

From: David Emblidge [mailto:demblidg[REDACTED]]
Sent: Saturday, June 23, 2012 1:22 PM
To: Read, John [John.Read@ATR.USDOJ.gov]
Subject: U.S. vs. Apple, Inc., et al., 12-cv-2826 (DLC) (SDNY)

John R. Read, Esq. (john.read@usdoj.gov)
Chief, Litigation III
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Washington, D.C. 20530

Re: U.S. vs. Apple, Inc., et al., 12-cv-2826 (DLC) (SDNY)

Dear Mr. Read,

I wish to register my very serious concern about the suit brought against Apple, et. al., concerning price fixing.

A word about my background:

Ph.D in American Studies (primarily history)

20+ years as a college professor (currently, Associate Prof., Emerson College, Dept. of Writing, Literature and Publishing, where I teach publishing studies courses [about the book industry] in a graduate program)

20+ years in publishing as editor, executive editor, editor in chief, publisher, and book packager.

I will be the new Editor of The International Journal of the Book, beginning in September.

I am an expert witness, on the publishing industry, for Thomson-Reuters.

My primary area of research is the history and future of American bookstores.

U.S. vs. Apple, Inc., et al., 12-cv-2826 (DLC) (SDNY) strikes me as seriously ill-considered. No one wants to defend collusion or price fixing. Our anti-trust laws are well grounded in common sense and the spirit of fair competition. And we all recognize that in publishing today the business models are reconfiguring themselves due to the digital revolution. Some turmoil is to be expected during a paradigm shift of this magnitude.

However, the DoJ suit approaches the issue of pricing ebooks from entirely the wrong angle. The book publishing industry has suffered, incrementally, for nearly fifteen years from the increasingly predatory practices of Amazon.com. In nearly every aspect of its book business, Amazon has taken steps to create both a vertical and a horizontal monopoly in the book business. The competitive health of book publishing has always rested on the belief that a diverse, heterogeneous ecosystem of writers, publishers, printers, distributors, and booksellers would best serve the consumer and the culture as a whole. Publishing works best when competition is fair and equitable. But Amazon has

been entirely upfront about their intentions simply to destroy entire sectors of the publishing business -- especially independent booksellers, but also historically significant publishing houses and printing companies. Amazon's CEO, Jeff Bezos, has even taken to using (as advertising copy) his argument about the need to dismiss these traditional gatekeepers, and his company has sanctioned the use of an app that consumers can activate in a bookstore to see, on the spot, whether Amazon offers lower prices. Illegal? perhaps not. But tasteless and destructive of the delicate web of mutually supportive relationships among writers-publishers-booksellers-and consumers? Absolutely.

Moreover, and this gets directly to the point in the DoJ suit where it appears the government's logic is wrong, Amazon sells ebooks at below cost, as a loss leader, for one simple reason: To drive business to the Amazon hardware category where consumers must buy a Kindle in order to read any Amazon ebooks. If there is an injustice in the book selling and ebook pricing picture, it is not that Apple and some of the big six publishers tried to use the agency model as a competitive strategy, but, rather, that Amazon has abused the wholesale model by reducing the retail price of ebooks to a level below cost and below the point of sustainability for publishers. Amazon simply does not care whether the publishing industry retains its thriving ecosystem of diversity. Amazon would prefer to be the world's only bookseller and the world's only publisher. That kind of strategic thinking and that kind of anti-competitive behavior is the exact opposite of what the great publishing houses have always espoused in American history. Random House and Simon & Schuster do not set out to destroy their competition, nor do they scheme to destroy the very bookstores through which their products reach the marketplace. But Amazon does just that.

The history of publishing in America is a long story of competing to and fro, of push and push back as publishers and booksellers have sought to out perform one another. Competition has been intense, even brutal at many points, and not all companies have survived. But when one takes over so many components of the industry and then puts in motion business practices (such as refusing to collect state sales taxes), the motive is clear. This is not healthy competition: it is unhealthy, even vicious, aggression. It is also breathtakingly short sighted.

In the other advanced capitalist countries we can observe for alternate business models in publishing, we can find examples like France where the very thing for which the DoJ wants to punish Apple, et. al, is not only sanctioned but rewarded -- setting price limits below which booksellers may not discount any books. Why do the French operate their publishing ecosystem in this way? Because they recognize, correctly, that unfettered free market price cutting would inevitably drive out of business not only the publishers who created and who sustain the cultural ecosystem but also the writers who create book products in the first place. While the US has lost thousands of independent booksellers in the last fifteen years, the French have actually increased the number of successful independent booksellers, and their primary book selling chain, FNAC, is doing

well, also (as opposed to Barnes & Noble, now seriously threatened by Amazon's price cutting).

The DoJ's suit seems to be completely unaware of the dynamics of American publishing in an historical sense; it appears to be unaware of alternate business models, such as the French; and, most ironically, it appears to want to reward the predator, Amazon, while punishing the producers of the very products Amazon profits so richly from selling on their e-reader, the Kindle.

In sum, the DoJ suit was unnecessary and will do severe damage to a vulnerable industry which, if anything, is in need of the support of our government -- like the small farm agriculture business, with its crop subsidies and price supports. The suit should be withdrawn. The settlements already extracted from several publishers that could not risk the legal costs of fighting DoJ and Amazon should be rescinded. And DoJ should begin immediately to educate itself about how publishing actually works, here and abroad. A good place to start is by reading Ken Auletta's fine article this week in The New Yorker. You can no doubt buy a copy at a local independent bookstore near you, if you're lucky enough to still have one in your neighborhood.

Sincerely,
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