



The Feature

Epic v. Apple: The Ninth Circuit Weighs In

The Ninth Circuit affirmed the district court's (Northern District of California) finding that Apple willfully violated an injunction that prohibited it from requiring developers to use its in-app payment system. The district court's order was unusual for an antitrust monopolization case, finding that Apple acted in bad faith and referring a senior Apple executive to the U.S. Attorneys' Office for potential criminal perjury sanctions.

The Ninth Circuit also affirmed most of the district court's restrictions on Apple but found that a few were overboard. For example, the Ninth Circuit allowed Apple to charge a commission on link-out purchases not made through Apple's in-app payment system. The case was remanded for the district court to determine the appropriate commission amount for link-out purchases, which presumably will be significantly lower than Apple's previous 27% commission.

Read our more detailed update [here](#).

The Niche

Keeping merger control up to data

As data continues to grow more important for companies and markets, regulators consider how to adapt key merger control concepts:

- Market power: It is well established by now that data can be a source of market power in the substantive assessment of mergers – as explored, e.g., in [Facebook/Kustomer](#) (EC, 2022).
- Control: Noting the strategic power of information, India's Competition Commission recently [confirmed](#) that acquiring access to sensitive business data can confer the ability to exercise "material influence" (even in case of a minority stake).
- Local nexus: The German Federal Court of Justice [confirmed](#) that processing data of German end customers amounts to "substantial domestic operations" under the transaction value threshold, despite being based on contracts with German business customers rather than direct relationships with end customers.

Less indicative of fundamental change, these examples show that key merger control concepts remain flexible in the context of markets driven by data – for now.

Other Interesting Recent Antitrust Developments

U.S.: On November 24, 2025, the DOJ [filed](#) a proposed settlement in *United States v. RealPage*, providing the first settlement between DOJ and a revenue management software provider. In part, the settlement illustrates how DOJ contends data can (and cannot) be used by algorithms to generate price recommendations.

U.S.: On November 18, 2025, the D.C. District Court decided *FTC v. Meta Platforms, Inc.* in favor of Meta. The court concluded that regardless of whether Meta previously had a personal social media monopoly, it no longer did. The FTC filed a notice of appeal on January 20, 2026.

EU: On December 4, 2025, the European Commission (EC) opened an [antitrust investigation](#) into Meta for allegedly restricting access by third-party AI providers to WhatsApp Business Solution. The investigation covers the EEA except for Italy, where AGCM has been investigating the practice separately since November 2025 (and adopted [interim measures](#) to ensure access to WhatsApp on 24 December 2025).

EU: On December 9, 2025, the EC opened an [antitrust investigation](#) into Google for allegedly (i) using web publishers' content in AI Overviews and AI Mode without appropriate compensation or opportunity to refuse such use of their content, and (ii) content uploaded to YouTube to train GenAI models without offering appropriate compensation or opportunity to refuse such use.

Italy: On December 22, 2025, AGCM [fined](#) Apple €98m for abuse of dominance in connection with its privacy App Tracking Transparency (ATT) tool, which requires developers to unnecessarily seek consent twice. A [similar investigation](#) is on-going in Germany, where Apple proposed neutral prompts to address antitrust concerns.

What's in the Pipeline?

EU: On January 29, 2026, the French Competition Authority announced a [public consultation](#) with a view to issuing an opinion regarding AI conversational agents in the course of 2026. The public consultation is opened until March 6, 2026.

Tune In for Our Bi-Monthly Talks

[Check out](#) last month's webinar: 2025 Antitrust Year in Review

[Subscribe](#) to receive Antitrust webinar invites and updates

