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June 19, 2012

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

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JUN 27 REC'D 2012  
LITIGATION III, ANTITRUST DIV.  
U.S. DEPT OF JUSTICE

Re: United States v. Apple, Inc. et al., No. 12-CV-2826(DLC) (S.D.N.Y.) – Comments on Proposed Final Judgment as to Defendants Hachette, HarperCollins, and Simon & Schuster

Dear Mr. Read,

I am writing to urge the Department of Justice not to pursue the above case. Even if all the facts in the Government's complaint in the case turn out to be true, this case would be – at best - a waste of taxpayer dollars. A victory would not only offer little benefit to consumers; a victory could actually concentrate additional market power in Amazon.

Amazon's retail pricing strategy on e-books may have been set to encourage consumers to switch to e-books. However, it is also reasonable to believe that the pricing, so far below what the market had previously borne for books, has a secondary goal of limiting the viability of other e-book distribution competitors and to raise barrier to entry into that field. But regardless of the reason and intention underlying the \$9.99 pricing model, it in fact created daunting market power for Amazon, which did not hesitate to use that power.


Competition requires multiple retail sources. The agency model adopted by the major publishing companies in 2010 has helped foster this kind of retail competition. This is a good thing; consumers have choice as to where they will acquire goods.

Even if the industry overtly agreed on the agency model – that seems to be one of the allegations in the complaint - one must not lose sight of the rationale that would have been underlying any such that agreement: to try and counter damage from a pricing strategy by Amazon that was in fact having the effect of limiting retail competition.

As with everything in life, the U.S. Department of Justice needs to pick its battles very carefully. DOJ does not have unlimited resources, and when it picks the cases it pursues it should be very focused on what public good will be served if it prevails. This case

would be, at best, a waste of public resources, and at worst, would do real harm to competition in the field of publishing.

Sincerely,

  
Leslie Griesbach Schultz