
POLITICS AND PROSE

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June 20, 2012

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

**Re: Comments on the Proposed Consent Decree in *United States v. Apple, Inc., et al.*,
77 Fed. Reg. 24518 (April 24, 2012)**

Dear Mr. Read:

We write to oppose the proposed consent decree with Hachette, HarperCollins and Simon & Schuster. We certainly recognize that if publishers did indeed collude, some punishment is called for. But the penalty devised by the Justice Department is excessively broad and counterproductive. By imposing a two-year moratorium on the benefits of agency model pricing for e-books, effectively denying publishers the ability to set a floor price for e-books, the decree would open the way for Amazon to resume its predatory pricing tactics and regain a near-monopolistic domination of the e-book market. This would jeopardize the futures of many bookstores, including our own, and harm the longer term interests of consumers.

When instituted in 2010, the agency model sought to correct a market distortion caused by Amazon. The online giant had managed to gain a whopping 90 percent of the e-book market by discounting even below the cost at which their e-books were acquired. Amazon's low prices discouraged entry by other companies that couldn't afford operating with similar loss leaders.

With the introduction of the agency model, publishers reclaimed control of the prices of their e-books. Amazon was required, along with other retailers, to sell at prices set by the publishers. This has enabled other players to enter the e-book business and has led to a more competitive market, with Barnes and Noble and Apple making significant inroads and reducing Amazon's market share substantially.

Justice Department officials have not objected to the agency model itself, accepting it as a legitimate approach. Their complaint, rather, has focused on the means by which the publishers

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allegedly decided to adopt the model. But the punishment should fit the crime. If the publishers are guilty of collusion, they alone should be forced to pay; the entire industry should not be harmed, not should consumers.

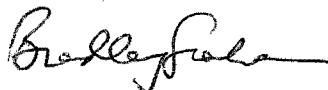
If Amazon is left free again to set its own prices for e-books, it will return to underselling all competitors and likely recapture a stranglehold over the e-book market, with unfettered power later to raise prices. True, the proposed decree would impose only a two-year hiatus on use of the agency model to block deep discounting. But two years are long enough to do permanent damage. By then, many more consumers will have become locked into Amazon's proprietary Kindle format, rendering them reluctant or unable to choose another retailer.

While lower prices for e-books might seem to benefit consumers, cheaper in this case isn't really better. Competition in books shouldn't be only about price. It should also be about keeping alive vital community-based enterprises, ensuring broad access to ideas, and sustaining and strengthening the nation's democratic values and cultural fabric.

In the view of the Justice Department, this case is about representatives of a threatened industry conspiring to undermine an innovative retailer. But Amazon is no ordinary retailer. And it certainly is no paragon of fair play. Indeed, a number of the company's own practices should be drawing Justice Department scrutiny for anti-trust violations. We're quite confident that Politics & Prose and other independent bookstores can compete effectively against a mammoth like Amazon. But the competition should be allowed to occur on a level playing field, free from such monopolistic practices as predatory pricing, tying arrangements and free-riding.

In summary, the Justice Department's proposed remedy would enhance Amazon's market dominance to the long-run detriment of consumers. It would deny other retailers hope of competing with Amazon. And it would end up punishing not only the publishers that are the target of the complaint but independent booksellers and other distributors that entered the e-book market after the agency model was adopted. This outcome clearly would not be in the public interest and should not be approved by the Court

Sincerely,



Bradley Graham, co-owner



Lissa Muscatine, co-owner