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Cutting Down Apple's 'Walled Garden': An insight into Epic Games, Inc v Apple Inc

In the recent case of Epic Games, Inc v Apple Inc [2025] FCA 900, Justice Beach grappled with the misuse of market power provision through the lens of electronic and contractual restrictions imposed by tech giant Apple.

Introduction

On 12 August 2025, Justice Beach of the Federal Court of Australia delivered judgment in *Epic Games, Inc v Apple Inc* [2025] FCA 900.[1]

In a lengthy decision, his Honour found that Apple had engaged in misuse of market power, in breach of section 46 of the *Competition and Consumer Act 2010* (Cth) ('CCA'), by placing restrictions on the distribution of apps and in-app payment processing services. However, his Honour did not hold that Apple had engaged in prohibited exclusive dealing, unconscionable conduct, or anti-competitive arrangements.

This judgment is of great importance to Australia digital app stores, app developers, and digital platforms, as well as consumers. This case also provides much needed instruction surrounding the application of section 46 of the CCA, which has remained largely untested following its reform in 2017.

Background – *Fortnite* and the App Store

In 2017, section 46 of the CCA was reformed. Specifically, the requirement that a company "*take advantage*" of its market power was removed. Additionally, an "*effects*" test and a "*purpose*" test were introduced. Consequently, a company with considerable market power could contravene section 46 by mere engagement in conduct which has the effect, or likely effect, of substantially lessening competition. This would be the case even where such company did not utilise its market power for this purpose.

The applicants, being the Epic Games, Inc and related companies (**Epic**), develop entertainment software for computers, smartphones and gaming consoles. Epic is primarily known for producing the very popular action video game *Fortnite*, which it distributed to its active users through Apple's 'App Store.'[2]

The respondents, being Apple Inc. and related companies (**Apple**), design, manufacture and sell smartphones, tablets, smartwatches and personal computers, known as iPhones, iPads, Apple Watches and Macs, along with various other devices and accessories. The iPhones, iPads and Apple Watches each utilise a mobile operating system known as 'iOS' which is exclusive to Apple's hardware ecosystem.

As mentioned, *Fortnite* is a popular video game, with approximately 1.4 million monthly active users in Australia. On 13 April 2020, Apple removed *Fortnite* from the App Store due to the presence of an optional payment solution known as Epic Direct Payment (**EDP**) to process in-app purchases of digital items for developers whose apps are distributed through the Epic Games Store.[3] This conduct prompted Epic to sue Apple, both in Australia and other jurisdictions such as the United States District Court for the Northern District of California.[4] Epic has also sued Google for similar conduct.

Market Power

Broadly, Epic argued that Apple, whilst wielding its "*considerable market power*", entered into contracts which had the effect of:

- requiring developers to appoint Apple as the developer's agent for 'marketing and downloading apps on the Australian App Store';[5]
- prohibiting the distribution of iOS apps to iOS devices other than by way of the App Store;[6]
- prohibiting app stores other than Apple's App Store on iOS devices;[7] and
- prohibiting iOS device users from downloading iOS apps from websites.[8]

Labelled the "*iOS restrictive terms*" by Justice Beach, it was argued that these terms effectively shielded the App Store from competition.[9] This was supplemented by "*anti-steering provisions contained in the App Store review guidelines*" which prevented "*developers from directing iOS users to alternative methods to purchase content.*" [10] In answer, Apple claimed these terms were implemented for "*legitimate reasons…such as seeking to derive return on Apple's intellectual property and protecting user privacy and security*".[11] However, Epic maintained that those justifications were not reflective of "*Apple's true purpose*"[12] and lacked "*logical connection to Apple's intellectual property*".[13] For context, Apple's approach stands in contrast to Android, where users can access multiple app stores and can download directly from websites.

Decision

Justice Beach identified that Apple possessed the relevant '*considerable market power*' in two markets; being:

- the iOS Distribution Market, in which Apple provides services related to the distribution of iOS apps;[14] and
- the iOS In-App Payment Processing market, in which Apple provides services to developers regarding digital content in iOS apps.[15]

His Honour held that Apple was therefore a "*monopolist*" in the iOS in-app payment solutions market.[16] Further, Apple charged app developers commissions of up to 30% to process payments.[17] Comparatively, this was "*well in excess of the commissions charged by payment solution providers on out-of-app purchases which range between 2 and 8% with a midpoint of 5%*".[18] This, in addition to the power to prohibit the installation of other app stores on iOS devices, informed his Honour's view of Apple's significant market power.

Ultimately, Justice Beach found that Apple had misused its market power by engaging in conduct that had the purpose, effect, or likely effect, of substantially lessening competition[19] in relation to both its iOS App Distribution Market and iOS In-App Payment Processing Market.[20] More specifically, His Honour found that "*conduct that prevents or prohibits the direct downloading or sideloading of native apps and prevents or prohibits developers and users from using alternative payments*" was in breach of s 46 of the CCA.

In relation to Apple's reasoning around security protection, Justice Beach found that this did not negate or diminish the anti-competitive purpose. It also did not impact his Honour's assessment of Apple's conduct. Tangentially, His Honour noted that alternative payment methods were permitted to allow in-app purchases of physical goods and Apple did not claim there were any security issues with this.

Notably, Justice Beach did not accept Epic's other anti-competitive claims regarding exclusive dealing,[21] anti-competitive agreements[22] or unconscionable conduct.[23]

Key Takeaways

Given the consequent public nature of this case, an appeal by one of the parties is probable. Until a higher court delivers its ruling, this decision is subject to change.

From a financial perspective, a developer's ability to access a commission structure more favourable than Apple's 30% commission likely comes as a blessing. In offering app developers a commission structure more favourable than 30%,[24] and also removing the iOS payment solution conduct,[25] his Honour highlighted that Epic's ecosystem will be expanded "*by attracting more consumers and developers to Epic's products*".[26] Additionally, "*developers who require an in-app payment solution for the purchase of digital content in their iOS apps*" will have the capacity to substitute to a supplier other than Apple.[27]

Ultimately, Justice Beach condemned Apple's "*walled garden*".[28] The Federal Court has drawn a line in the sand: market power cannot be used to fence-in innovation or fence-out competition. As the dust settles, developers can begin to move towards a technological ecosystem defined by creativity, not control.

[1] *Epic Games, Inc v Apple Inc* [2025] FCA 900 (‘*Epic*’) (Beach J).

[2] Ibid [102].

[3] Ibid [101] and [201].

[4] Ibid [201].

[5] Ibid [460].

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid [4798].

[10] Ibid [5960].

[11] Ibid [4799].

[12] Ibid [4799].

[13] Ibid.

[14] Ibid [39].

[15] Ibid [38].

[16] Ibid [5982].

[17] Ibid [210], [5880], [6273].

[18] Ibid [5967].

[19] *Competition and Consumer Act 2010* (Cth) s 46(1) (‘CCA’).

[20] *Epic* (n 1) [6114].

[21] *CCA* (n 14) s 47.

[22] Ibid s 45

[23] *CCA* (n 14) sch 2 (*Australian Consumer Law*) s 21.

[24] Ibid [145].

[25] Ibid [6101].

[26] Ibid [2].

[27] Ibid [5955].

[28] Ibid [145].