

## Key Excerpts from Google's Opening Appeal Brief *Epic v. Google*

Brief filed November 27, 2024 (9th Cir. No. 24-6256)

### On what is at stake:

- *"This case involves an extraordinary attempt by a lone competitor to use the federal judiciary to restructure the day-to-day operations of Google's app store, Google Play, and to unilaterally reshape markets with consequences for millions of non-parties. If not reversed, the injunction and the flawed liability ruling underlying it will directly undercut Google's efforts to compete against Apple and the iPhone, a competitive dynamic that has spurred innovation and brought concrete benefits to consumers around the world."* p. 1

### On why the injunction is good for Epic but bad for consumers:

- *"Epic is a single plaintiff. But the injunction does not impact just Epic; it seeks to regulate Google's interactions with over half a million developers, OEMs, mobile carriers, and Android app stores—none of whom are parties."* p. 87
- *Epic's lawsuit against Google was "accompanied by an extensive (and expensive) public relations campaign designed to portray Epic as sympathetic and to mask that Epic was trying to avoid compensating Google and Apple for future services."* p. 12-13
- *"Epic's proposed remedies were unsafe and would impede competition, not improve it."* p. 22
- *"[T]he injunction would harm millions of users by creating new security threats and would infringe on the intellectual property rights of hundreds of thousands of non-party app developers, whose apps would suddenly appear in potentially hundreds of unknown stores with whom they have no relationship and through which they may have no desire to distribute."* p. 5

### On Google's competition with Apple:

- *"Google and Apple have long been locked in fierce competition over mobile devices and operating systems, including competing to ensure their consumers have access to the apps they want on those devices."* p. 7
- *"If not reversed, the injunction, and the flawed liability ruling underlying it, will directly undercut Google's efforts to compete against Apple and the iPhone, a competitive dynamic that has spurred innovation and brought concrete benefits to consumers around the world."* p. 1
- *"Epic prevailed in this case only by gerrymandering the markets to exclude Google's main competitor: Apple."* p. 31
- *"[I]f the [District Court's] contradictory treatment of Google and Apple stands, Apple will be free to continue its walled garden approach while Google has been ordered to cease practices that are central to its ability to compete with Apple on key concerns like security and convenience" and "will be required to affirmatively assist other competitors at the same time."* p. 38-39
- *"Google has designed and operated Play to ensure that Android users have a secure, trusted environment to obtain apps and in-app content, which is an essential component of consumer satisfaction with a mobile device and key to keeping Android as a robust competitor against Apple."* p. 1-2.

- *Unlike Apple, which maintains a “self-contained ecosystem that gives Apple complete control over every aspect of its devices,” Google has always believed “that the future of smart devices require[s] an operating system that [i]s not only powerful, but also open.” p. 7-8.*

#### **On the flaws in the liability verdict:**

- *“The District Court allowed the jury in this case to adopt market definitions that contradicted the settled findings in [Epic’s parallel suit against Apple].” p. 37*
- *“[T]he District Court erred by failing to instruct the jury on critical aspects of Epic’s burden of proving the markets it asserted.” p. 40.*
- *“[T]he District Court erred by holding a jury trial on Epic’s purely equitable claims over Google’s objection. Google simply never consented to a jury trial on Epic’s injunctive-relief claims alone.” p. 28*
- *“Because the jury’s verdict lacked specific findings of fact, including (for example) on exactly what anticompetitive effects the jury found or how the jury applied the Rule of Reason framework, the court simply assumed that the jury resolved every factual dispute presented at trial in Epic’s favor. This had an enormous impact on the remedies the court selected.” p. 57*

#### **On the flaws in the injunction:**

- *“At no point before the injunction issued did the District Court require Epic—the party bearing the burden of proof—to file a legal brief in support of its proposed injunction.” p. 22*
- *The injunction “requires Google to build new infrastructure to provide new services to Google’s competitors, contravening a well-established antitrust principle: Businesses generally have no duty to deal with competitors, much less design new products to prop up their competitors.” p. 28-29*
- *“Requiring Google to bring to market entirely new products specifically for its competitors defies Supreme Court antitrust precedent on duties to deal with competitors.” p. 58*
- *“Here, the District Court’s injunction exceeds the remedies Epic proposed, with no explanation for why this was necessary,” and no explanation “why it is in the public interest to impose additional remedies beyond those agreed to by the attorneys general of all fifty States, the District Columbia, and two territories.” p. 30*
- *“The District Court failed to account for the harm its injunction would cause to the security interests of millions of non-parties.” p. 82*
- *“The District Court also disregarded the legal and business ramifications of the catalog access provision for the half-million-plus developers who distribute through Play.” p. 86*