that app more attractive to consumers. However, the right to interoperability is subject to the condition that the platform in question was not developed exclusively for the developer's own activities. Also, refusing access can be objectively justified, for example if integrating the third-party app would compromise the integrity or security of the platform.

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How do interoperability obligations fit into the EU case law on refusal to deal and the essential facilities doctrine?

The judgment has fundamental significance for the interoperability obligations of dominant firms in Europe. It clarifies that access to interface information is not held to the same stringent requirements as those governing compulsory licenses for intellectual property rights (*Magill* and *IMS Health*) or access to essential facilities (*Bronner*). In particular, it is not necessary that access to the platform is indispensable for the commercial operation of the app. In the *Microsoft* case, the European Commission and the Court had assumed in favor of the dominant firm that intellectual property rights were involved and therefore applied (and affirmed) the strict indispensability criterion. The *Android Auto* case now avoids such an assumption and lowers the threshold for intervention to "attractiveness to consumers," which will usually be met. Moreover, the case is another example of a distinction from genuine essential facilities cases. In a series of cases, the ECJ had already ruled that the *Bronner* requirements do not apply if the issue is not actually a refusal of access, but rather the fairness of access conditions (price-margin squeeze since *TeliaSonera*), discrimination (self-preferencing in *Google Shopping*), or the dismantling of infrastructure (*Lietuvos geležinkeliai*). The *Android Auto* judgment fits into this context: Android Auto is not reserved for Alphabet/Google apps, but has been opened up to a range of third-party applications through the creation of relevant templates. Therefore, the judgment should not be interpreted as a departure from the essential facilities doctrine, but as a further example of a narrow interpretation of this concept: It only applies if the facility in question has been solely developed for one's own needs.

At the same time, the judgment contains an important clarification regarding the requirements for effects on competition. Contrary to the rules on refusal to supply and refusal to license, it is not necessary in the interoperability context that "all competition" (*Commercial Solvents* for the obligation to supply) or "all effective competition" (*Microsoft* for compulsory licenses) be eliminated. Rather, it is sufficient and must be demonstrated on the basis of tangible evidence that the conduct is capable of having anti-competitive effects. For the same reason, no "exceptional circumstances" are required (as in *Magill* and *IMS Health* for compulsory licenses).

Regulation of interoperability

The topic of interoperability is not limited to competition law but arises in many other contexts. One prominent example is the decompilation exception in copyright law. Under certain conditions, the exclusive rights of reproduction and translation are restricted if reverse engineering is necessary to achieve interoperability of an independently created program with other software. The goal of this remarkable limitation of copyright is to enable system components from different manufacturers to interact properly. In practice, however, this provision has only gained minor significance: Reverse engineering is expensive and time-consuming and can be rendered worthless at any time by upgrading the software with which interoperability is intended. This is why rights to the active disclosure of interface information are so important, as established by the case law described above.

Moreover, sector-specific regulation provides for interoperability rules. One example is the Digital Markets Act (DMA) of the EU, which requires gatekeeper platforms, among other things, to allow third-party software developers, providers of services, and providers of hardware effective interoperability with their systems. Interoperability rules can also be found in other digital regulations of the EU, for example in the Data Governance Act, the Data Act, and the Artificial Intelligence Act. The overarching goal of these rules is to keep markets contestable and to guarantee as much competition as possible in a context that is characterized by huge economies of scale, network effects, and control of big data.

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Interoperability and innovation

The assessment of interoperability rules, whether laid down in specific regulatory law or derived from general competition law, depends very much on their impact on incentives for innovation. Innovation economics has dealt extensively with the relationship between competition and innovation. In this context, a distinction is often made between two ends of the spectrum, which are equated with two giants of economics. According to Joseph Schumpeter, it is market power and monopoly profits that enable innovation and create incentives for "*creative destruction*." Caution is advised when applying competition law, and the risk of false positives is emphasized. In contrast, according to Kenneth Arrow, it is competitive pressure that creates incentives to invest in innovation. The risk of false negatives is stressed and another authority, John R. Hicks, is quoted with his famous remark "*The best of all monopoly profits is a quiet life*." The concept of the inverted U-relationship has emerged as a useful compromise between these positions: When competition intensity is low, intensifying competition leads to more incentives for innovation. If, on the other hand, the intensity of competition is already high, further intensification of competition reduces innovation, since no one can invest enough anymore. The message is that the intensity of competition should not be maximized but optimized.

This basic scheme can also be applied to the question of interoperability. On the one hand, a cautious approach to interoperability obligations may be commended, arguing that disclosure obligations enable free riding on the achievements of others and thus reduce the incentives of the interface holder to engage in research and development. On the other hand, it is conceivable to point to the innovation-promoting effects of disclosure obligations since access to interface information allows third parties to integrate their own developments into the system and thus bring alternatives to the market. Finally, it is possible to develop a compromise in the sense of the inverted U-curve: More interoperability brings more innovation as long as excessive interoperability requirements do not undermine the overall incentives for innovation. This compromise should be preferred because it succeeds in optimizing the creation of innovation.

The *Android Auto* case can be interpreted precisely in this sense. There is no generalized obligation for dominant firms to make interoperability information available since such obligations do not apply to platforms that have been developed exclusively for their own business. In contrast, if the infrastructure was built with a view to making it accessible to third parties, the operator's incentives to innovate are not jeopardized, so that additional competition from third parties leads to additional innovation.

Conclusion

The conditions for interoperability obligations are lower than for compulsory licenses of intellectual property rights. Interface information has to be made available if commercializing a product via the relevant platform makes that product more attractive to consumers and if refusing access is likely to have anti-competitive effects. The underlying reason for the relatively low requirements for abuse is to promote dynamic competition: Competing app developers can make their applications more easily accessible to consumers, which also stimulates the market leader's incentives to innovate. A dampening of incentives to build the platform is not to be expected if the investment decision was based from the outset on the plan that the facility would also be used by third-party companies.

Against this background, the European Commission should revise its Draft Guidelines on abusive exclusionary conduct by dominant undertakings. The section on refusal to supply in its current version only deals with this topic in passing. The question of interoperability is so crucial for dynamic competition and innovation that it deserves a separate analysis. The efficient functioning of the digital economy also depends on clear rules on interoperability.

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