

Syllabus

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SUPREME COURT OF THE UNITED STATES

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APPLE INC. *v.* PEPPER ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 17–204. Argued November 26, 2018—Decided May 13, 2019

Apple Inc. sells iPhone applications, or apps, directly to iPhone owners through its App Store—the only place where iPhone owners may lawfully buy apps. Most of those apps are created by independent developers under contracts with Apple. Apple charges the developers a \$99 annual membership fee, allows them to set the retail price of the apps, and charges a 30% commission on every app sale. Respondents, four iPhone owners, sued Apple, alleging that the company has unlawfully monopolized the aftermarket for iPhone apps. Apple moved to dismiss, arguing that the iPhone owners could not sue because they were not direct purchasers from Apple under *Illinois Brick Co. v. Illinois*, 431 U. S. 720. The District Court agreed, but the Ninth Circuit reversed, concluding that the iPhone owners were direct purchasers because they purchased apps directly from Apple.

Held: Under *Illinois Brick*, the iPhone owners were direct purchasers who may sue Apple for alleged monopolization. Pp. 4–14.

(a) This straightforward conclusion follows from the text of the antitrust laws and from this Court’s precedent. Section 4 of the Clayton Act provides that “any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue.” 15 U. S. C. §15(a). That broad text readily covers consumers who purchase goods or services at higher-than-competitive prices from an allegedly monopolistic retailer. Applying §4, this Court has consistently stated that “the immediate buyers from the alleged anti-trust violators” may maintain a suit against the antitrust violators, *Kansas v. UtiliCorp United Inc.*, 497 U. S. 199, 207, but has ruled that *indirect* purchasers who are two or more steps removed from the violator in a distribution chain may not sue. Unlike the consumer in *Illinois Brick*, the iPhone owners here are not consumers at the bot-

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tom of a vertical distribution chain who are attempting to sue manufacturers at the top of the chain. The absence of an intermediary in the distribution chain between Apple and the consumer is dispositive. Pp. 4–7.

(b) Apple argues that *Illinois Brick* allows consumers to sue only the party who sets the retail price, whether or not the party sells the good or service directly to the complaining party. But that theory suffers from three main problems. First, it contradicts statutory text and precedent by requiring the Court to rewrite the rationale of *Illinois Brick* and to gut its longstanding bright-line rule. Any ambiguity in *Illinois Brick* should be resolved in the direction of the statutory text, which states that “any person” injured by an antitrust violation may sue to recover damages. Second, Apple’s theory is not persuasive economically or legally. It would draw an arbitrary and unprincipled line among retailers based on their financial arrangements with their manufacturers or suppliers. And it would permit a consumer to sue a monopolistic retailer when the retailer set the retail price by marking up the price it had paid the manufacturer or supplier for the good or service but not when the manufacturer or supplier set the retail price and the retailer took a commission on each sale. Third, Apple’s theory would provide a roadmap for monopolistic retailers to structure transactions with manufacturers or suppliers so as to evade antitrust claims by consumers and thereby thwart effective antitrust enforcement. Pp. 7–11.

(c) Contrary to Apple’s argument, the three *Illinois Brick* rationales for adopting the direct-purchaser rule cut strongly in respondents’ favor. First, Apple posits that allowing only the upstream app developers—and not the downstream consumers—to sue Apple would mean more effective antitrust enforcement. But that makes little sense, and it would directly contradict the longstanding goal of effective private enforcement and consumer protection in antitrust cases. Second, Apple warns that calculating the damages in successful consumer antitrust suits against monopolistic retailers might be complicated. But *Illinois Brick* is not a get-out-of-court-free card for monopolistic retailers to play any time that a damages calculation might be complicated. Third, Apple claims that allowing consumers to sue will result in “conflicting claims to a common fund—the amount of the alleged overcharge.” *Illinois Brick*, 431 U. S., at 737. But this is not a case where multiple parties at different levels of a distribution chain are trying to recover the same passed-through overcharge initially levied by the manufacturer at the top of the chain, cf. *id.*, at 726–727. Pp. 11–14.

846 F. 3d 313, affirmed.

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KAVANAUGH, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. GORSUCH, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS and ALITO, JJ., joined.

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 17–204

APPLE INC., PETITIONER *v.* ROBERT PEPPER, ET AL.ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[May 13, 2019]

JUSTICE KAVANAUGH delivered the opinion of the Court.

In 2007, Apple started selling iPhones. The next year, Apple launched the retail App Store, an electronic store where iPhone owners can purchase iPhone applications from Apple. Those “apps” enable iPhone owners to send messages, take photos, watch videos, buy clothes, order food, arrange transportation, purchase concert tickets, donate to charities, and the list goes on. “There’s an app for that” has become part of the 21st-century American lexicon.

In this case, however, several consumers contend that Apple charges too much for apps. The consumers argue, in particular, that Apple has monopolized the retail market for the sale of apps and has unlawfully used its monopolistic power to charge consumers higher-than-competitive prices.

A claim that a monopolistic retailer (here, Apple) has used its monopoly to overcharge consumers is a classic antitrust claim. But Apple asserts that the consumer-plaintiffs in this case may not sue Apple because they supposedly were not “direct purchasers” from Apple under our decision in *Illinois Brick Co. v. Illinois*, 431 U. S. 720,

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745–746 (1977). We disagree. The plaintiffs purchased apps directly from Apple and therefore are direct purchasers under *Illinois Brick*. At this early pleadings stage of the litigation, we do not assess the merits of the plaintiffs’ antitrust claims against Apple, nor do we consider any other defenses Apple might have. We merely hold that the *Illinois Brick* direct-purchaser rule does not bar these plaintiffs from suing Apple under the antitrust laws. We affirm the judgment of the U. S. Court of Appeals for the Ninth Circuit.

I

In 2007, Apple began selling iPhones. In July 2008, Apple started the App Store. The App Store now contains about 2 million apps that iPhone owners can download. By contract and through technological limitations, the App Store is the only place where iPhone owners may lawfully buy apps.

For the most part, Apple does not itself create apps. Rather, independent app developers create apps. Those independent app developers then contract with Apple to make the apps available to iPhone owners in the App Store.

Through the App Store, Apple sells the apps directly to iPhone owners. To sell an app in the App Store, app developers must pay Apple a \$99 annual membership fee. Apple requires that the retail sales price end in \$0.99, but otherwise allows the app developers to set the retail price. Apple keeps 30 percent of the sales price, no matter what the sales price might be. In other words, Apple pockets a 30 percent commission on every app sale.

In 2011, four iPhone owners sued Apple. They allege that Apple has unlawfully monopolized “the iPhone apps aftermarket.” App. to Pet. for Cert. 53a. The plaintiffs allege that, via the App Store, Apple locks iPhone owners “into buying apps only from Apple and paying Apple’s 30%

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