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June 25, 2012

Mr. John Read
Chief Litigation III Section
Antitrust Division
U.S. Department of Justice
450 5th Street, NW, Suite 4000
Washington, DC 20530

Re: Comments on the Proposed Consent Decree in United States v. Apple, Inc., et al., 77 Fed. Reg. 24518 (April 24, 2012)

Dear Mr. Read:

I am an independent bookseller. My family has owned and operated Rainy Day Books in Fairway, Kansas (Kansas City) since 1975. I am also an attorney, admitted to the Kansas Bar in 2000. This letter is one of many you will receive in opposition to your department's efforts to eliminate the Agency Model for the sale of e-books.

I have reviewed many of the letters submitted already in opposition and will not repeat those points here, although I agree with many of them in substance and principle.

I do challenge your Department's due diligence. This case revolves around anti-competitive behavior, predatory pricing, collusion, and circumvention of the law in the book business. However, this case began long before the events stated in your cause of action. I find it puzzling that your department is responsible for investigating antitrust activity, yet has so little understanding of the major changes in the book industry over the past fifteen years, and only now takes action.

Your Department attorneys have failed to review what actions occurred before the so-called "conspiracy" began. Beginning in 2007, one entity overwhelmingly controlled the distribution of e-books in this country: Amazon.com. Moreover, this company used their monopoly status to destabilize the market for physical books. While it is well-settled law that the use of loss leader pricing is legal, there is no precedent for a company that uses an entire category of product as a loss leader.

The market eventually reacted like any other competitor faced with a monopolist: it developed alternatives. Although there continues to be upheaval, we now have robust competition and innovation under the Agency Model. There are fewer barriers to entry, and pricing is in the hands of producers large and small.

Your Department has read one chapter from a much longer book, and skimmed it at best. As a taxpayer, an attorney, a consumer, and an advocate for literacy, I request that you reexamine this situation with the attention it deserves.

Sincerely,

Geoffrey B. Jennings
Corporate Counsel
Rainy Day Books, Inc.