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EPIC V. APPLE: AN ANTITRUST EXPERIMENT

1. Introduction

On 10 September, the United States District Court Northern District of California handed down the first-instance decision in a highly publicized case *Epic v. Apple*.[1]

Epic sued Apple for violation of Sections 1 (*inter alia*, for illegal maintenance of monopoly) and 2 (*inter alia*, unreasonable restraint on trade) of the Sherman Act, for corresponding violations of the Californian antitrust laws,[2] and for violation of the Californian Unfair Competition Act, in each case in relation to the way Apple operates its iOS App Store. The plaintiff did not claim any damages but requested the court to enjoin the defendant Apple from further violations. Apple countersued for damages stemming from the breach by EPIC of its Developer License Agreement ("DPLA") with Apple and won. Epic, for the time being, lost on all antitrust counts. It won solely on the challenge to the anti-steering provisions of the DPLA and the App Store Review Guidelines ("App Store Guidelines") on the basis of the California Unfair Competition Law.

At the time this case note is being written, both Epic's and Apple's appeals are pending.

The case involves complex facts and economics idiosyncratic to digital platforms. That elusive background made both the definition of the relevant market and the determination of anti-competitive effects of the challenged conduct particularly difficult.

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1 United States District Court Northern District of California, Case 4:20-cv-05640-YGR, Rule 52 Order After Trial on the Merits, available at https://s3.documentcloud.org/documents/21060631/apple-epic-judgement.pdf ("Epic Decision").

2 California Cartwright Act. That aspect of the dispute is not reviewed here because it is not substantially different from the Sherman Act claims.

2. Background of the Dispute

Plaintiff Epic is a large and successful video gaming company. Its most famous product is the video game Fortnight, specifically the *Battle Royale* play mode. EPIC does not charge consumers for downloading and playing *Battle Royale.* Instead, it pursues the so-called freemium business model whereby it earns money by offering players to purchase so-called V bucks and spend them on in-game digital content, such as costumes for a game character. *Battle Royale* and some other *Fortnite* game modes can be played, and V bucks can be purchased and spent, on various devices (including Sony Play station, Microsoft Xbox, Nintendo switch, PCs, mobile devices). Players using different devices can simultaneously play with one another (cross-platform play). Moreover, an individual player can start the game on one device and continue it on another while keeping the game progress (cross-platform progression). Equally, with the exception of Sony PlayStation and Nintendo Switch, a player can purchase V bucks while playing on one platform and spend them while playing on another platform (cross-purchase or cross-wallet).

Apple is, if that needs mentioning, a manufacturer of, *inter alia,* iPhone and iPad devices which operate on Apple's proprietary operating system iOS. iOS is a closed system which means that Apple maintains full control over which apps an iOS device user can download and use on the device. The fence around an iOS gaming app is threefold. If a video game producer such as Epic wants to make its game available on iOS devices, it must develop a special iOS-compatible app. In order to do so, it must enter into a non-negotiable Developer Product Licensing Agreement (DPLA) with Apple and pay a minor annual fee for the membership in the developer's program. DPLA gives the developer access to necessary tools and information to write up an app that can function on iOS. Furthermore, a third-party app developer who signs the DPLA undertakes to distribute its iOS-compatible and Apple-approved apps to iOS devices exclusively through the App Store operated by Apple and pre-installed on each iOS device. Apple does not allow installation of any competing app store on its iOS devices. Finally, to the extent a third-party game app developer charges for in-app purchases of digital goods after the app download, the payment must be processed exclusively by Apple's in-app payment processing system (IAP), whereby Apple automatically retains 30% of the transaction value as a commission.

To fortify the exclusivity of its App Store, Apple inserted into its App Store Guidelines the so-called anti-steering provisions which, *inter alia*, prohibit app developers from including in their iOS apps "buttons, external links, or other calls to action that direct customers to purchasing

mechanisms other than in-app purchase". Another disputable provision of the App Store Guidelines prohibits app developers more broadly from sending to the customers whose contact details they obtained through the App Store any communication designed to discourage them from using in-app purchase administered by Apple.

