

Apple Loses Bid to End App Antitrust Case in Supreme Court

LAWSUIT CHALLENGES TECH GIANT'S EXCLUSIVE CONTROL OVER THE MARKETPLACE FOR IPHONE APPS



The lawsuit over Apple's domination of iPhone apps threatens its slice of billions of dollars in software sales. PHOTO: PATRICK SEMANSKY/ASSOCIATED PRESS

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WASHINGTON—Consumers can sue [Apple Inc.](#) for forcing them to buy apps exclusively from the tech giant, the Supreme Court ruled Monday, threatening billions of dollars in revenue that the company is counting on to make up for slowing iPhone sales.

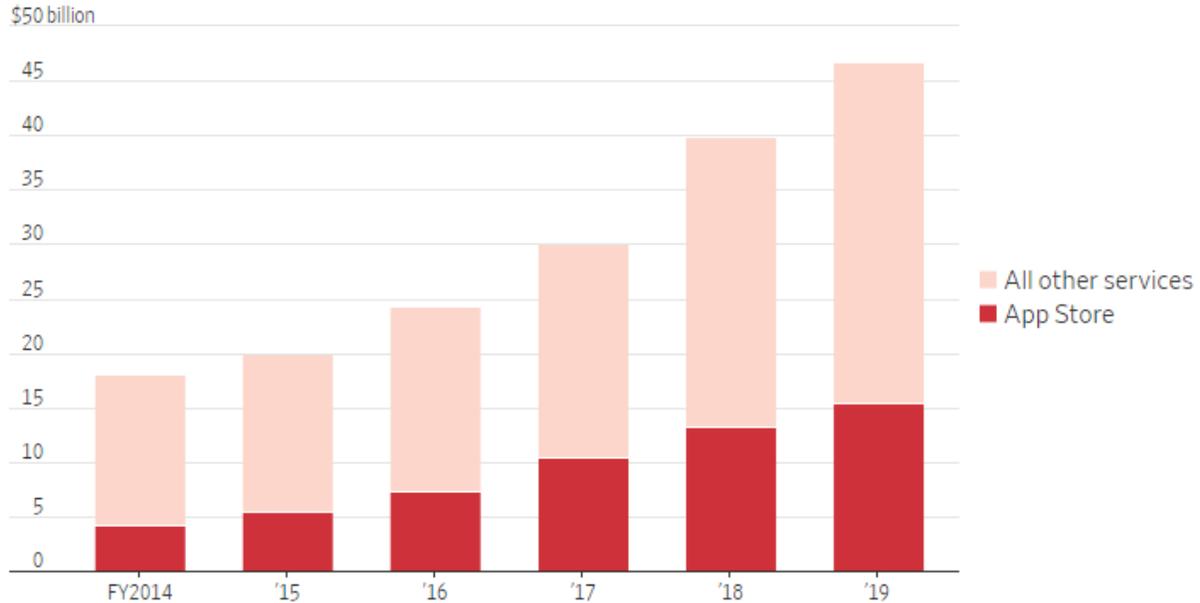
The antitrust suit alleges consumers pay inflated prices because Apple requires that all phone software be sold and purchased through the company's App Store. Apps would be cheaper if software developers could sell them directly and bypass Apple as a middleman, the lawsuit alleges.

Apple typically takes a 30% cut of every app it sells, and a 15% cut of subscriptions sold through the app store after subscribers' first year. The consumer lawsuit also complains about other App Store rules that affect pricing, such as Apple's requirement that every app price point end in "99 cents," meaning developers can only set prices in one-dollar increments like \$1.99, \$2.99 and so forth.

Steady Uptick

App Store revenue is one of the biggest contributors to Apple's growing services business.

Apple's services revenue



Notes: 2019 is an estimate; Fiscal year ends in September.

Source: Jefferies Equity Research

The Supreme Court's decision focused on a preliminary issue in the case: whether consumers had a right to sue Apple over these practices. The court, in a 5-4 opinion by Justice Brett Kavanaugh, said they did.

The court rejected Apple's arguments that consumers can't sue because it is the app developers, not the company, that set app prices.

