

Apple v. Pepper

Meredith Hurley



What's the problem?



Pepper argues that Apple's App Store is a closed market system and artificially inflates the prices of apps because all app developers must use it

Apple's App Store = Monopoly

Apple overcharges iPhone users purchasing apps sold through the App Store.

- Charges **30% commission** on apps
- Developers pass this extra charge on to purchasers
- Increases the cost of apps and stifles competition
- iPhone users are harmed by these monopolistic practices

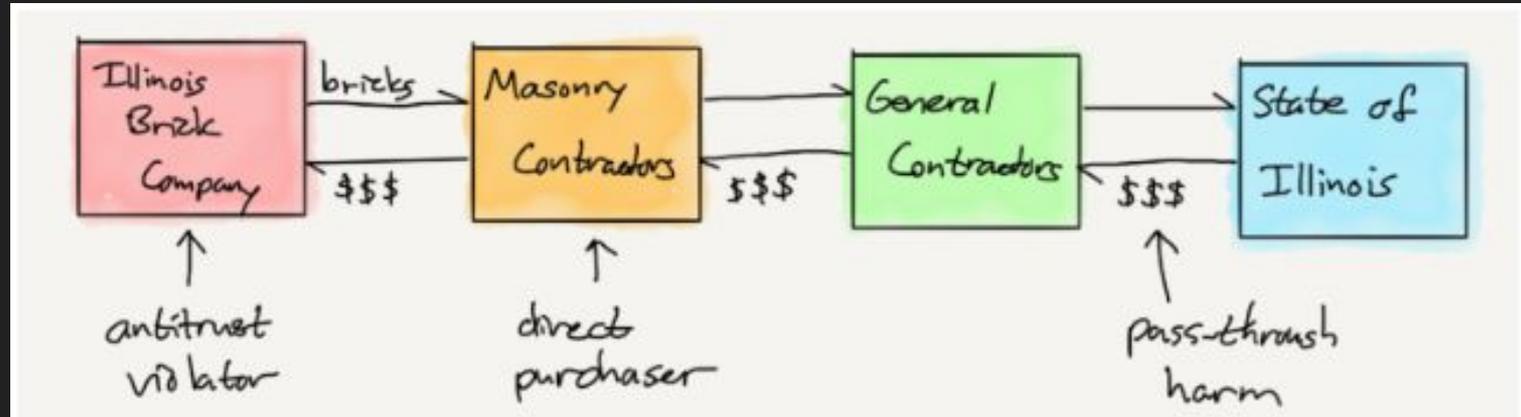


Antitrust Class Action Complaint

Section 4 of the Clayton Act, 15 U.S.C. § 15(a)

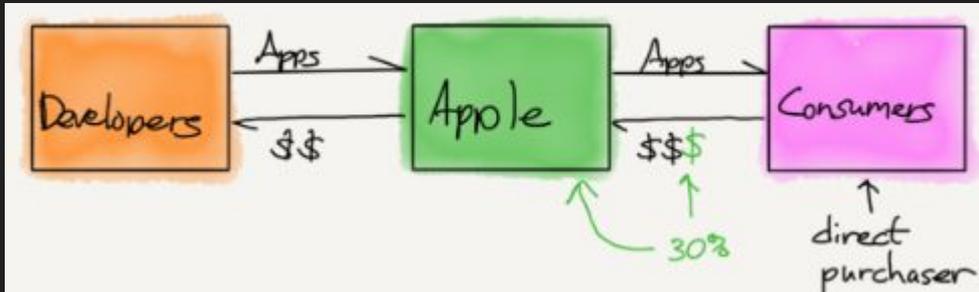
Issue = whether the plaintiffs have statutory **standing** to sue Apple under the Supreme Court's precedent in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977)

→ only the DIRECT PURCHASER has standing to sue for antitrust damages



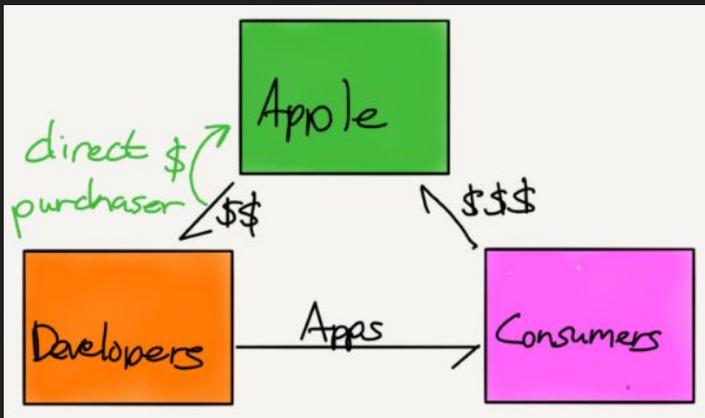
Are users purchasing the app from the developer or from Apple?

