

Antitrust and Competition Update

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***Google Android*, the Final Chapter: Court of Justice Clarifies the Standard for Exclusionary Abuse in Digital Markets**

Executive Summary

- **What's new:** On 2 July 2026, the European Court of Justice delivered its judgment in the *Google Android* case, upholding the European Commission's €4.1 billion fine against Google for abusing its dominance through pre-installation requirements, app bundling and anti-fragmentation agreements tied to Android devices.
- **Why it matters:** As well as confirming the Commission's analysis of pre-installation as potentially abusive tying conduct, the court's conclusions on the standard by which to judge exclusionary conduct are likely to lower the bar in abuse of dominance investigations. The judgment endorses key parts of the Commission's draft exclusionary abuse guidelines, which have been slated for release later this year.
- **What to do next:** Companies should assess distribution practices, in particular pre-installation arrangements, in light of the judgment, mindful that the Commission will look skeptically at claims that rivals with equally high-quality apps can compete on the merits with pre-installed apps. We can expect guidance from the Commission later this year to address this and other common practices in the digital sector.

Background

On 2 July 2026, the Court of Justice of the European Union (the Court) delivered its judgment in *Google Android* upholding the European Commission's (Commission's) €4.1 billion fine against Google for abusing its dominance through pre-installation requirements, app bundling and anti-fragmentation agreements tied to Android devices.¹

In 2018, the Commission had imposed on Google a record fine of €4.34 billion for agreements which allegedly forced phone manufacturers to pre-install Google Search, the Chrome browser and the Google Play app store on their Android devices and prevented them from using rival systems. In particular, the Commission identified several contractual restrictions, each of them allegedly amounting to an abuse of dominance and together constituting a single and continuous infringement due to their interdependence and common objective:

¹ Judgment of 2 July 2026, *Google LLC and Alphabet Inc. v European Commission*, C-738/22 P.

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- Google’s Mobile Application Distribution Agreements (MADAs) with original equipment manufacturers (OEMs), which required the pre-installation of Google Search as a condition for licensing the Play store, and the pre-installation of Chrome as a further condition for licensing both the Play store and Google Search.
- As an additional condition for licensing the Play Store and Google Search, OEMs were required to enter into Anti-Fragmentation Agreements (AFAs), under which they committed not to sell devices running noncompatible versions (“forks”) of the Android operating system.²
- Under Revenue Share Agreements (RSAs), OEMs and mobile network operators (MNOs) received a share of Google’s advertising revenue in exchange for agreeing to *exclusively* pre-install Google’s general search service across a defined portfolio of devices.

In 2022, the General Court, the EU’s lower court, trimmed the fine to €4.1 billion, largely confirming the Commission’s decision, except for its findings on RSAs. Google appealed the judgment to the Court, the EU’s highest judicial tier.

The Judgment

The Court dismissed Google’s appeal against the judgment of the General Court, thus confirming the Commission’s fine, as revised by the General Court. Building on recent case law,³ the Court confirmed several fundamental points of law for abuse of dominance cases in the EU.

Counterfactual Analysis Is Not Mandatory

The Court held that the Commission must establish a causal link between the allegedly abusive conduct and its anticompetitive effects. However, it may do so by relying on a range of evidence. It is not obliged to employ any single methodology, including a counterfactual analysis which assesses what the competitive landscape would have looked like absent the alleged infringement.

The Court accordingly rejected Google’s argument that the Commission should have examined whether the Android open licensing model would have remained viable without the MADA

pre-installation conditions.⁴ The counterfactual analysis and the procompetitive effects of the MADA pre-installation conditions remained relevant, but only for purposes of alleging objective justifications of Google’s practices, not as part of the Commission’s burden in establishing the abuse. The General Court, however, found that Google had failed to adduce sufficient evidence to justify its conduct, and the Court did not revisit this finding.

The AEC Test Is Also Not Mandatory

Google argued that its apps were higher-quality and more popular than rivals, and that their higher use reflected competition on the merits which any app of similar quality (an AEC) could match, rather than any particular advantage of pre-installation.

In response, the Court recalled the two-limb test for establishing an exclusionary abuse of dominance, a framework also reflected in the Commission’s draft guidelines on exclusionary abuse. The Commission must show that (i) the conduct falls outside the scope of competition on the merits; and (ii) the conduct is capable of producing exclusionary effects. It is not necessary to prove any actual effects.

