

June 11, 2012

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

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

Dear Mr. Read,

We are writing in support of many of our colleagues who have made their thoughts public through letters regarding the Department of Justice case against Apple and 5 other publishers. While we know that many have already expressed their thoughts about the complicated circumstances surrounding the case, we also wanted to weigh in with our concerns about this lawsuit and its implications on the future of the publishing industry.

While we are not legal experts, nor do we have extensive knowledge of collusion or antitrust, Market Partners International is comprised of three publishing professionals with almost a century of experience amongst them. In our careers working in and with publishing houses, we have experienced major changes in the industry over the course of the past 30 years, and as consultants working with clients in all sectors of book business, our knowledge of the issues affecting this industry—especially those relating to digital publishing—continues to expand.

One word frequently used on both sides of this case is “competition,” and we would like to note that there seem to be two different ways in which the word is being used amongst our colleagues. While Judge Cote made an excellent point in her rejection of the motion to dismiss this lawsuit that the agency model eliminates “horizontal price competition” in pricing, the need to find a regulated method of pricing was done in the interest of allowing that same horizontal competition amongst retailers in the marketplace.

One factor that has made ebooks especially unique in the marketplace is how segregated consumers have become depending on who manufactures their ereaders. For millions of people with dedicated ereaders, buying ebooks is not merely buying a title, but buying into an “ecosystem,” and with the Kindle being one of the most restrictive platforms, it has been almost impossible for competitors to thrive. Those who manage to compete, such as Nook and Kobo, do so with the help from agency pricing.

A reasonable concern expressed in this lawsuit is the idea of price fixing and that publishers are using the lack of pricing competition to raise their ebook prices as a whole to protect the sales of hardcover physical books. However, there is no evidence that ebook prices as a whole have risen—simply that bestselling titles are standardized through the agency model to prevent retailers with deep pockets from selling books at a loss, thus making it impossible for smaller retailers to compete for big business. As

Simon Lipskar references in his letter, which was made open through the AAR website, a 2009 Publishers Lunch study shows that the prices of many non-bestselling ebook titles have actually decreased since the agency model's implementation.

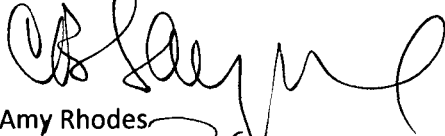
Given these and other reasons as laid out in detail by Simon Lipskar and many more of our colleagues, we find the claim that Agency pricing has harmed American consumers to be incorrect. We urge you to reconsider whether punitive measures against Apple and the publishers concerned is in the best interest of American consumers, both in the short term as the ebook marketplace continues to take shape and in the long term that will serve readers for years to come.

Respectfully Yours,

Lorraine Shanley



Constance Sayre



Amy Rhodes

