

Bloomberg Law[®]

Mergers & Antitrust Law News



The Apple Inc. logo is displayed at one of the company's stores, Jan. 3, 2019.
Photographer: Anthony Kwan/Bloomberg via Getty Images

Apple's App Maker Lawsuit Could Be Start of More Legal Trouble

Oct. 11, 2019,

- Blix Inc.'s suit is unique since it's rare for an app developer to challenge Apple
 - The antitrust and patent infringement suit comes as lawmakers, DOJ probe Apple
- App developer Blix Inc.'s lawsuit could spell headaches for Apple Inc. with Congress and federal antitrust regulators ready to lend a sympathetic ear to the little guy.

Blix's case is unique among more than 60 antitrust and patent infringement claims against Apple since it seeks to advance monopolization claims few have attempted to litigate. Blix alleges Apple stifled competition by copying its email app BlueMail and then banned it from the app store.

Both the Justice Department and the House Judiciary's antitrust subcommittee recently launched inquiries into Apple and have sought out retailers and others that detail big tech's potentially anti-competitive tactics.

Blix is considering participating in future Congressional hearings, a spokesperson told Bloomberg Law. The app developer's cooperation with lawmakers and its separate lawsuit could prompt other companies to detail their own experiences.

"It's helpful to have developers come forward publicly like this and it may embolden others to come forward," Sally Hubbard, the director of enforcement strategy at Open Markets Institute, said.

Blix claims that Apple stole its patented technology which allows users to send emails without disclosing their private addresses. After stealing the email feature, Apple then removed BlueMail from the app store to stifle competition, Blix alleged in an Oct. 4 [lawsuit filed](#) in the U.S. District Court for the District of Delaware.

The case is one of the few antitrust suits filed by app developers that says Apple copies and then bans other developers apps—a practice called sherlocking—in order to thwart competition.

Unique Case

More individual consumers have challenged Apple's practices since a May Supreme Court ruling in [Apple v. Pepper](#) said that app purchasers can sue the company for alleged antitrust violations.

Since then, several cases, including the original Pepper case, have targeted Apple's lucrative app store model by alleging the company is a monopoly that drives up the prices of apps by artificially inflating the costs through a 30% commission Apple charges app developers.

But Blix's cases seeks to go up against Apple in a way most haven't since the Supreme Court's decision, Eleanor Tyler, a senior legal analyst at Bloomberg Law, said.

"This is definitely a different claim than the Pepper case," Tyler said. Instead of alleging Apple is a monopoly through its app store commission structure, Blix seeks to prove that Apple acts anti-competitively through both exclusionary tactics and intellectual property theft.

"Apple's anticompetitive use of the App Store is harming not only Blix, but also other software developers – and harming consumers who would otherwise enjoy the benefits of fair competition and healthy innovation," Patrick Curran, a partner at Quinn Emanuel Urquhart & Sullivan, LLP who is representing Blix, told Bloomberg Law in a statement.

If Blix doesn't settle the case with Apple and it proceeds into discovery, there's a chance Apple's conduct will be publicly aired, Hubbard said.

"I think it's really helpful to have it in a more public forum with publicly available documents and court filings," she said. "It will shed a lot more light on the conduct," Hubbard added.

Broad Scrutiny

Apple faces increased scrutiny after Rep. David Cicilline (D-RI), who chairs the House Judiciary's antitrust subcommittee, [demanded Sept. 13](#) troves of documents detailing the company's acquisition plans, internal emails between executives, and other information about its business practices.

The Justice Department in July opened a broad inquiry into whether dominant tech platforms, such as Apple, are hurting competition.

Presidential candidate Sen. Elizabeth Warren (D-Mass.) has also criticized Apple, saying running an app platform and selling its own apps gives the tech company an unfair competitive advantage.

Apple didn't respond to a request for comment.

During a July House Judiciary antitrust subcommittee hearing, Kyle Andeer, Apple's vice president of corporate law said the app store is comprised of only a few Apple made apps. Andeer said Apple faces numerous competitors in every category that the company competes in, including the app store.

Blix's suit is "another opportunity for politicians to go after Apple," Seth Bloom, a former Democratic counsel on the Senate Judiciary antitrust subcommittee, said.

"I think in this climate any kind of accusations are bad for Apple," Bloom added.

To contact the reporter on this story: Victoria Graham in Washington at vgraham@bloomberglaw.com

To contact the editor responsible for this story: Seth Stern at sstern@bloomberglaw.com