Pepper:



Apple is Direct Seller

Apple:



Apple is "Marketplace Sponsor"

What is at stake?

- ★ Millions of \$\$\$ in **triple damages** for Apple [Section 4 of the Clayton Act]
- ★ Overruling of *Illinois Brick*
 - 17 bills in Congress have attempted to repeal it, but all failed
 - Congress has actively amended the Clayton Act >24 times, never changed
- ★ How much **power** consumers have over digital platforms and tech companies
- ★ Digital platforms or electronic marketplaces operated by other companies
 - Ticketmaster, Google Android Store, etc.

Other Positions

App Developers: The App Association and R Street (amici)

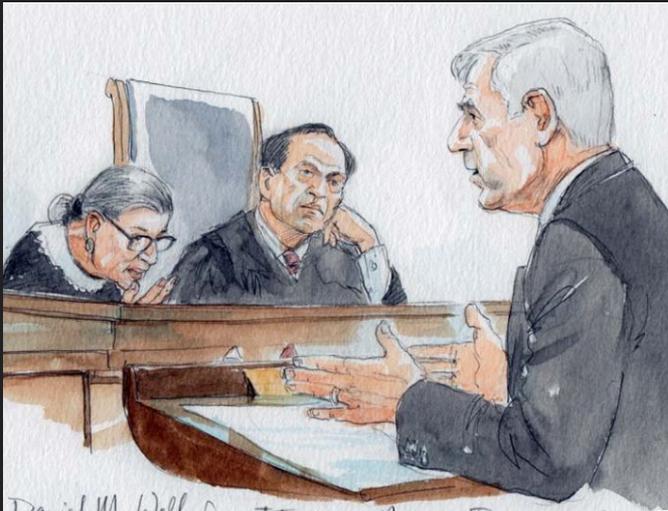
- Symbiotic relationship between app developers and Apple
- Platforms simplify market entry for developers by lowering costs and increasing trust for potential app users
- Treble damages against Apple will harm the tech sector and larger economy

FTC Commissioner: Rebecca Kelly Slaughter

- Consumers who are potential victims of antitrust violations should be allowed to bring a lawsuit
- Citizens are meaningful checks against anti-competitive corporate conduct
- This about the right of citizens to hold corporate monopoly power in check

The Advocates

Noel Francisco, Solicitor General



Daniel M. Wall for petitioner, *Apple v. Pepper, et al*
11-26-18

Daniel Wall for Apple



Noel J. Francisco, Solicitor General
Apple v. Pepper, et al, 11-26-18



David C. Frederick
for respondents, *Apple v. Pepper et al*, 11-26-18

David Frederick for Pepper

The Justices



“The first sale is from Apple to **the customer**. It’s the customer who pays the 30 percent.”



“**Illinois Brick** has been questioned by 31 states before this Court...Shouldn’t we question [it] given the fact that so many states have done so.”

“Indirect purchasers may be better suited to enforce the antitrust laws.”



“It just seems to me that when you’re looking at the relationship between the consumer and Apple, that there is only **one step**.”



“To the extent that it might be said that Apple is a **two-sided market**, they’re subject to suit on both sides of the market for a single antitrust price increase that they’re alleged to have imposed.”

Forecast

Based on reading the briefs = **Apple wins**

- Apple designed the ecosystem software that apps run on - they invited developers onto the platform
- Developers set the price consumers pay
- Apple is an agent and simply charging commission for use of its platform

Based on listening to the oral arguments = **Pepper wins**

- Made a stronger argument that Apple app store is monopoly
- Justices seemed to agree that iPhone users were direct purchasers
- Kavanaugh: noted the text of the statute is broad and vague
- Gorsuch: interest in overruling *Illinois Brick*