

The Daily Dish

Antitrust and Apple

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This past week, the Department of Justice (DOJ) fired the latest antitrust volley at Apple. As the DOJ complaint puts it:

> *For many years, Apple has built a dominant iPhone platform and ecosystem that has driven the company's astronomical valuation. At the same time, it has long understood that disruptive technologies and innovative apps, products, and services threatened that dominance by making users less reliant on the iPhone or making it easier to switch to a non-Apple smartphone. Rather than respond to competitive threats by offering lower smartphone prices to consumers or better monetization for developers, Apple would meet competitive threats by imposing a series of shapeshifting rules and restrictions in its App Store guidelines and developer agreements that would allow Apple to extract higher fees, thwart innovation, offer a less secure or degraded user experience, and throttle competitive alternatives. It has deployed this playbook across many technologies, products, and services, including super apps, text messaging, smartwatches, and digital wallets, among many others.*

There are a couple of reasons Eakinomics is skeptical at this juncture. First, Apple is hardly a monopolist in the smartphone market. It has about 60 to 70 percent of the market, well below the 95 percent of the browser market that Microsoft had when DOJ sued it in the 1990s. It will be hard for the DOJ to define the market in a way that Apple is a monopolist.

Second, there have been similar charges before, notably in the case between Epic Games and Apple over the game Fortnite. In that case, Epic contended that Apple restricted competition in the market for games on mobile devices running the iOS operating system. It was a successful defense because consumers didn't have to choose Apple/iOS. Instead, there is vigorous competition among platforms along many dimensions. Apple, for example, has featured security as an essential part of iOS, so in choosing Apple versus an Android phone,

the consumer is picking a bundle of security attributes, app store content, and other benefits. This defense was largely successful.

Third, the DOJ is essentially saying that Apple is obligated to help rival products of software and hardware providers to work with the IOS operating system. Unfortunately, the Supreme Court ruled antitrust law cannot be used to sue businesses for not helping rivals.

In short, if the courts adhere to the consumer welfare standard, it will be difficult for DOJ to win. The wild card is that the DOJ has tossed the consumer welfare standard as part of its revised merger and acquisition guidelines. It will be interesting to see the case develop.