"If accepted, Apple's theory would provide a road map for monopolistic retailers to structure transactions with manufacturers or suppliers so as to evade antitrust claims by consumers and thereby thwart effective antitrust enforcement," Justice Kavanaugh wrote in a 14-page opinion.

The case marked the first 5-4 decision written by Justice Kavanaugh, a Trump appointee who joined the court in October after a bitter confirmation battle. It also came with a twist.

During the confirmation process, liberal critics accused Justice Kavanaugh of holding a cramped view of antitrust law, but Monday's opinion was joined by four liberal justices—Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan—and articulated a view of the law that was more expansive than what Justice Kavanaugh's four other conservative colleagues could accept.

Justice Neil Gorsuch, President Trump's other appointee, led the dissenters, saying the decision created a "senseless" rule that would be complicated to apply in practice, including in the Apple case, where lower courts would now have to probe how the iPhone maker's rules might have affected the pricing decisions of app developers.

Joining him in dissent were Chief Justice John Roberts and Justices Clarence Thomas and Samuel Alito.

The high court didn't address the merits of the plaintiffs' claims. If they ultimately win, the case could change the way apps are sold and make Apple liable for significant monetary damages. The case could take one to two years, if not longer, to resolve, and several important legal issues must still be settled.

An Apple spokeswoman said the company is confident it will prevail in the lawsuit. "The App Store is not a monopoly by any metric," the spokeswoman said, adding that the company marketplace was "the safest, most secure and trusted platform for customers."

Mark Rifkin, a lawyer for the plaintiffs, said his clients were gratified the Supreme Court affirmed consumers could sue alleged monopolists. "No doubt the anticompetitive profit is a significant part of the price for iPhone apps," he said. "The injury will surely be in the billions of dollars."

The court's decision came on a day when Apple shares already were trading sharply lower because of rising U.S.-China trade tensions. Apple assembles most of its devices in

China and counts on China for about one-fifth of its sales. Apple's stock fell 5.8% Monday to \$185.72, while the broader market declined 2.4%.

Monday's ruling is the latest headache in Washington for Big Tech. President Trump and some lawmakers, including some who are running for the Democratic presidential nomination, have been vocal in criticizing dominant Silicon Valley firms, while the Federal Trade Commission recently launched a task force to take a closer look at potential anticompetitive behavior in the tech sector.

The decision also signaled that online platforms can't necessarily escape legal liability by arguing they are neutral middlemen between buyers and sellers.

"The court is not just taking as dogma the traditional notion that these platforms have no direct sales relationship with consumers," said Gene Kimmelman, president of Public Knowledge, a consumer advocacy group.

App-store sales account for about 35% of Apple's ballooning services business. Apple has pointed to that business as a bright spot in the face of declines in the number of iPhones sold. The services business grew by about 30% during the last fiscal year, to \$39.75 billion.

"Apple doesn't have to all of a sudden change, but it's another pressure point," said Ben Schachter, an analyst with Macquarie Group. A final consumer victory in the lawsuit against Apple could force the company to reduce its commission on app sales and decrease its pretax earnings by as much as 15%, he said.

The App Store offers developers access to 900 million iPhones world-wide and generally reaches a more affluent audience than rivals. Users of iPhones and iPads spent an estimated \$46.6 billion on apps in 2018, almost double what was spent for apps from rival service Google Play, according to Sensor Tower, a market research firm.

Apple has said it is entitled to take a share of app sales because it built the store and employs staff who review 100,000 submissions weekly for compliance with its rules around privacy and content.

Apple's rules differ somewhat from those of [Alphabet Inc.](#)'s Google, which developed the Android phone operating system. Google also takes a 30% cut of apps sold in its Google Play store, but Android phone users can buy apps elsewhere, including directly from the software maker in some cases.

Apple's practice of vetting apps and developers, as well as its prohibition of third-party app stores, has resulted in it having about one-tenth the amount of malware on its iOS operating system as Google does on the Android operating system, said JT Keating, vice president of product strategy at Zimperium, a mobile security company.

Dow Jones & Co., publisher of The Wall Street Journal, has a commercial agreement to supply news through Apple services.

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