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LITIGATION III, ANTITRUST DIV.
U.S. DEPT OF JUSTICE

Dear Mr. Read,

I am writing to you with regard to your case against Apple, Penguin and Macmillan claiming they colluded to fix eBook prices via the eBook Agency model. My representation, set out below, is that in fact you (and the European authorities) should be prosecuting Amazon for abusing its market position via predatory pricing and some possibly illegal unsolicited approaches to consumers re their products.

To explain further, Books4Spain is a newly established (launched in late 2011) online bookshop specialising in English language books and eBooks about Spain. Although based in the UK, as a web based business our customers are worldwide.

Agency pricing was introduced in the US in May 2010 and later that year in Europe (which has its own issues re VAT on eBooks) and I subsequently wrote the following post about this [Agency Pricing – Who Benefits?](#) which looks at the pros and cons of agency pricing from the perspective of publishers, authors, retailers and consumers.

As a new online bookshop we chose to compete with Amazon (with whom I am very familiar having written a case study about them in 1998 for the Financial Times) by adopting a niche strategy. However, it was clear that as the eBook market took off Amazon were using their virtual monopoly to adopt predatory pricing of eBooks via huge discounts available by the traditional wholesale model and also to create a proprietary platform from which to sell eBooks.

Thus for us as new retailer the agency model created a level playing field and gave us an opportunity to compete with Amazon on best selling titles. Naturally, we were concerned that the relevant publishers would abuse this situation but my experience suggests that over time they have learnt how to price popular eBooks – this was after all a new market for them too and they did have some re-positioning to do in terms of strategy, infrastructure and mentality.

The agency model has therefore helped to stop Amazon further advancing its dominant position in eBooks, helped retailers large and small to compete with them in the mainstream eBook market and has not, in my experience or opinion, resulted in an abuse of power by the agency publishers in terms of excessive price.

In fact our own experience suggests that it is Amazon who is abusing its position. Aside from the fact that it clearly has a dominant market position in books, eBooks, DVDs and CDs (it does own: LoveFilm, Audible, ABE, Book Depository, some publishing businesses, including its own Createspace, and also the technology to apply DRM to Kindle eBooks)

So here is our specific experience with Amazon:

Since launching Books4Spain in late November, Amazon have approached 2 of our independent reviewers on an unsolicited basis with very targeted offers for books they had, or were about to, review for us (in fact the book which was going to be reviewed had not even been published at that point and our email correspondence had been with the publisher and the reviewer). They also approached a third colleague with an offer for books related to Spain.

One of the 2 reviewers has never received any such emails before from Amazon nor are they signed up to Amazon's email "newsletter". The other used to receive email newsletters for sundry goods (usually NOT books) but unsubscribed to all such newsletters many months before they received the "offer" for the book we were asking them to review (and which had not even been published at that time). Also, although they both live in Spain, they assure me that they have not bought similar books from Amazon to those that they were being offered for more than a year prior to receiving the unsolicited email and that they have not searched Amazon for any of the titles (or similar).

One such incident I can just about accept as coincidence (and that was difficult) but in my view two such incidences is not a coincidence. In addition, the approach to the third person was also not "normal" since they have not bought books about Spain from Amazon and do not even live in Spain. None of them have their email addresses on our site and only one has their real name.

One of the reviewers has asked Amazon for a full explanation of how they came to send him an email offering him the relevant books. Initially they claimed that he was signed up to their email Newsletter and that this approach was therefore "normal". This clearly not being the case he has sent them the following questions:

Unfortunately your response does not answer my questions in a satisfactory manner. For example, you state:

On further investigation it would appear that your e-mail preferences are set to receive e-mails from Amazon regarding offers and promotions.

In this regard I would like to know:

- 1. Why have I not received e-mails from Amazon before IF as you claim, my preferences are set to receive offers (which to my knowledge is not the case)?*
- 2. Why did I get this particular one and not any others before?*
- 3. When did I set my email "preferences" and can you tell me what they are?*

Can you also explain what: "we can sometimes email non direct offers or promotions" - actually means?

Finally, I would like to know what cookies you are using to monitor my usage of Amazon (or any other websites) from my computer.

Thank you and I look forward to a full response to these questions.

At the time of writing this letter, we are still waiting for a full and proper explanation more than 2 weeks after sending them these questions.

I am all for competition and Amazon do provide consumers with a great, if soulless, experience BUT our experience indicates that they have crossed a line.

How can Amazon be so smart to specifically target these people with offers for books which they have reviewed and/or are about to review and other books which are closely related to reviews they have done when they have not used Amazon to either search for, or buy, books related to Spain? Are Amazon being very clever and using cookies to monitor peoples browsing behaviour OFF the Amazon website and then using that information? The EU has recently passed laws governing use of cookies, e.g. type allowed without permission, types that require permissions etc. and I suspect Amazon may be using "old" and deep cookies to track peoples non-Amazon browsing behaviour and then using that information to target them. If that is the case then this is an invasion of privacy and I think Amazon (probably by law now in the EU at least) has to ask users to opt in to the use of such cookies.

I appreciate that your legal process and reasons for investigating a monopoly (or oligarchy) are different to those in Europe in that you require that an abuse of that position has, or is, occurring and not merely the fact that a company is in a monopoly situation, but I do feel strongly that further investigation into Amazon's abuse of its virtual monopoly position with regard to online sales of books and eBooks is more than merited.

In my view, all you need to do as far as the Agency model is concerned is remove the Most Favoured Nation status enjoyed by Apple – bear in mind that Amazon imposes this on authors who publish via them and also on their Marketplace sellers. It is also worth pointing out that the price of physical books is fixed in France, Germany, Spain and some other continental European countries and the EU authorities are not investigating this practice (I do understand that your case is more about the alleged collusion rather than the pricing per se).

Thank you for your attention and I look forward to hearing your thoughts about an investigation into Amazon's practices.

Yours sincerely,



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