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John Read, Esq.
Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
450 5th Street, N.W., Suite 400
Washington, D.C. 20530

Re: Proposed Consent Decrees with Publishers Regarding Agency Pricing

Dear Sir:

I do not believe that the proposed consent decrees with three book publishers is in the interests of consumers or the book industry as a whole including most especially publishers and booksellers. I feel personally qualified to comment on this matter as both an antitrust lawyer for my entire 42 year career and a bookseller for the last 24 years. I fear that these consent decrees threaten to extinguish an experiment in pricing by Apple and five publishers that had the promise to enhance competition for the benefit of consumers before it has the opportunity to demonstrate its merit against the virtual monopoly in e-book distribution of Amazon.com.

I am well aware that pricing is among the most sensitive issues in the antitrust laws and that the Department of Justice ("DOJ") has the task under the Sherman and Clayton Antitrust Acts to protect consumers from conspiracies to fix prices. However, the DOJ is also given the task under Section 2 of the Sherman Antitrust Act to protect consumers from the pernicious effects of monopolies. I submit that Amazon.com was using its power to monopolize the e-book market with about 90% of the market prior to the introduction of the agency model. It did this by pricing such books below the price at which publishers could or would sell these books to other bookstores. Since the introduction of the agency model, more companies have entered the market for e-books and the control exhibited by Amazon.com has abated somewhat. I understand its market share may have been reduced to about 75%. Enhanced competition can only benefit consumers. It has long been an accepted fact that once a monopolist firmly controls a market, they will use this power to realize monopoly profits by raising prices to consumers. Do not kill the agency model in its infancy to give Amazon this power.

My concern with the prompt action by the DOJ to stop an alleged conspiracy in restraint of trade to establish the agency model is that there is faint evidence of a conspiracy to establish this model by Apple and the five publishers charged. All have denied such charges and the DOJ has not provided within or outside of the proposed consent decrees much evidence other than speculative descriptions of ambiguous meetings of such a conspiracy. On the other hand, evidence of Amazon.com's use and misuse of monopoly power is abundant. Not only do they price e-books below cost as discussed above, but on a nearly daily basis Amazon is threatening publishers with exclusion from its database if the publishers will not provide Amazon with discounts and benefits not readily available to competing booksellers.

I submit that it would be a better use of the DOJ resources to investigate if Amazon.com is exercising monopoly power over e-books as I believe than to attack an experiment at its outset to try to enhance competition with a new pricing system. The DOJ has the difficult task of both protecting consumers from conspiracies in restraint of trade under Section 1 of the Sherman Act as well as from monopolies in violation of Section 2 of the Sherman Act. I submit that the DOJ has leaned too far in one direction in this case and that these consent decrees will ultimately harm consumers as well as the whole book industry that is vital to maintaining our First Amendment freedoms as well as keeping an electorate informed.

On a personal note, my wife and I closed our bookstore in 2007 due to a combination of factors and not solely or primarily competition from Amazon.com. My wife has continued to act as a bookseller to schools and at author events occurring throughout the New York-New Jersey metropolitan area. In this new venture, she sells no e-books. Therefore, I hope you will understand this letter to be an honest attempt to correct what I believe will be a serious error if these consent decrees are accepted and not a personal vendetta against Amazon.

Very truly yours,

John E. Bennett