Apple, AI, and the Fight to Control Consumer Choice—Part I

By Pat Pascarella and Luke Hasskamp (August 2026)

Courts, Not Boardrooms, Are About to Decide Who Owns the Customer's First (and Last) Question

Part I of a four-part series

If you're building the assistant, this is the fight for the most valuable real estate that will ever exist in commerce.

If you're a company that will have to work through whatever assistant wins, this is the fight over whether you keep any path to your customers.

A federal judge has already ordered Google not to lock up exclusive distribution rights for its Gemini app. The Justice Department is appealing to go further, including a bid to force Google to sell Chrome and to end its default-search deal with Apple. Meanwhile, Apple is mid-discovery in a separate case that could decide whether it's allowed to favor its own products and its own AI assistant on its own devices. And just recently Apple sued OpenAI for theft of trade secrets in an action that could hamstring OpenAI's deployment of an iPhone replacement.

These cases, and others surely to follow, are not disputes confined to search, smartphones, or AI. They will determine the legal architecture of the entire AI economy: whether consumers meet a competitive field of assistants, or a market where a handful of platform owners decide which products get recommended, which firms get access to customers, and how economic decisions get made. They are quietly writing the rulebook for who gets to stand between every consumer and every purchase, loan, diagnosis, and decision they make.

Why this round of litigation is different

Search-era gatekeepers were powerful but leaky. A dissatisfied user could scroll, refine a query, or open a second tab. An AI assistant that answers, ranks, negotiates, and transacts in a single exchange, plugs that leak entirely. The default isn't a starting point for decision anymore. It's the whole decision. Consumers won't search for a car, a mortgage, a physician, or a law firm. They'll ask an assistant, and the assistant will rank, filter, negotiate, and complete the purchase—for whichever platform was asked first. That's what makes this litigation categorically different from anything that came before it: the harm from losing the "first question" is no longer diluted by downstream consumer effort. It's total.

What's actually in front of the courts right now

- *U.S. v. Google.* As noted above, Judge Mehta's September 2025 remedies ruling didn't stop at search. The court has signaled it views AI-assistant defaults as an extension of the same monopoly problem as search defaults. The DOJ and a coalition of states weren't satisfied: they've cross-appealed, seeking Chrome divestiture and an end to Google's default-search payments to Apple.
- *U.S. v. Apple.* The DOJ's case alleging Apple illegally maintains its smartphone monopoly survived Apple's motion to dismiss in June 2025. Apple has reportedly made multiple settlement proposals to the DOJ relating to several of DOJ's key complaints. Despite some private discussions, the case currently remains in active discovery with no current trial date. Buried inside this case is the question that matters most for the AI era: can Apple favor its own assistant, on its own devices, the way it has favored its own apps and services?
- X Corp. v. Apple and OpenAI. In the Northern District of Texas, xAI alleges Apple and OpenAI conspired to wire ChatGPT into iOS and bury rival assistants like Grok. The court denied motions to dismiss xAI's antitrust claims in November 2025. The dispute is headed for summary judgment. Fact discovery is about to close on July 31, and trial is set for January 2027. This is the case testing head-on whether Apple can favor one assistant on its own devices.

The real question these cases are answering

None of this turns on which model performs best on a benchmark. It turns on who gets to receive the question in the first place. The company that controls the default assistant, the operating system it runs on, or the device that decides which assistant a consumer meets first holds something more valuable than any single product: the ability to shape demand across every product, before a competitor is ever considered. For more than a century, competition law protected rivalry within a market. This is the first time it has to protect something upstream of every market at once—not how an assistant answers, but which assistant gets asked.

What does this mean for you, starting now

The stakes split cleanly along one line: are you trying to become a default, or trying to survive whichever default wins?

If you're fighting to be the platform—building or backing an assistant, a device, or a model with ambitions to sit at the front of the consumer relationship:

1. Litigate your position now, not after the remedy is set. Judge Mehta's ruling in the Google case shows exclusivity and self-preferencing theories are already being applied specifically to AI-assistant distribution, not just search. Your commercial and product decisions this year are the fact pattern a future case will be built on.
2. Assume the "we're too new to be a monopoly" defense won't hold. Google has argued that younger rivals didn't exist during the relevant conduct period and thus should be excluded from remedies. That argument is so far unsuccessful; being young doesn't exempt a distribution advantage from scrutiny.
3. Treat IP and talent flows as a live front, not an HR issue. Apple's recent lawsuit against OpenAI shows the fight over who controls the device layer will be fought through trade secret and employment law as much as antitrust. If you're building a competing device or model, your hiring pipeline is discoverable evidence

If you're a company that will have to work through whatever assistant wins—selling goods, services, advice, or expertise to consumers:

1. Diversify distribution. Don't let any single assistant or platform become the sole channel to your customer while these rules are still being written.
2. Get a seat at the table. Amicus positions and industry coalitions are being formed now, while remedies are still open questions—not after the D.C. Circuit rules in 2027 (*U.S. v.Google*).
3. Stress-test your commercial terms. Any agreement that assumes today's default arrangements hold—search deals, assistant integrations, platform placement—should

Waiting until these cases (and others) resolve is itself a decision. The companies that treat the next twelve to eighteen months as a live rulemaking process—not a spectator sport—will help write the rules everyone else lives by.

Coming in August & September

Part II: Study the Past if You Would Define the Future: United States v Microsoft

Part III: Storming the Castle: Conventional Weapons to Breach the Walled Garden

Part IV: The Trebuchet: AI