By its lawsuit, Epic essentially sought to force Apple to allow its billion-people-large iPhone consumer base install and access Epic's own game store on their iPhones and purchase *Fortnite* content from the Epic's store rather than from App Store if they so prefer.[3] It also sought to force Apple to allow Epic bypass IAP and process the payments for in-app purchases by using Epic's own payment processing solution.

Curiously, the lawsuit was preceded by an intentional breach by Epic of its DPLA with Apple and the App Store Guidelines, although Apple's expected retaliatory action was not a prerequisite for the dispute. On the day Epic filed its Complaint, it covertly installed and activated a button on its Fortnite iOS app that offered cheaper prices to players if they selected Epic's own payment system over Apple's IAP. The move forced Apple to remove Fortnite from the App Store and eventually terminate the DPLA and countersue for damages.

3. Case Review

3.1. MONOPOLIZATION (SECTION 2 OF SHERMAN ACT)

Section 2 of the Sherman Act prohibits, *inter alia*, maintenance of monopoly through unlawful means.[4] Illegal monopoly exists when there is (i) monopoly power on the relevant market which is (ii) wilfully acquired or maintained through anti-competitive conduct rather through "growth or development as a consequence of a superior product, business acumen, or historic accident".[5]

3.1.1. Relevant market

Like in every antitrust case, the departing point and the crucial task for the court was to define the relevant market. Epic and Apple fiercely differed on the proposed definitions while the court, somewhat unusually, discarded both proposals and adopted its own definition.

3 Epic's prayer for relief sought to enjoin Apple's conduct not only vis-à-vis Epic but in general. Epic's Complaint for Injunctive Relief ("Complaint") is available at https://cdn2.unrealengine.com/apple-complaint-734589783.pdf.

4 15 U.S.C. para. 2.

5 *United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966).

The plaintiff's definition of the relevant product market evolved throughout the case in pursuit of the strategy to have Apple declared a monopolist. Epic ultimately proposed that Apple operates, for the purpose of this case, on two relevant single-brand markets: (i) market for distribution of iOS apps (essentially the App Store), and (ii) market for iOS in-app payment processing. It construed both of these product markets as aftermarkets of the foremarket for smartphone operating systems.[6]

"A 'foremarket' is 'a market in which there is competition for a long-lasting product' from which 'demand for a second product' derives. An 'aftermarket' is the 'market for the second product.'"[7] Epic needed the foremarket-aftermarket construct to support its theory that Apple is a monopolist by definition. In *Eastman Kodak*,[8] the Supreme Court established that monopoly may exist on the aftermarket if the competition on the foremarket is not sufficient to discipline the undertaking on the aftermarket. This will be the case if the consumers were not able or reasonably chose not to inform themselves of the costs of transactions on the aftermarket in advance of making a purchase on the foremarket. Lock-in on the foremarket would also exist if the cost of switching to a competing primary product is prohibitory.[9]

Epic's strategy also informed its choice of the relevant foremarket. The decision to define the relevant product foremarket as the market for smartphone operating systems rather than market for smartphones, and to exclude tablets from the market definition, is conspicuous. It was motivated by the fact that Apple has only a 15% market share on the global, very competitive, market for smartphones. In contrast, the market for smartphone operating system has only two players, Apple with 40% global market share and Google with 60%. Accordingly, Epic argued that Apple has unconstrained market power on the market of smartphone operating systems that locks consumers into using iPhone and by extension iOS apps in spite of Apple's anti-competitive conduct on the derivative markets for distribution of those apps and administration of payments for in-app purchases.

Apple proposed that the relevant product market should be defined as a two-sided market for digital gaming transactions between game app

6 Findings of Fact and Conclusions of Law proposed by Epic games, Inc. ("EPIC's Proposed Findings and Conclusions'), para. 125 *et seq.*, available at https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-Games-20-cv-05640-YGR-Dkt-407-Epic-Games-Proposed-Findings-of-Facts-and-Conclusions-of-Law.pdf.

7 Epic Decision, footnote 244.

8 *Eastman Kodak Co. v. Image Tech. Servs.*, 504 U.S. 451 (1992) (*Eastman Kodak*).

