

ECJ Hands Down Landmark Decision on Access Restriction Abuses

Introduction

Refusal to supply vs. access restrictions

where a dominant undertaking gives access to its infrastructure but makes that access, provision of services or sale of products subject to unfair conditions, the conditions laid down [in Bronner] do not apply

obligation

*infrastructure, as that access has already been granted
access restrictions*

*do not have to force the dominant undertaking to give access to its
refusals to supply*

balance between the right to choose one's trading partners and freely to dispose of one'

delicate

The Judgment

delicate balance

Bronner is not applicable for digital ecosystems dependent on uptake from third parties

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

Indispensability

capable of constituting an abuse of a dominant position even though that digital platform is not indispensable for the commercial operation of the app concerned on a downstream market

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