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

Dear Mr. Read,

I am writing to you to express my concern about the proposed settlement regarding Apple and the five publishers charged with colluding to fix market prices and thereby decrease competition in bookselling market. I believe, as do all of the other agents and editors writing to you, that this settlement will in fact do just what Apple and the five houses have been accused of—eliminate competition, and therefore limit the availability and variety of books to consumers. In addition, the proposed term will ensure that this market is dominated by a single, wealthy, virtual bookseller and will not foster competition amongst book vendors.

The terms of the proposed settlement are based on the false generalization that the introduction of the agency model of pricing resulted in the overall increase of ebook prices. This is true for only a small percentage of ebooks, specifically the *New York Times* bestselling titles which generally increased from $9.99 to $12.99. This single price shift, though, is not representative of the changes to pricing and competition in the market after the introduction of the agency model. In fact, before the agency model many titles were sold by Amazon for prices significantly higher than $9.99. *The apparent assumption that the bookseller was forced to raise its prices over the ten dollar mark for the first time is a misconception.* According to the 2009 Publisher's Lunch study, many non-bestselling ebooks actually decreased with the switch to the agency model. Though the price of a small selection of e-books, the bestsellers, was raised by three dollars, this change corresponded with *the simultaneous decrease in price for many other hardcover ebooks.* In short, the agency model does not work to raise the prices in general and decrease competition in the market; rather, by raising the prices of a selection of titles, competition in the market was stimulated when the prices of other titles fell.

In its attack on the agency model of price setting, the proposed settlement will allow Amazon to continue its predatory pricing tactics. The settlement will enable Amazon to continue to sell frontlist titles at a loss as long as vendors don't lose money on the entire list over the course of twelve months. As a rich and well-established corporation, it is unlikely that Amazon will lose money by selling these frontlist titles at a loss when it will make back that money in the market of backlist titles that it has come to dominate. Brick and mortar bookstores depend on these frontlist titles to thrive; allowing Amazon to sell them at a loss will only further the company's control over the ebook and backlist physical book markets while undercutting sales in physical bookstores.

These brick and mortar bookstores are a vital part of the bookselling community. By being able to physically see and handle books, consumers are able to purchase titles in ways they wouldn't necessarily be able to online, and are also opened to a more diverse purchasing experience than they would be if only virtual bookselling existed. Virtual booksellers such as Amazon are optimized for searching: if consumer knows what they are looking for, it is simple to search for that in Amazon's database. Brick and mortar bookstores, though, are the showrooms in which consumers can find new titles that they might not have been looking for, but ultimately end up purchasing. Physical bookstores allow consumers to browse for titles—a vital function of the bookselling market that the virtual book vendor cannot provide. When consumers go into physical bookstores, they can head to a specific section if they know what they are looking for; if they don't, however, they are also able to browse until they find something that captures their interest. The proposed settlement, by making these brick and mortar bookstores the more expensive, less desirable alternative to virtual booksellers, undermines the variety of purchasing venues and experiences available to consumers. Furthermore, the terms in section VI.B. of the proposed settlement hinder competition even among online retailers by tying the amount of allotted price discounts that a specific retailer can give to the total commissions collected by that retailer from the defendant publisher. In doing so, this allows any online retailer that currently controls the majority of the market for online ebook sales to provide the greatest amount of discounts thereby stifling competition from the retailers that have the minority share of the market.

I thank you for taking the time to read and consider these letters. The bookselling market is an industry as important to us as it is to consumers. I hope that our consumers will continue to have access to the diversity of titles and purchasing experiences that the healthy balance between physical bookstores and virtual booksellers can provide.

Best regards,

Denise Marcil
President