



Department of Justice

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WWW.JUSTICE.GOV

AT
(202) 514-2007
TTY (866) 544-5309

**JUSTICE DEPARTMENT REACHES SETTLEMENT WITH THREE OF THE
LARGEST BOOK PUBLISHERS AND CONTINUES TO LITIGATE AGAINST
APPLE INC. AND TWO OTHER PUBLISHERS TO RESTORE PRICE
COMPETITION AND REDUCE E-BOOK PRICES**

*Department Settles with Hachette, HarperCollins and Simon & Schuster;
Litigates Against Apple, Macmillan and Penguin to Prevent Continued
Restrictions on Price Competition*

WASHINGTON – The Department of Justice announced today that it has reached a settlement with three of the largest book publishers in the United States– Hachette Book Group (USA), HarperCollins Publishers L.L.C. and Simon & Schuster Inc.–and will continue to litigate against Apple Inc. and two other publishers–Holtzbrinck Publishers LLC, which does business as Macmillan, and Penguin Group (USA)–for conspiring to end e-book retailers’ freedom to compete on price, take control of pricing from e-book retailers and substantially increase the prices that consumers pay for e-books. The department said that the publishers prevented retail price competition resulting in consumers paying millions of dollars more for their e-books.

The civil antitrust lawsuit was filed in U.S. District Court for the Southern District of New York against Apple, Hachette, HarperCollins, Macmillan, Penguin and Simon & Schuster. At the same time, the department filed a proposed settlement that, if approved by the court, would resolve the department’s antitrust concerns with Hachette, HarperCollins and Simon & Schuster, and would require the companies to grant retailers–such as Amazon and Barnes & Noble–the freedom to reduce the prices of their e-book titles.

“As a result of this alleged conspiracy, we believe that consumers paid millions of dollars more for some of the most popular titles,” said Attorney General Eric Holder. “We allege that executives at the highest levels of these companies–concerned that e-book sellers had reduced prices–worked together to eliminate competition among stores selling e-books, ultimately increasing prices for consumers.”

“With today’s lawsuit, we are sending a clear message that competitors, even in rapidly evolving technology industries, cannot conspire to raise prices,” said Acting Assistant Attorney General Sharis A. Pozen in charge of the Department of Justice’s Antitrust Division. “We want to undo the harm caused by the companies’ anticompetitive conduct and restore retail price competition so that consumers can pay lower prices for their e-books.”

The department's Antitrust Division and the European Commission cooperated closely with each other throughout the course of their respective investigations, with frequent contact between the investigative staffs and the senior officials of the two agencies. The department also worked closely with the states of Connecticut and Texas to uncover the publishers' illegal conspiracy.

According to the complaint, the five publishers and Apple were unhappy that competition among e-book sellers had reduced e-book prices and the retail profit margins of the book sellers to levels they thought were too low. To address these concerns, they worked together to enter into contracts that eliminated price competition among bookstores selling e-books, substantially increasing prices paid by consumers. Before the companies began their conspiracy, retailers regularly sold e-book versions of new releases and bestsellers for, as described by one of the publisher's CEO, the "wretched \$9.99 price point." As a result of the conspiracy, consumers are now typically forced to pay \$12.99, \$14.99, or more for the most sought-after e-books, the department said.

The department alleges the conspiracy began in the summer of 2009. CEOs from the publishing companies met privately as a group about once per quarter. The meetings took place in private dining rooms of upscale Manhattan restaurants and were used to discuss confidential business and competitive matters, including Amazon's e-book's retailing practices.

The complaint states that the companies accomplished their conspiracy by agreeing to stop the longstanding practice of selling e-books, as they long sold print books, on wholesale to bookstores, and leaving it to the bookstores to set the price at which they would sell the e-books to consumers. Through their conspiracy, the companies imposed a new model under which the publishers seized e-book pricing authority from all of their retail bookstores and raised prices for e-books.

