



Consumer Federation of America

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On the Wrap up of the Apple, E-Book Price Fixing Trial

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This case is straightforward and important. It is not about the “agency” model, it is about price fixing, plain and simple. Apple and the publishers wanted to raise prices and to do so they had to limit competition. The case presented by the Department of Justice makes it clear that this was a conscious scheme orchestrated by Apple and joined by the publishers to raise prices and dampen competition at the expense of consumers.

Publishers wanted to raise prices, but they knew they needed to act together. They knew they needed to move together and get “a critical mass” behind them. They knew that Apple was “herding the cats. “

Apple wanted to get into the e-book business and wanted to take a bigger cut, which meant “customers pay a little more” but needed assurance that it would not be undercut by a low price competitor. They had to “move Amazon.” They got assurances that Amazon would be moved by all the publishers through most favored nation clauses. The publishers wanted “a proposal” from Apple and they knew they were all headed in the same direction through their transaction with Apple, which assured them the “the prices would be the same. “

Prices went up when they implemented this price fixing scheme; they came down when the Department of Justice put a stop to it.

Our Tunney Act Comments filed in support of the settlements entered into by the publishers underscored the importance of vigorous antitrust enforcement to stop blatantly illegal price fixing in emerging digital markets (p.14):

Digital technologies lower costs and force incumbents to give consumers new choices. Digital technologies do not eliminate the concern about market power; if dominant incumbents have control over marquee content or bottleneck facilities, they can abuse their market power. (<http://www.justice.gov/atr/cases/apple/comments/atc-0775.pdf>,

All across the digital economy we see companies trying to dampen competition with business practices that were clearly recognized as illegal in the physical economy. When an antitrust case goes to trial, especially after every party but one has settled in the U.S. and Europe, the outcome is strongly precedential.

As the digital revolution affects more and more consumer products, a ruling against price fixing will ensure that content providers and digital distributors cannot concoct blatantly anticompetitive schemes to drive up consumer prices. If we let companies get away with this type of price fixing, consumers will be denied a substantial part of the benefits of the digital revolution. It is vitally important that we affirm our commitment to vigorous competition in the digital economy.

We view vigorous action to block e-book price fixing and restore competition as an important step forward in the reinvigoration of antitrust in America and the battle to ensure that consumers get the full benefit of the digital revolution.”
(Consumer Federation of America, Letter to Senate Judiciary Committee, p. 7, <http://www.consumerfed.org/pdfs/cooper.e-book.antitrust.letter.sen.4.9.12.pdf>)