

No. 23-__

IN THE

Supreme Court of the United States

Epic Games, Inc.,

Petitioner,

v.

Apple, Inc.,

Respondent.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents two critical questions regarding the legal standards governing the Rule of Reason, which determines the outcome of nearly every Sherman Act case. It is well settled that a restraint that has both pro- and anti-competitive effects is unlawful if a “less-restrictive alternative” will achieve the same benefits while harming competition less. The circuits are divided, however, on two issues that were outcome-determinative in this case: (1) the legal test for identifying a less-restrictive alternative; and (2) if no less-restrictive alternative exists, whether the restraint is valid even when (as in this case) the court finds harms to competition that vastly outweigh the benefits.

The Questions Presented are:

1. Must a less-restrictive alternative be free from additional costs to the defendant?
2. If there is no less-restrictive alternative, is the restraint invalid if the harms to competition substantially outweigh the restraint’s procompetitive justification?

PARTIES TO THE PROCEEDING

The parties to the proceeding are as follows:

1. Petitioner is Epic Games, Inc. (“Epic”), which was plaintiff in the district court and appellant and cross-appellee in the court of appeals.

2. Respondent is Apple Inc., which was defendant in the district court and appellee and cross-appellant in the court of appeals.

RELATED PROCEEDINGS

This case was designated under Northern District of California rules as related to the following cases:

1. *Cameron v. Apple Inc.*, No. 19-cv-03074 (N.D. Cal.), judgment entered June 10, 2022.

2. *In re Apple iPhone Antitrust Litigation*, No. 11-cv-06714 (N.D. Cal.) judgment entered; *Pepper v. Apple Inc.*, No. 14-15000 (9th Cir.), judgment entered January 1, 2017, remanded to the district court July 16, 2019; *Apple Inc. v. Pepper*, No. 17-204 (S. Ct.), judgment entered June 17, 2019.

3. *SaurikIT, LLC v. Apple Inc.*, No. 20-cv-08733 (N.D. Cal.), judgment entered September 12, 2022; *SaurikIT, LLC v. Apple Inc.*, No. 22-16527 (9th Cir.).

4. *Epic Games, Inc. v. Apple Inc.*, No. 20-cv-5640 (N.D. Cal.), judgment entered September 10, 2021; *Epic Games, Inc. v. Apple Inc.*, Nos. 21-16506, 21-16695 (9th Cir.), judgment entered April 24, 2023.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Epic states that it has no parent corporation and that Tencent Holdings Ltd. owns more than 10% of Epic stock.

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