To demonstrate that conduct departs from competition on the merits, an antitrust authority may examine whether a hypothetical AEC could have replicated the conduct in question.⁵ The underlying rationale is that competition law exists to safeguard the competitive process itself, not to protect individual competitors — still less to guarantee the survival of less efficient firms on the market.

Nevertheless, the Court held that a finding of abuse of dominance does not always require analysing whether the conduct could exclude an AEC. First, certain types of abuse — such as tying — are inherently regarded as departing from competition on the merits, making such analysis unnecessary. Second, as the Court states, “there are situations in which it is not possible, nor does it make sense” to apply this analysis. The Court indicated that is particularly the case in markets which often involve an ecosystem characterised by significant barriers and network effects and where the conduct at issue makes the entry of an AEC practically impossible.

² The Commission found that, among other things, AFAs prevented developers of noncompatible Android forks from finding distribution channels that would enable a rapid scaling up of their operations. This allegedly hindered the development of such Android forks and eliminated a credible competitive threat to Google Android.

³ See Judgment of 10 September 2024, *Google and Alphabet v Commission* (Google Shopping), C-48/22 P; C-377/20; Judgment of 21 December 2023, *European Superleague Company*, C-333/21; Judgment of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20.

⁴ Google had characterised MADA’s conditions as nonmonetary consideration received from OEMs in return for Google providing its software suite free of charge.

⁵ See Judgment of 24 October 2024, *Intel*, C-240/22 P, para. 181.

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The Annulled RSA Abuse Is Still Considered as Part of the Context in Which the Conduct Takes Place

Finally, the Court endorsed the principle that context matters in assessing exclusionary effects. The Court's holistic analysis here meant that complementary agreements (even lawful ones) may be considered as part of the factual backdrop reinforcing foreclosure. In this case, the General Court had annulled the Commission's finding that portfolio-based RSAs were abusive. The Court nevertheless took RSAs into account as part of the context of Google's conduct and found that they accentuated the exclusionary effects of the MADAs.

Moreover, the Court rejected Google's arguments that there was no single and continuous infringement since one of the constituent elements of this infringement (the RSA abuse) was annulled. The Court found that the RSA abuse was severable from the rest of the elements of the conduct, *i.e.*, the tying and the anti-fragmentation obligations, which were still covered by the same overall strategy and thus amounted to a single and continuous infringement.

Looking Ahead

The *Google Android* judgment is the latest word on common practices in the digital sector, including when pre-installation, app bundles and anti-fragmentation agreements may constitute

unlawful conduct. It marks a significant victory for the Commission and may bolster enforcement of abuse of dominance rules in the digital sector.

The Court confirmed that the Commission need not demonstrate the (non-price-related) conduct's capability to exclude an equally efficient competitor in markets where ecosystems and network effects preclude such competition — effectively lowering the threshold for establishing an abuse of dominance in digital markets.

These findings build on the Court's 2024 ruling in *Google Shopping*.⁶ In contrast, when it comes to price-related conduct (such as rebates), the AEC test would remain applicable "as a general rule."⁷

The Court also endorsed key elements of the Commission's draft exclusionary abuse guidelines, which are expected to be finalised later this year. These include the two-step test to determine if a practice amounts to an exclusionary abuse of dominance (see the AEC section above), and the nonmandatory nature of the counterfactual analysis. Importantly, the judgment also gives the Commission a green light to further de-emphasise the AEC test in its guidelines.

⁶ In *Google Shopping*, the Court found that "it would not have been possible for the Commission to obtain objective and reliable results concerning the efficiency of Google's competitors in the light of the specific conditions of the market in question." The Court referred to the particular nature of the abuse that the Commission identified: Google giving its own comparison shopping service more favourable positioning and display on its general search results pages, which allowed it to divert a large share of traffic from its general results pages towards its own service and away from competitors.

⁷ As the Court found in *Intel*, the capability of the rebates to "foreclose a competitor as efficient as the dominant undertaking, which competitor is supposed to meet the same costs as those borne by that undertaking, must be assessed, as a general rule, using the AEC test." However, the Court also stated that the AEC test is "merely one of the ways" of evaluating whether a given conduct departs from competition on the merits, so the application of the test would not be mandatory even for price-related conduct.