



Antitrust Spotlight: *Epic v. Apple*

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The *Epic* Battle Unfolds...

by [Parker Miller](#) and [Valarie Williams](#)

The *Epic v. Apple* trial started on Monday, May 3. As antitrust trials go, this one has all the makings of a landmark event. It's the first attempt to take on a modern tech giant, complete with star witnesses (Tim Cook!), nuanced application of new and old antitrust principles, tremendous financial consequences, and even heckling teenagers. The Antitrust Team at Alston & Bird is following the developments closely.

Background

Epic Games launched a high-profile case against Apple in 2020 challenging the 30% commission Apple charges developers on in-app purchases. Epic Games, the company behind blockbuster video games like *Fortnite*, alleges that Apple monopolized the market for distribution of apps on iOS and has used that power to extract anticompetitive commissions and force developers to use Apple's payment processor. There are class actions pending that make similar allegations, but Epic's case is the first to go to trial—in a bench trial in front of Judge Gonzalez Rogers in federal court in San Francisco.

Pre-Trial Events

The Friday before trial began, the EU filed charges against Apple based on similar allegations raised by Spotify and others about these practices for music streaming apps. That doesn't mean Epic has a slam-dunk case in the United States—U.S. and EU law on monopolization and abuse of dominance diverged long ago, with the EU being more aggressive on going after Big Tech for behaviors deemed anticompetitive by the European Commission. U.S. state and federal lawmakers have also taken an interest in the debate over commissions paid to both Apple and Google for access to their app stores. So regardless of the outcome of this trial, there could be legislative changes on the horizon.

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The Trial

The parties submitted thousands of pages of testimony from experts and witnesses before the trial even started. Their opening arguments on Monday showcased the themes that will be developed over the next few weeks:

Epic

- Apple intentionally built a walled garden around its App Store to prevent competition.
- The App Store is a single-brand market where Apple exercises monopoly power.
- Apple's security concern rationale for the restrictions are pretextual since Apple does not impose the same restrictions in MacOS.
- Apple makes a lot of money from the App Store.
- Innovation in the App Store has suffered from lack of competition.

Apple

- Apple has grown the market for apps exponentially, which is inconsistent with Epic's allegations that Apple has hurt competition.
- A ruling against Apple would affect other closed video game platforms, such as Sony, Nintendo, and Microsoft.
- Apple's integrated ecosystem is necessary for security and privacy concerns.
- Epic's alleged relevant market (iOS app distribution) is wrong—it should be game transactions, which would include gaming on platforms other than iPhones.

The outcome of the case will likely hinge on Judge Gonzalez Rogers's findings on the relevant market, but the parties seem to be focusing on each other's conduct. Epic said in openings that Apple was never supposed to make money off the App Store but changed its mind to the detriment of consumers. Apple charged Epic with enjoying the benefits of the App Store until Epic thought that its products were too valuable to play by the rules.

Stay Tuned

As the trial progresses, we will be providing updates on the implications for companies that may be subject to these restrictions and for those that have similar business models to Apple's. Ultimately, this is a test case for the ability of antitrust law, in its current state, to deal with the complexities of highly concentrated markets—most notably in Big Tech—in 2021.

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