

Epic Games Moves Battleground From Mobile Phones to Courtroom With Antitrust Attacks on Apple and Google

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Epic Games, Inc., developer of the wildly popular online videogame Fortnite, has kicked off a real-life battle royale with Apple and Google over their respective application marketplaces and digital payment processing platforms. Specifically, in separate complaints filed on August 13, Epic accused Apple of monopolizing the iOS app distribution market and iOS in-app payment processing market, and accused Google of monopolizing the Android mobile app distribution market and the Android in-app payment processing market.

On August 13, Epic announced that it would offer players on iPhones and Android phones a “direct payments” option, which bypassed Apple’s and Google’s in-app payment platforms and allowed direct payments to Epic. As Apple and Google collect a 30% service fee for all transactions that occur through their payment platform, Epic offered users that opted for the direct payments option a discount on their purchases. But this new option is in direct contravention of Apple’s App Store policies as well as Google’s Google Play policies, both of which prohibit apps distributed through those marketplaces from making use of other payment processing services. Within hours of this announcement, Fortnite was removed from both the App Store and Google Play. Apple went one step further, allegedly notifying Epic that it was removing all Epic products from the App Store and terminating Epic’s access to development tools, including the tools that Epic needs to offer its “Unreal Engine”—a popular graphics engine. In response, Epic is currently seeking a preliminary injunction that would prevent Apple from taking any adverse action against Epic, including preventing Apple from removing Fortnite from the App Store and restricting Epic’s access to development tools.

Epic alleges that Apple and Google are able to collect this payment service fee in apps distributed through the App Store and Google Play, respectively, because there are no viable alternative methods of app distribution. Apple’s iPhones operate in a closed ecosystem where a user can only download apps through Apple’s App Store. Accordingly, developers must accept the App Store’s policies—including its requirement that apps do not offer in-app “direct payment” options—in order to distribute their apps to users.

Google’s Android platform is somewhat more accessible to developers since apps can be distributed through alternative app marketplaces like Samsung’s Galaxy Store and Aptoide, as well as by directly downloading apps outside of a marketplace. But Epic alleges that even with these available alternatives, Google Play is by far the dominant method of Android app distribution, accounting for “nearly all” downloads from marketplaces on Android devices. Until April 2020, however, Fortnite was not among the apps available through Google Play. Although the

Android version of the game launched 18 months earlier, Epic eschewed Google Play in favor of independent distribution—and alleged rejections from Google Play for including its own direct payment processor.

Notably, both of Epic’s complaints seek only injunctive relief and base their claims on both Sections 1 and 2 of the Sherman Act, California’s Cartwright Act, and California’s Unfair Competition Law. But the injunctions that Epic is seeking will have a much broader reach than simply allowing Epic to use its own direct payment processing platform. By seeking both broad injunctions prohibiting anticompetitive conduct and declarations that Apple’s and Google’s policies are unlawful and unenforceable, Epic is not only asking the court to impose drastic changes on Apple’s and Google’s businesses, but also to open the door to other app developers challenging other App Store and Google Play policies. And on August 19, Epic’s lawsuit against Apple was reassigned to Judge Yvonne Gonzalez Rogers, who is overseeing other litigation related to Apple’s App Store. Moreover, Google is now in the crosshairs of a consumer class action complaint alleging, among other things, that Google monopolized and restrained trade in both the Android app distribution market and the Android in-app payment processing market, and more copycat litigation is likely to follow. With so much on the line for the platforms and developers alike, this offline fight is shaping into an all-out battle.

The cases are *Epic Games Inc. v. Apple Inc.*, case number 3:20-cv-05640, in the U.S. District Court for the Northern District of California, and *Epic Games Inc. v. Google LLC*, case number 3:20-cv-05671 in the U.S. District Court for the Northern District of California.

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