READERLINK

Dennis E. Abboud
President and
Chief Executive Officer

June 12, 2012

RECEIVED
JUN 1 3 REC'D 2012
LITIGATION III, ANTITRUST DIV.
U.S. DEPT OF JUSTICE

John R. Read
Chief, Litigation III Section
Antitrust Division
Department of Justice
Washington, DC 20530

Dear Mr. Read:

Re: ***U. S. v. Apple, Inc., et al.*, Civil Action No. 1:12-CV-2826**
Comments on [Proposed] Final Judgment as to Defendants Hachette, HarperCollins, and Simon & Schuster

By way of introduction, Readerlink, LLC's Readerlink Distribution Services division is the largest full-service distributor of hardcover, trade and paperback books to non-trade channel booksellers in the United States, providing books to over 24,000 retail outlets. Our customers include Target, Wal-Mart, Kmart, Toys "R" Us, Costco, Sam's Club, BJ's Wholesale, Shopko, Meijer, Kohl's, and many substantial drug and grocery chains. These customers sell one out of every five print books sold in the United States and service 275 million consumers weekly.

It is our belief that the Proposed Final Judgment (the "Settlement"), as a settlement of the charges against three of the defendants in the referenced matter, should be rejected by the Court. The Government's Competitive Impact Statement (the "Impact Statement") has erroneously characterized the eBook market as devoid of competition, resulting in increases in the retail prices of eBooks. It is our opinion, rather, that the Settlement, instead, facilitates the anticompetitive and monopolistic position and activities of a single player in the business, Amazon, that will, in fact, result in an *overall* increase in the prices of eBooks.

We believe that the Settlement lays a framework for *controlling* the marketplace for eBooks, rather than allowing for free market forces, and sets the stage for the systematic elimination of competition by Amazon. Amazon's practice of selling popular eBooks at a substantial loss *locks* consumers into a "closed" platform and drives less powerful and diversified competitors out of the market. Further, this practice also establishes a formidable barrier to entry for any new parties seeking to enter the market and compete, including our retail partners, many of whom are well-known as champions of the consumer and torchbearers for low pricing. Not only will the resulting lack of competition in the eBook market facilitate the dominance of a single player, it invokes the fundamental caution of our antitrust laws by, then, allowing for an *increase* in eBook prices with few alternatives for consumers.

Amazon's practice of selling eBooks substantially below cost will, further, adversely impact traditional retailers' willingness to offer *print* books in their stores, ultimately harming consumers. In the period before the agency model proliferated, predatory eBook pricing by Amazon severely and adversely affected print book sales by many of our retail partners, as many print book customers migrated to eBooks from Amazon as an alternative due to the vast retail pricing differential. As such, many of our retail partners reduced the number of *print* titles offered or even ceased offering *print* books altogether, adversely affecting consumers, especially those without the eBook option, as discussed below.

We cannot opine as to the allegations in the Complaint and repeated in the Impact Statement and Settlement concerning the actions of the defendants; however, the Government's account of the consequences of the agency model for the sale of eBooks, presented as fact in the Settlement and the Impact Statement, lays a false premise for the terms of the Settlement.

The pricing of eBooks in the agency agreements left competitive market forces unaffected—and in fact even led to increased price competition and lower consumer prices in sales of the majority of titles being sold. The only prices allegedly increased by the agency agreements that the Government actually attempted to *document*, in support of the Settlement, relates to a limited number of bestselling titles, when it is commonly known that the majority of eBook prices to consumers, during the agency period, actually decreased. The prices only increased, on these limited number of titles, from prices artificially set by Amazon's predatory and anticompetitive sales below cost, which were designed to artificially undermine the price and, thereby, eliminate competition by other eBook retailers, as well as traditional print book sales of best sellers by all retailers. It its filings, the Government leaps from allegations of fact to sloppy generalizations *as fact*; it specifically addresses the pricing of best sellers as increasing under the agency model and goes on to wrongly state that the agency model led to the increase in *all* eBook prices, to the harm of consumers.

The consequences of approval of the Settlement will also lead to the death of many print book sellers, who provide the *only* way to buy books for an abundance of the American book-consuming public. According to CNN.com, 47 million consumers do not have regular online access, including 59% of seniors, 46% of those with disabilities and 40% of those with annual incomes of $30,000 or less. Further, 23% of adults (and virtually no children) have credit cards, with which to make online purchases. Amazon, by predatory pricing protected by government restriction on avenues of competition in the eBook marketplace, will temporarily and illegally and below their cost, lower prices that will eliminate less financially strong or diversified competitors, and will kill off the only other option for the reading public, the retail sale of print books in brick-and-mortar retail stores. And, then, there will be none; no more competition and no other options.

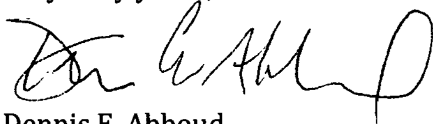
Consumers who do not have the electronic option, because they cannot afford an e-reader and the cost of its maintenance or because they do not have credit cards or other means to allow them to purchase books online, but did not need it due to the retail store, will not be able to own precious books any longer. Then, lo and behold, the sole or few who control our books through e-retail channels need not *conspire* to fix and raise prices, they can, and will, just do it. Not only is this outcome the underlying motivation and fundamental tenet of our antitrust laws, but the examples, in recent past, abound. Netflix achieved monopolistic dominance in DVD rentals, and imposed a 60% price increase following the bankruptcy of Blockbuster and the closure of the Movie Gallery, West Coast Video and Hollywood Video chains. iTunes achieved monopolistic dominance in digital music, and prices on popular tracks increased 30% following the closure of Musicland, Tower Records, Virgin Mega Stores and others.

eBooks do not exist without eBook readers. The market for eBooks is, therefore, materially distinguishable from printed books that can be picked up by any consumer and read, without more. Defining the market to evaluate the effect of any activity on the market under scrutiny cannot be limited to eBooks alone (let alone the limited subcategory of bestsellers), as the Government has done to craft its arguments in favor of the Settlement. Defining the market, as the Government should and the Court must, necessarily includes the consideration of eBook readers in the marketplace.

Amazon's sales of eBooks below cost deliberately draws consumers to its closed system eBook reader; consumers buy eBooks from Amazon that can only be read on it. This strategy ties consumers exclusively (initially, without substantial additional cost for content, and ultimately, once successful, because there are no other options) to the Amazon brand and leads to the certain demise of other eBook reader platforms and blocks the entry of any new eBook platforms into the market. The result is, once captured, Amazon raises eBook prices to all consumers. The agency model, to the extent consistent pricing of the eBook content allows for competition among providers of eBook readers, allows for the proliferation of new platforms, and increases overall competition in the sale and consumption of eBooks.

Finally, not insignificantly, the Government has failed to comply with it legal obligation to the public under the Tunney Act, by offering the Settlement for public comment without providing, for the public's and for the Court's consideration, alternatives to its Settlement, from among those offered and rejected. Instead, the Government decides, for us all, that the other "proposals or suggestions" from some Publisher Defendants, "would have provided less relief . . . and [t]hese proposals and suggestions were rejected." The law requires that any consent decree sought to be entered, be considered from the additional standpoint of "a description and evaluation of alternatives to such proposal actually considered by the Government." 15 U.S.C. §16(b)(6). The Court (and the public) have been deprived of any opportunity to consider any such alternative actually considered to determine, for itself, if this Settlement being offered is the best settlement available to the public, which for the reasons set forth above, we believe, unequivocally, it is not.

Very truly yours,



Dennis E. Abboud