

COMPETITION

Is your iPhone “illegal”?

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Vertical integration is a powerful strategy employed by businesses to control more than one stage of their supply chain. By integrating operations upstream and or downstream, businesses can reduce costs, enhance efficiencies and improve competitiveness.

However, vertical integration can sometimes be "illegal". This is according to a lawsuit instituted by the United States Department of Justice ("DOJ") on 21 March 2024 along with 20 state and district attorneys general (four of which joined the law suit on 11 June 2024) against Apple Inc. ("Apple"), alleging, in a 91-page lawsuit,^[1] that Apple violated antitrust laws with practices that were intended to keep customers reliant on their iPhones and less likely to switch to a competing

"Apple's Broad-Based, Exclusionary Conduct Makes It Harder for Americans to Switch Smartphones, Undermines Innovation for Apps, Products, and Services, and Imposes Extraordinary Costs on Developers, Businesses, and Consumers"^[2]

At a high level, the lawsuit alleges that –

- Apple illegally maintains a monopoly over smartphones by selectively imposing contractual restrictions on, and withholding critical access points from developers; and
- Apple undermines apps, products, and services that would otherwise make users less reliant on the iPhone, promote interoperability and lower costs for consumers and developers.

Through the above alleged monopolisation, the lawsuit further alleges that Apple is able to exercise monopoly power to extract more money from, amongst others, consumers, content creators, artists, publishers, small businesses and merchants.

The lawsuit also alleges that Apple has monopoly power given its market shares of "**over 70 percent of the performance smartphone market and over 65 percent of the broader smartphone market**" and that the anti-competitive course of conduct of Apple has taken several forms, many of which allegedly continue to evolve today, including –

- **blocking innovative "super apps"**^[3] in that Apple has disrupted the growth of apps with broad functionality that would make it easier for consumers to switch between competing smartphone platforms;
- **suppressing mobile cloud streaming services** in that Apple has blocked the development of cloud-streaming apps and services that would allow consumers to enjoy high-quality video games and other cloud-based applications without having to pay for and rely on expensive Apple smartphone hardware. In this regard, the lawsuit notes that cloud streaming apps allow users to run computationally intensive programs without having to process or store the program on the smartphone itself. Instead, a user's smartphone leverages the computing power of a remote server, which runs the program and streams the result back to the phone. Cloud streaming allows developers to bring cutting-edge technologies and services to smartphone consumers even if their smartphone includes hardware that is less powerful than an iPhone;
- **excluding cross-platform messaging apps** in that Apple has made the quality of cross-platform messaging (and, generally, third-party message apps such as WhatsApp and Facebook) poor, less innovative and less secure for users in

order for its customers to continue buying iPhones to use, for example, Apple's messaging platform, iMessage, which generally has better functionality due to its deep integration with Apple's software system;

- **diminishing the functionality of non-Apple smartwatches** in that Apple has limited the functionality of third-party smartwatches in such a way that users who purchase the Apple Watch face substantial out-of-pocket costs if they do not buy iPhones to use the Apple Watch. In this regard, the lawsuit notes that –
- the Apple Watch is only compatible with the iPhone. Consequently, the Apple Watch cannot be used, at least functionally, with any other phone apart from the iPhone; and
- Apple uses its control of the iPhone, including its technical and contractual control of critical APIs (Application Programming Interface), to degrade the functionality of third-party cross-platform smartwatches in at least three significant ways: First, Apple deprives iPhone users with third-party smartwatches of the ability to respond to notifications. Second, Apple inhibits third-party smartwatches from maintaining a reliable connection with the iPhone and, third, Apple undermines the performance of third-party smartwatches that connect directly with a cellular network.
- **limiting third party digital wallets** in that Apple has prevented third-party apps from offering tap-to-pay functionality, inhibiting the creation of cross-platform third-party digital wallets.

Apple, as a brand, is ubiquitous and all of the above allegations are, in substance, facets of Apple's vertical integration in the performance smartphone market which are now alleged to be illegal from a competition law perspective.

The outcome of this lawsuit could have far-reaching implications for the tech giant and the broader app economy. For example, a finding against Apple could mandate substantial changes to its business model, potentially reshaping the landscape of app development and functionality of the iPhone. This observation is echoed by Apple spokesperson Fred Sainz when he said the lawsuit "*threatens who we are [our emphasis] and the principles that set Apple products apart in fiercely competitive markets*" and that "*we believe this lawsuit is wrong on the facts and the law, and we will vigorously defend against it*".^[4]

In the broader context, this lawsuit reflects growing global concerns about the power wielded by major tech companies and the need for regulatory frameworks that ensure fair competition and consumer protection.^[5] Given Apple's size and global presence, it is not inconceivable that other competition watchdogs across the globe will keep a close eye on the developments of this lawsuit. This may particularly be the case in light of the fact that the case comes up at a time when many competition watchdogs across the globe are trying to up their ante in the effort to effectively regulate digital markets.

It remains to be seen whether Apple will be found guilty of violating antitrust laws. We await the outcome!

[1] The lawsuit is available [here](#), accessed on 18 July 2024.

[2] Extract from the press release of the DOJ available [here](#), accessed on 28 May 2024.

[3] A super app is a mobile or web application that provides a wide range of services and functionalities within a single platform. Instead of needing multiple apps for different tasks, users can access various services such as messaging, payments, shopping, transportation, food delivery, and more, all in one place. An example of a super app is WeChat which was initially a messaging app, WeChat subsequently expanded to include social media, mobile payments, e-commerce and various other services.

[4] The statement is available [here](#), accessed on 28 May 2024.

[5] For example, Apple is the second tech giant the DOJ has taken on in recent years after filing two separate antitrust suits against Google (see this [link](#) accessed on 28 May 2024) and Microsoft (see this [link](#) accessed on 28 May 2024) respectively.



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