9 *Ibid.*, at pp. 473–477.

developers and consumers of game app content. According to Apple, different digital transaction platforms, accessible through various devices, compete for both app developers and consumers.[10]

Epic Decision adopts a relevant market definition that was not proposed by either of the parties to the dispute. It defines the relevant product market as a two-sided market for digital mobile gaming transactions. On the one side of the transaction platform are transactions with app developers, and on the other side are transactions with app consumers.

The judge restricted the relevant market to gaming transactions on smartphones and tablets, reducing the market to Apple and Google. She excluded transactions on Nintendo Switch and streaming services for lack of evidence as to their substitutability with the transactions effected by using smartphones and tablet.[11] However, she appears to have contradicted herself when she acknowledged at one point in the decision that Nintendo, Microsoft, and Nvidia are "recent entrants into the mobile gaming submarket".[12]

The decision discards Epic's relevant product market theory on the basis that there can be no market without a product. The judge held that there is no foremarket for smartphone operating systems in which Apple competes since Apple, unlike Google, does not sell its iOS as a separate product either for the use on iPhones and iPads or for the use on other devices. Instead, Apple competes on the market for mobile devices, especially smartphones. Mobile devices are, according to the judge, more than just the underlying operating systems. Consumers choose to buy iPhone because of its design, battery and camera more than because of the operating system inside it.[13] For the same reason for which there is no foremarket, App Store and IAP cannot be the relevant markets either on a stand-alone basis or as aftermarkets. The decision essentially concludes that iOS platform and the App Store are not stand-alone products but rather platforms regulated by Apple within which competition between various apps occurs.

Even though the judge dismissed the plaintiff's foremarket-aftermarket theory, she nevertheless devotes significant effort to demonstrate that Epic's foremarket-aftermarket theory would fail even if App Store and IAP

10 Defendant Apple Inc's Proposed Findings of Fact and Conclusions of Law, Proposed Conclusions of Law, at p. 153, available at https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-Games-20-cv-05640-YGR-Dkt-410-Apple-Proposed-Findings-of-Facts-and-Conclusions-of-Law.pdf.

11 Epic Decision, p. 85.

12 *Ibid.*, p. 132.

13 *Ibid.*, p. 45.

were stand-alone product markets deriving from the primary smartphone market. In that context, the decision notes that the plaintiff did not offer any evidence suggesting that consumers are not aware, when buying iPhone, that they are investing into a closed system incompatible with other platforms. Epic also failed to impress upon the judge that the cost of switching from iPhone to Android is prohibitory. In contrast, the judge took note of evidence, introduced by Apple, that low switching from iPhone to Android-based smartphones is primarily caused by consumer satisfaction with the product rather than lock-in.[14] The court may have decided to challenge the lock-in argument in order to sustain its own definition of the relevant market as the market for mobile gaming transactions. Namely, if iOS users were locked into their iPhones, the proposition that there is competition for the gaming transactions between iOS and Android mobile devices would be untenable.

The definition of the relevant market endorsed by the court landed close to the Apple's proposal but is obviously narrower because Apple argued for the market of digital gaming transactions irrespective of the platform. While the dismissal of the Epic's proposed definition of the relevant market seems reasonable, the decision to segregate mobile gaming apps from video games in general is more controversial. According to the judge, the transactions involving the downloading of gaming apps on mobile devices and purchases within those apps are sufficiently distinct from the same type of gaming transactions that take place on PCs, consoles or cloud-based streaming platforms. It appears that the court's conclusion was driven by its inability to discern whether the fact that a lot of players play games on multiple devices is evidence of complementary playing or evidence of substitution.[15]

The finding that mobile gaming apps are sufficiently distinct from other mobile apps (such as Netflix or Spotify) is easier to understand. The court opted to segregate gaming app transactions from the rest of the app market for nine reasons, including because the overwhelming majority of revenues generated through App Store comes from the gaming transactions.[16] Generally, a cluster of products which are not mutually substitutable may create a distinct relevant market if "the product package is

14 *Ibid.*, pp. 47–48.

15 Epic Decision, pp. 60–61. Even Apple's advocacy of substitution may be read as in fact an argument in favour of complementary playing ("While an iPhone user is waiting for the bus in the morning, for example, she might decide to play a session of Fortnite on her phone for a few minutes[...] That same iPhone user, arriving home at night, might choose to play Fortnite or Halo on a game console or PC..." Apple's Proposed Conclusions of Law, para. 40.

