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John R. Read, Esq.
Chief, Litigation III Section
Antitrust Division, United States Department of Justice
450 5th Street, NW, Suite 4000
Washington, DC 20530

To: john.read@usdoj.gov
cc: stephen.fairchild@usdoj.gov

RE: United States v. Apple, Inc. et al., No. 12-CV-2826(DLC) (S.D.N.Y.) – Comments on Proposed Final Judgment as to Defendants Hachette, HarperCollins, and Simon & Schuster

Dear Mr. Read:

As the CEO of Zola Books, a startup e-book retailer with a mission to provide consumers with a more open, mobile and social book-buying experience than they can get from any other e-book retailer, I am writing today to oppose the proposed consent decree with Hachette, HarperCollins and Simon & Schuster. Zola Books, which will retail all e-books from all publishers, has the primary goal of empowering readers by creating a direct relationship with every significant player in the book community, including authors, independent bookstores, publishers, and book reviewers, who can individually and collectively lead readers to their next great book. Zola Books also seeks to empower readers by enabling them to read e-books on any up-to-date e-reader device, including Kindles, Nooks, iPads and iPhones, preserving consumers' e-book investments across all platforms; we are serving consumers who do not want to be locked into buying books that can only be read on one proprietary device. Zola Books also supports paying state and local taxes on all online e-book sales, because its intention is to ally with local independent booksellers and to support publicly funded services such as libraries – which we believe are essential for healthy, book-reading communities.

The agency model preserves diversity

We believe that requiring the settlement publishers to eliminate or substantially modify the agency model for the sale of e-books for two years will be damaging to writers, the publishing industry, and to companies like Zola that are eager to compete and create a diverse and healthy marketplace. The adoption of agency pricing allowed us to conceive Zola Books more than a year ago; when retailers could no longer lose money on every single e-book sold in order to gain market share, we believed a new retailer could get a foothold in the market based on the quality of its product. If agency terms are abandoned for those three publishers (representing about 25% of the trade publishing market), once again retailers will be able to undercut prices, so long as in the aggregate they do not lose money on all books from those publishers over the course of a year. With a review process that has not been specified – it seems to rely on the reporting of those retailers – and with penalties that have not been established, the settlement terms do not offer serious protection to any retailer that does not have a multibillion dollar market capitalization. Clearly, an e-book marketplace dominated by one entity limits consumer choice in the long run – as monopoly has *always* led to pricing disadvantageous to consumers in the long run.



The DoJ action already is sidelining retail competition

Already the Department of Justice action has had a negative effect on competition. Zola Books was scheduled to launch its e-book retail site to the public at the industry's prestigious trade event, Book Expo of America, on June 5, 2012. When the Department of Justice filed *United States v. Apple, Inc. et al.*, Zola Books had to halt its business negotiations with the publishers in question. (Because Zola wasn't live when the suit was filed, we are not a "continuance party," and even some contracts with non-settling publishers were withdrawn.) As a direct result of the Department's suit, Zola Books is not currently selling e-books to the public. Until the terms with the settlement publishers are resolved, Zola Books will not launch; the only way to compete with the dominant market players is to offer a full range of e-books, which is not possible because of the Department of Justice's action. So the competitive value Zola Books may provide to consumers and to the book-selling community will continue to be unavailable until new terms with the settlement publishers are established.

The settlement punishes the wrong parties

If the intent of antitrust laws is to preserve competition and innovation, there could be no better test-case than Zola – a new e-book retailer with an innovative model looking to compete with the established players.

Other letters to the Department have pointed out that prices to consumers have actually fallen since the introduction of agency pricing. Other letters to the Department have documented what monopolies have done throughout American history: raise prices – and the best example of a monopoly is Amazon, which until agency pricing controlled 90% of the e-book market. As well, it is difficult to believe that multi-billion dollar non-taxpaying retailers pose less of a long-term threat to the consumer than three publishers who collectively generate less revenue in a year than the largest e-books retailer alone generates in a quarter. But we leave those arguments to others, and instead focus on one simple, fundamental truth: Zola is a new model that offers something not currently available to consumers, and because of the Department of Justice action Zola Books is not live and serving those consumers. However innovative Zola may be, however much better its "mousetrap," it does not have the opportunity to enter the market and prove it. And when the settlement is concluded, and Zola Books can enter the market carrying all e-books from all publishers, its long-term goals of building a thriving commercial ecosystem may be undercut by the proposed settlement, which allow retailers to sell books without needing to make money from selling those books—a short term but ultimately unsustainable business strategy for any company that employs it.

In short, Zola Books is a prime example of why eliminating the agency model for two years punishes the wrong parties and sets back competition in the e-book marketplace. We urge to you amend the settlement so that the final version does not require Hachette, HarperCollins, Simon & Schuster, Macmillan and Penguin Group to drop the agency model.

Sincerely,

Joseph Regal
w/Michael Strong
Bill Shapiro
Audrey Niffenegger
Josh Bazell
Chandler Burr