The Epic question: how Google lost when Apple won

Apple rules the iPhone's App Store with an iron fist — sideloading outside it is not allowed. Google lets anyone install any app on an Android phone. But guess which one of these two companies has an illegal monopoly, according to the courts?

As you probably already know, Google is the one that lost its fight against Epic Games this week. It's a fight that Apple previously (mostly) won in a similar trial in 2021, beating claims that it had violated antitrust laws by charging mandatory in-app transaction fees and kicking Epic's game *Fortnite* off the App Store. Google tried a similar move, but in its case, a jury found it had maintained an unlawful monopoly with the Play store; a judge is scheduled to consider remedies next month.

Listening to the verdict live in the courtroom, I couldn't believe my ears at first. Readers in our comments and around the internet felt the same. *How could Epic have possibly won* against the company that gives away its open-source operating system for free, especially after losing to that company's more locked-down competitor?

Here's my set of theories — which I spent half an hour discussing on *The Vergecast* this week.

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[&>a]:shadow-underline-black dark:[&>a]:shadow-underline-white”>2. Google controls its ecosystem with third-party business deals, meaning unfair-looking documents are in more hands.

Apple sells the iPhone. It’s Apple’s way or the highway, and has almost always been.

Google doesn’t sell the Samsung Galaxy phone lineup and didn’t sell the Motorola Droid. It builds the Google ecosystem within Android by sharing a cut of its advertising and app store profits if phone makers agree to prominently carry its apps (like Chrome, Gmail, and Play), use its APIs, and issue timely security patches. Epic’s lawyers could present details about these agreements and argue they showed Google using its power in one layer of the phone market to shut down competition in another.

As we learned in this trial, Google also tried to offer major app and game developers deals to keep them from bypassing the Google Play Store — like Project Hug, which gave top game developers up to hundreds of millions of dollars worth of credits, co-marketing, and support. Paradoxically, the fact that Google allowed some competition created a paper trail of discussions about how much of a potential threat that competition was, including forecasts of a “contagion effect” if game developers like Epic defected from Play.

Apple did face some awkward disclosures in its case too, like an internal email referring to iMessage as a “serious lock-in” factor for iOS. But the *Epic v. Apple* trial included long digressions about topics like app store moderation, giving lots of airtime to Apple’s non-monopolistic rationales for a walled garden. While Epic argued that these rationales were merely a pretext for running a monopoly, the ruling ended up treating them as valid concerns, albeit with some skepticism. In an antitrust trial, intentions matter — and over the course of its many negotiations, Google wrote a *lot* of intentions

down.

Epic Games CEO Tim Sweeney told me it’s unfortunate that the more open company is getting penalized for that openness:

> *I think Apple is… it’s a little bit unfortunate that in a lot of ways Apple’s restrictions on competition are absolute. Thou shalt not have a competing store on iOS and thou shalt not use a competing payment method. And I think Apple should be receiving at least as harsh antitrust scrutiny as Google.*

a:hover]:shadow-highlight-franklin dark:[&>a:hover]:shadow-highlight-franklin [&>a]:shadow-underline-black dark:[&>a]:shadow-underline-white”>4. This case was in front of a jury, not a bench trial.

That meant Epic could spin a tale of good and evil, while Google was left explaining away complicated business deals.

Epic showed the jury document after unfair-looking document where Google allegedly “bribed” or “blocked” its partners from becoming competitors with special deals, ones which at least disincentivized them from building, joining, or carrying alternative app stores, I’d argue.

While a judge might have well decided those deals aren’t out of the norm, the jury may have seen how the sausage is made for the very first time — and the jury was ultimately in charge.

a:hover]:shadow-highlight-franklin dark:[&>a:hover]:shadow-highlight-franklin [&>a]:shadow-underline-black dark:[&>a]:shadow-underline-white”>6. That jury saw that Google

intentionally deleted evidence, too.

Judge James Donato literally said these exact words to the jury just hours before they reached a verdict:

> *You have seen evidence that Google Chat communications were deleted with the intent to prevent their use in litigation. You may infer that the deleted Chat messages contained evidence that would have been unfavorable to Google in this case.*

Can you imagine being a juror in this case, getting told that Google probably deleted *even more* unfair deals and potentially damning evidence than what you've already seen? That's exactly what happened over and over during this trial, with Epic grilling practically every Google witness — right up to Google CEO Sundar Pichai — about why they didn't preserve all of their business communications as required by law.

It turned out that Google had set all one-on-one chats to automatically delete themselves after 24 hours by default, and employees all the way up to the CEO intentionally used that to make certain conversations disappear.

Not only did the jury see this, at least one juror decided that Sundar Pichai wasn't credible on the stand, and that the deleted chats were a factor in their decision to give Epic the win.