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The US Supreme Court rejects attempt to block consumer claims against a big tech company under indirect-purchaser rule (*Apple / Pepper*)

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US Supreme Court, *Apple v. Pepper*, No. 17–204, 13 May 2019

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Apple v. Pepper: Supreme Court Rejects Attempt to Block Consumer Claims Under Indirect-Purchaser Rule*

The Supreme Court on Monday issued a much-anticipated *decision* ↗ in the *Apple v. Pepper* case, where iPhone owners are accusing Apple of monopolizing the retail market for iOS applications, or apps.

The Court ruled in favor of the plaintiffs, holding that iPhone owners have standing to pursue a claim for damages against Apple under the federal antitrust laws. The decision has significant implications in terms of both the legality of Apple's practices surrounding apps and antitrust law generally.

In a somewhat surprising five-to-four decision, Justice Brett Kavanaugh, who authored the Court's opinion, sided with the Court's so-called liberal justices, with a slight majority holding that iPhone owners purchase apps directly from Apple and that, as a result, the indirect-purchaser rule does not bar them from claiming damages for Apple's allegedly monopolistic conduct. The Court held that Apple could not escape the plaintiffs' suit merely because it does not set the ultimate price paid for other developers' apps.

The Court's decision marks a critical milestone in the *Pepper* plaintiffs' suit against Apple, allowing the iPhone owners to continue their fight against the Cupertino-based company, which has recently grabbed headlines for its app store practices. Although the plaintiffs have a long road ahead of them—including class certification and summary judgment—the Court has definitively determined that they are direct purchasers vis-à-vis Apple and therefore are not barred from obtaining monetary recovery if Apple's conduct is determined to violate the antitrust laws.

The decision also marks an important coordinate in the Court’s jurisprudence on the direct purchaser rule, which limits monetary recovery in federal antitrust suits to “direct purchasers,” and has particular relevance in today’s economy, where businesses are often characterized as platforms interacting with multiple groups. The Court’s decision, by rejecting Apple’s argument that developers first pay Apple’s commission and therefore are the only group capable of recovering for Apple’s conduct surrounding the iOS app store, suggests that future plaintiffs will have antitrust standing even in the instance that a defendant does not set the price ultimately paid by the consumer. According to the Court, whether a defendant’s business involves a traditional retail relationship (i.e., the intermediary takes title of the goods to be sold) or is commission-based, standing will exist—a defendant cannot avoid standing by structuring the transaction in a way to avoid an antitrust suit.

The Court’s decision also has implications for other groups affected by Apple’s conduct, in particular app developers and publishers. The Court stated that iPhone consumers’ standing to bring suit against Apple does not preclude an app developer from bringing suit against Apple under a different theory. Although the Court’s decision will have implications for how prospective suits can be successfully maintained, the Court stated explicitly that Illinois Brick and its progeny do not bar a suit by developers under a different theory of harm.

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