

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

Dear Mr. Read,

As the operator of five independent toy stores in the Washington, DC area, I write to express my concern with the proposed consent decree in U.S. v. Apple, Inc, et al as published in the Federal Register on April 24, 2012.

My co-owners and I oppose the proposed consent decree with Hachette, HarperCollins and Simon & Schuster primarily because it requires that the Agency Model for the sale of e-books be eliminated by these three publishers for two years. As a reader, book-buyer, and "mom and pop" retailer, I fail to see how this settlement promotes the public interest. If publishers secretly discussed and fixed prices, then by all means fine them, severely if you believe this will prevent collusion in the future. But **eliminating agency pricing, which no one, including the Department of Justice is contending is illegal, will have a chilling effect on retailers well beyond the book industry**, and may further hasten the decline of independent, locally owned toy stores and other brick-and-mortar retailers.

The settlement would, among other things, bar the publishers in questions from using agency pricing for two years. It would effectively return the market to its previous state where a single dominant player, Amazon, controlled pricing. If agency pricing is illegal, please rule it as such. But since that is not the question here, I am at a loss to understand why the remedy is to eliminate a legal business practice for two years. I find it ironic that an anti-trust action brought in the name of the public interest will result in the weakening of real competition in the book industry and concentrate power in the hands of a very few large online retailers.

As an independent retailer, I support pricing policies that promote greater competition in the retailing sector and adequately take into account the value provided by brick-and-mortar stores. I wish to see these pricing practices remain legal and protected by antitrust policy. By eliminating agency pricing, this settlement would suspend the ability of producers to adopt such policies in one important sector, books. I fear that this will have a chilling effect on other pricing strategies, such as Minimum Advertised Pricing Policies (MAPP), that are

important in the toy industry and other retail operations. With MAPP, manufacturers establish a minimum retail price at which their goods can be advertised in print or online. Brick-and-mortar retailers may choose to sell these goods for more or for less in their stores, but may not advertise them below the established level. In the toy industry, this has meant that toy shops such as mine, that offer education about these products and service after the sale, are able to effectively compete with online and big-box retailers.

In my industry, a toy is seldom an instant hit. It can often take years on the market before a game or toy becomes a best-seller. Savvy manufacturers understand this phenomenon, and the important role that stores such as mine can make in the development of their brands. They understand that our stores are key showrooms for their product, and that our staff will promote and educate consumers about their toys. Given the chance to purchase a new "unknown" board game v. a classic such as *Scrabble* or *Battleship*, how often is the newcomer likely to win out without someone to promote it?

Without MAPP and similar pro-competition policies, stores like mine would adapt and survive, but many of my small manufacturers probably would not. Market forces would likely force stores like mine to discontinue selling products from many small and emerging manufacturers because we could not afford to educate the public only to have sales of these products migrate to behemoth retailers who have chosen to forego profit in a quest for market share. Without the incubator that stores like mine afford new and emerging producers, their products face an almost insurmountable barrier to entering the marketplace. MAPP helps ensure a dynamic and competitive toy industry with players both large and small.

The settlement in question bans the use of a legal pricing strategy. I fear that this will create an environment in which manufacturers are uncertain about the legality of MAPP (which, like agency pricing, involves producers setting advertised retail prices). Please punish the alleged conspirators if collusion has been proven; but do not eliminate a lawful pricing tool that is increasingly critical to ensuring a competitive market place, where both small manufacturers and independent retailers can compete. This will not only inflict collateral damage in the book industry, but could have a chilling effect on other industries, including the toy sector, where it could create an environment in which manufacturers are uncertain about the legality of important pro-competitive pricing policies

Thank you for your consideration,

Steven Aarons  
President  
Barstons Child's Play