16 Epic Decision, pp. 122–123.

significantly different from, and appeals to buyers on a different basis from, the individual products considered separately" or if customers generally obtain all products/services from the package at one place (*e.g.* banking services).[17] Epic did not develop such argument with respect to mobile apps or even iOS apps.

The relevant geographic market was determined on the worldwide level.[18]

3.1.2. Monopoly power

Having defined the relevant market, the court was called upon to determine whether Apple has monopoly power on that market.

Monopoly power is "the power to control prices or exclude competition".[19] It may be rebuttably presumed if the market share is sufficiently large, proven by direct evidence of supracompetitive pricing and restriction on output, or, more often, proven circumstantially, by showing that the undertaking has a dominant share on the relevant market that suffers from entry barriers and inability of existing competitors to increase their output in the short run.[20]

Once the judge dismissed Epic's postulation of a single-brand relevant market and opted for the relevant market of mobile gaming transactions, proof of Apple's monopoly power became more difficult given the presence of strong competitor Google.

Apple's market share on the relevant market is, as determined by the court, in the neighborhood of 55%. This falls short of the point where presumption of monopoly power arises, even if, according to the court, it brings Apple "near the precipice" of monopoly power.[21]

Since it could not infer monopoly power solely from the market share, the court examined whether there is direct evidence thereof, such as supracompetitive pricing and restriction in the output. While the court noted that Apple's 30% commission rate appears to be above the competitive

17 *Image Tech Services, Inc. v. Eastman Kodak*, 125 F.3d 1195 (1997), 1204–05; *United States v. Phillipsburg National Bank and Trust Company,* 399 U.S. 350, 360–61 & n. 4 (1970).

18 Epic Decision, p. 90. Apple unconvincingly argued for domestic market on the basis that consumers face country-specific storefronts and that competitive conditions significantly differ from country to country. Apple's Proposed Findings of Facts, paras. 438–451. The court discarded this argument, noting that country-specific storefronts are imposed by Apple rather than by market forced.

19 United States v. du Pont & Co., 351 U. S. 377, 391 (1956); *Grinnel*, at 571.

20 Epic Decision, pp. 135–136.

21 *Ibid.*, p. 139.

level, it refused to find monopoly power on that basis because, according to the prevailing precedents, supracompetitive prices must be accompanied by a decreased output in order to support a monopoly power conclusion.[22] Decrease in the output was not proven. The court noted that the record in fact shows increase in the number of gaming transactions.

Finally, indirect evidence, such as barriers to entry, did not support the monopoly power conclusion either. The court noted that the point was not even argued by Epic given that neither party proposed the market definition ultimately adopted by the court. It nevertheless concluded that limited evidence on the record does not point to insurmountable entry barriers.[23]

The court therefore concluded that Apple does not have monopoly power on the market for mobile gaming transactions. As far as Section 2 of the Sherman Act is concerned, this made further analysis of the alleged anti-competitive conduct moot.

3.2. UNREASONABLE RESTRAINT ON TRADE (SECTION 1 OF SHERMAN ACT)[24]

Section 1 of the Sherman Act prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations".[25] The Supreme Court has clarified that only unreasonable restraint of trade is caught by Section 1.[26]

To address Section 1 claim, the court first had to evaluate whether the restrictive provisions of the DPLA are an agreement in the broadest sense of that concept as used in Section 1 of the Sherman Act. If so, the next step is to analyse whether the vertical restraints imposed by Apple on app developers in the DPLA and App Store Guidelines have anti-competitive effects, *i.e.* whether they harm the competitive process and thus consumers. Anti-competitive effects can be established directly, by showing actual adverse effects, such as price increase, reduction of output or reduction of innovation above a competitive threshold, or indirectly, by showing that the defendant has substantial market power (a threshold lighter than

22 *Ibid.*, pp. 137–138.

23 *Ibid.*, pp. 138–139.

24 EPIC also advanced Section 1 illegal tying claim, which failed at the threshold because the allegedly tied products (App Store and IAP) were not seen by the court as products. Epic Decision, p. 152 *et seq*.

25 15 U.S.C. para. 1.