As stated in the department's complaint, one publisher's CEO said, "Our goal is to force Amazon to return to acceptable sales prices through the establishment of agency contracts in the USA. . . . To succeed our colleagues must know that we entered the fray and follow us."

The publishers also agreed with Apple to pay Apple a 30 percent commission for each e-book purchased through Apple's iBookstore and promised, through a retail price-matching most favored nation (MFN) provision, that no other e-book retailer would sell an e-book title at a lower price than Apple.

As stated in the department's complaint, Apple's then-CEO Steve Jobs said, "the customer pays a little more, but that's what you [publishers] want anyway." Based on the commitments to Apple, the publishers imposed agency terms, over some objections, on all other e-book retailers. As a result, no e-book retailer is able to compete by using its commission to discount or reduce the price that the publishers set for their e-book titles or offer any special sales promotions to encourage consumers to purchase those e-books. The department said that the

intent and effect of the publishers' contracts with Apple was to raise the prices that consumers nationwide pay for e-books.

Under the proposed settlement agreement with Hachette, HarperCollins and Simon & Schuster, they will terminate their agreements with Apple and other e-books retailers and will be prohibited for two years from entering into new agreements that constrain retailers' ability to offer discounts or other promotions to consumers to encourage the sale of the publishers' e-books. The settlement does not prohibit Hachette, HarperCollins and Simon & Schuster from entering new agency agreements with e-book retailers, but those agreements cannot prohibit the retailer from reducing the price set by the publishers.

The proposed settlement agreement also will prohibit Hachette, HarperCollins and Simon & Schuster for five years from again conspiring with or sharing competitively sensitive information with their competitors. It will impose a strong antitrust compliance program on the three companies, which will include a requirement that each provide advance notification to the department of any e-book ventures they plan to undertake jointly with other publishers and that each regularly report to the department on any communications they have with other publishers. Also for five years, Hachette, HarperCollins and Simon & Schuster will be forbidden from agreeing to any kind of MFN that could undermine the effectiveness of the settlement agreement.

The ongoing litigation against Apple, Macmillan and Penguin seeks to restore price competition among e-book retailers in the sale of the litigating publishers' e-books. Under the existing agency agreements, Macmillan and Penguin prohibit e-book retailers from exercising any pricing discretion on their titles, and Apple is freed from any price competition with other retailers in selling those e-books.

Hachette Book Group USA has its principal place of business in New York City. It publishes e-books and print books through its publishers such as Little, Brown and Company and Grand Central Publishing.

HarperCollins Publishers, L.L.C. has its principal place of business in New York City. It publishes e-books and print books through publishers such as Harper and William Morrow.

Macmillan has its principal place of business in New York City. It publishes e-books and print books through publishers such as Farrar, Straus and Giroux, and St. Martin's Press. Verlagsgruppe Georg von Holtzbrinck GmbH owns Holtzbrinck Publishers LLC, which does business as Macmillan, and has its principal place of business in Stuttgart, Germany.

Penguin Group (USA) Inc. has its principal place of business in New York City. It publishes e-books and print books through publishers such as The Viking press and Gotham Books. Penguin Group (USA) Inc. is the U.S. subsidiary of The Penguin Group, a division of Pearson plc, which has its principal place of business in London.

Simon & Schuster Inc. has its principal place of business in New York City. It publishes e-books and print books through publishers such as Free Press and Touchstone.

Apple Inc. has its principal place of business in Cupertino, Calif. Among many other businesses, Apple distributes e-books through its iBookstore.

The proposed settlement, along with the department's competitive impact statement, will be published in the Federal Register, as required by the Antitrust Procedures and Penalties Act. Any person may submit written comments concerning the proposed settlement within 60-days of its publication to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW, 4th Floor, Washington, DC 20530. At the conclusion of the 60-day comment period, the court may enter the final judgment upon a finding that it serves the public interest.

The court will determine a pretrial schedule for the case against Apple, Macmillan and Penguin once the companies file their responses to the government's lawsuit.

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