

June 20, 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:

We are writing today to oppose the proposed consent decree with Hachette, HarperCollins and Simon & Schuster because we believe that it is misrepresentative of the industry, and dictates future business terms that are harmful to competition. It is likely to result in an Amazon e-book monopoly, which we believe to be to the great detriment of other booksellers and publishers, and most importantly, the consumer. The settlement seems dictated by premises derived from Amazon marketing strategies rather than through a true understanding of the industry.

We believe that Amazon seeks to establish both vertical and horizontal monopolies of the publishing and bookselling industries and represents the most significant risk to competition for e-book sales. We believe they have damaged competition through, in part:

- Self-serving misrepresentation of the true costs and benefits of physical and e-book publishing and bookselling. Publishing and selling a quality book is about much more than just writing and uploading a manuscript. Editing, design, sales, marketing, warehousing (electronic and physical), distribution, rights management, discovery, recommendations, community, and more, all add consumer value and contribute to overall sales expenses.
- Predatory pricing: Sustained selling below purchase cost from publishers (which does not include other operating, marketing or development costs, further increasing the negative margin).
- Creating a closed e-book ecosystem which doesn't allow customers to purchase from other retailers. This closed system with an initial required customer investment of over \$400 (pre-agency Kindle price) also vastly discouraged customer investment in other devices.
- Free-riding off the sales and promotional efforts of bricks-and-mortar stores which have proven to be instrumental to the discovery of titles and incur significant other expenses that Amazon does not have.
- Sales taxes avoidance which creates an unfair competitive advantage over bricks and mortar, and increases the tax burden on local taxpayers.

Hudson Booksellers is the largest airport bookseller in North America. Our stores play an important role in title discovery, with over 1.5 billion potential customer exposures annually. The traveling customer demographic is one of the best pools of potential readers, but today, they almost exclusively use our stores as a showcase for Amazon purchases, frequently downloading from Amazon while they are in our stores, and asking our associates for assistance with their Amazon purchases. We believe that we could offer some of those customers a viable alternative to Amazon for e-book and on-line purchases. However, the very significant upfront and ongoing investment required to sell e-books, combined with the risk of unsustainably low e-book margins (which are already lower than p-book margins) has prevented even

major players in the physical book industry like Hudson from entering the e-book marketplace at all at this point. Without agency pricing, or a similar model with pricing controlled by the publishers and authors, there is a very real risk that only companies with massive scale and a willingness to accept long term losses for even longer term gain will be able to compete for sales. Currently, there is only one company that fits that description.

While we don't dispute Amazon's right to pursue business, and the value that they present to their customers, this decision would hand them the tools to further reduce e-book and print book competition, under the guise of fostering competition in the marketplace. Those sales were, and are, directly siphoning significant business away from the sale of physical books. This increases the cost of physical book production, further reducing competition in the marketplace. Should Amazon be able to return to selling e-books below cost, it is possible that Hudson and many other retailers will no longer be able to compete in the physical book marketplace any longer, not to mention the e-book space. The public recognizes this; witness the massive drop in B&N's stock price after the DOJ announcement.

Before agency pricing, Amazon had a 90 percent share of the e-book market. The agency model allowed scores of other booksellers, including Barnes & Noble, independent bookstores, and others, to enter the market, resulting in a reduction of Amazon's market share to around 60% today. It has also lowered the retail prices of e-books and the required devices. Before agency model agreements and any meaningful competition for Amazon, Kindles cost approximately \$400, which Amazon could use to subsidize below-market pricing on content. With a non-replaceable battery life of less than two years, even with Amazon's below-cost retails of \$9.99 readers would have to purchase over twenty new hardcovers per year for the purchase to pay off, a number which is significantly higher than average consumption rates. In other words, Amazon wasn't offering any deals. After agency and increased competition, the entry level device is less than \$100, with e-book retails still falling below their pre-agency pricing.

Since the DOJ asserts that agency is a legal business model, so consent decree should not prevent publishers from independently establishing their own business models, including (but not requiring) agency business models. Hudson is requesting that the DOJ strongly consider this possibility when reviewing the proposed consent decree.


Finally, there has been a lot of public discussion surrounding this case, and we believe it is worth mentioning that the formal complaint letters published by Barnes & Noble and the American Booksellers Association, as well as statements such as Scott Turow's of the Authors' Guild are strongly representative of Hudson's views on this subject.

<http://news.bookweb.org/news/aba-submits-comments-doj-re-agency-model>

<http://gigaompaidcontent.files.wordpress.com/2012/06/barnes-noble-complaint.pdf>

<http://blog.authorsguild.org/2012/04/12/scott-turow-on-justice-departments-proposed-settlement/>

Sincerely,


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Vice President, Book Purchasing & Promotions

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