26 *National Soc'y of Prof. Engineers v. United States*, 435 U.S. 679, 687 (1978).

monopoly power) and has imposed a restriction on competition. The logic of indirect proof avenue is that if there is market power and a restraint on competition, the probability of competitive harm is high, whereas without market power, a restraint is unlikely to have an anti-competitive effect. Under the so-called "rule of reason", which almost always applies to vertical restraints cases, if the plaintiff makes a *prima facie* showing, directly or indirectly, of anti-competitive effects, the burden reverts to the defendant to demonstrate that there are pro-competition justifications of the anti-competitive restraint, while the plaintiff may then annul the relevance of pro-competition justifications by showing that they do not outweigh anti-competitive effects, *i.e.* that the alleged procompetitive efficiencies could be equally achieved via less restrictive means.[27] Section 1 "rule of reason" analysis therefore resembles effects-based analysis of restrictive agreements under Article 101 TFEU.

3.2.1. Agreement

The court did not consider DPLA to be an agreement within the meaning of Section 1 Sherman Act because it was unilaterally imposed on app developers. The App Store Guidelines are not an agreement for the same reason. On that basis, Section 1 analysis could have stopped at this point. However, the court took a cautious approach and proceeded to examine whether the restraints stemming from the DPLA and the Guidance have anti-competitive effects which are not offset by prevailing pro-competitive justifications.

3.2.2. Anti-competitive effects

Relying on *Amex*[28], which also involved a two-sided relevant market, the judge set the test which requires plaintiff to demonstrate that Apple's app distribution restrictions increased the cost of mobile gaming transactions above the competitive level, reduced the number of mobile gaming transactions, or otherwise stifled competition in the mobile gaming market.[29]

Regarding anti-competitive effect in the form of price increase, the *Amex* postulate is that on a two-sided market, the showing of supracompetitive pricing on the one side of the market is not sufficient for a conclusion that there is an anti-competitive price increase on the market as

27 *Ohio v. American Express.*, 138 S. Ct. 2274, at 2284 (*Amex*).

28 *Ibid.*, at 2287.

29 Epic Decision, p. 143.

a whole. There has to be net harm to the consumers.[30] This is because what appears to be supracompetitive pricing on the one side can be offset by the pricing on the other side of the market.[31] On the example of App Store, Apple charges app developers under the DPLA only a minor fee for the access to iOS app development tools. Many of those developers do not pay any commission to Apple because they do not sell digital content within their iOS apps, although they may be monetizing their apps in another manner. On the downstream side of the market, Apple charges 30% commission fee only to those developers who sell their digital content through the App Store.[32] Given the extreme complexities of the economics of digital transaction platforms, proving net harm may be in many cases impossible.[33]

Epic court lightly shrugged off these acknowledged difficulties and concluded that "Apple's app distribution restrictions do have some anti-competitive effects".[34] The court saw those anti-competitive effects in the form of foreclosed competition by large app developers who run their own stores, consumer app prices the court think would be lower in the absence of distribution restrictions, and decreased innovation compared to what would have been the case in the absence of restraints.[35] Perhaps the court took a casual approach to determining anti-competitive effects because it was convinced of their business justifications.

3.2.3. Pro-competitive business justifications

Having found that Apple's restrictions have *some* anti-competitive effects, the judge ultimately concluded that those effects are offset by the benefits the consumers get in the form of cyber security and reliability of the service (which at the same time promotes interbrand competition) and respect for consumers' privacy. She also agreed that contractual restrictions are necessary to protect Apple's intellectual property invested in the App Store from freeriding, even though she noted that the 30% rate does not corelate to the value of such intellectual property.[36] Finally, with

30 Panner, A. M., 2020–2021, Market Definition and Anticompetitive Effects in Ohio v. American Express, *The Yale Law Journal*, Vol. 130, available at https://www.yalelawjournal.org/forum/market-definition-and-anticompetitive-effects-in-ohio-v-american-express.

31 Epic Decision, pp. 90–91 and 94–95.

32 See Section 2 above.

33 Panner, A. M., 2020–2021.

34 Epic Decision, p. 144.

35 *Ibid*. pp. 96–102.

36 *Ibid*. pp. 145–147.

respect to IAP, she recognized business justification of the restraint in Apple's entitlement to facilitate collection of commission that includes royalty for intellectual property, and the benefits for consumers in the form of payment safety and convenience of a centralized purchasing system.[37]

The 'rule of reason' analysis concludes that Epic failed on its burden of proof that Apple had at its disposal less restrictive but equally efficient means of achieving security, privacy and protection of its IP.[38] On balance, with the exception of anti-steering provisions, the restrictive provisions of Apple's DPLA and App Store Guidelines are closer to being potentially beneficial to consumers than anticompetitive.[39]

3.3. CALIFORNIA UNFAIR COMPETITION LAW

This state extension of antitrust laws broadly prohibits, *inter alia*, "any unlawful, unfair or fraudulent business act or practice".[40] Given that antitrust claims failed and Apple's conduct was thus not found to be unlawful, of relevance was the 'unfair' prong of the cited prohibition.

The notion of 'unfairness' assumes that conduct is, albeit not unlawful, objectively 'unfair'. According to the so-called 'tethering test', that would be the conduct that is an 'incipient' violation of antitrust laws and conduct that violates the 'policy or spirit' of those laws with 'comparable' effects.[41]

Anti-steering provision in the Guidelines prohibit apps from including "buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase", and from "encourag[ing] users to use a purchasing method other than in-app purchase" either "within the app or through communications sent to points of contact obtained from account registrations within the app (like email or text)". Accordingly, app developers are prohibited from informing their iOS-generated customers base on the app prices on other platforms not only by inserting the relevant communication within the iOS app but also by sending pricing information to the customers' contact details obtained though their registration with the App Store. App developers are also more generally prohibited from disclosing to their customers that they are paying 30% to Apple. Anti-steering provisions do not prevent app developers from advertising their offering in a general manner on other platforms.

37 *Ibid.*, pp. 149–150.

38 *Ibid.*, p. 150.

39 *Ibid.*, p. 162.

40 Cal. Bus. & Prof. Code, para. 17200.

41 Epic Decision, p. 162.

The court condemned the challenged anti-steering provisions as amounting to unfair business practice because they prevent iOS app consumers from making a fully informed choice as to where to shop.[42] The decision makes a stark comment that "common threads run through Apple's practices which unreasonably restrains competition and harm consumers, namely the lack of information and transparency about policies which effect consumers' ability to find cheaper prices, increased customer service, and options regarding their purchases. Apple employs these policies so that it can extract supracompetitive commissions from this highly lucrative gaming industry."[43]

The decision enjoins Apple from: (i) prohibiting developers "to include in their: Apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to IAP" and (ii) "communicating with customers through points of contact obtained voluntarily from customers through account registration within the app".

This means that, while the app developers will still be prohibited from installing competing payment solutions into their iOS apps[44], they should be able to direct purchasers to shop outside the app and to contact them using the details they left upon registration with the App Store. Importantly, this injunction on anti-steering provisions is not limited to gaming apps.[45] As far as Epic is concerned, the victory on the unfair competition claim will be of little value if its assertion from the Complaint that the purchases outside a gaming app cannot substitute for in-app purchases was not self-serving.[46]

4. Conclusion

Although Epic Decision, rendered in the context of private enforcement, may not bear much relevance in Europe where public enforcement dominates[47], it confirms the central role of the relevant market definition for any competition law analysis. It also illustrates the inherent difficulty that both regulators and judges face when they attempt to assess (anti) competitiveness of business practices in the digital world. The decision

42 *Ibid.*, p. 50.

43 *Ibid.*, p. 118.

44 http://www.fosspatents.com/2021/09/no-epic-v-apple-injunction-absolutely.html.

45 Decision, p. 167.

46 Epic's Complaint, p. 29; Epic's Proposed Findings and Conclusions, para. 276 *et seq*.

47 *See* concluding remarks of Damien Geradine on https://theplatformlaw.blog/2021/09/13/the-epic-games-judgment-is-out-some-first-thoughts/.

is also rich with factual insights into the gaming industry and the world of digital transactional platforms, although the reader is left with an impression that the trial judge did not always have enough patience when evaluating those facts against antitrust principles.

It is to be seen whether the US Court of Appeals for the Ninth Circuit, and potentially the US Supreme Court, will disturb the first-instance decision in *Epic v. Apple*.

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