

US says Apple led 'deliberate' scheme on ebooks (Update 2)

June 3 2013, by John Biers

A US government lawyer accused Apple Monday of concocting a deliberate scheme to fix prices of electronic books as the antitrust trial against the tech giant got underway.

"Apple knowingly and intentionally committed to a common scheme of publishers to raise prices," Justice Department attorney Lawrence Buterman told the court in an opening statement that laid out the government's case.

There was a "deliberate scheme by Apple" to "fix prices" in concert with major book publishers, Buterman said at the New York federal trial.

The alleged conspiracy cost consumers hundreds of millions of dollars in higher book fees, according to the government. The price of e-books soared right after Apple launched its iPad in 2010, the government alleged before a packed courtroom.

Apple attorney Orin Snyder said however that "the government has reverse-engineered a conspiracy" and that Apple was simply competing in the marketplace.

"Apple's intent was not to upend pricing paradigms throughout the industry, but to build the best bookstore and make sure prices were competitive," Snyder said in his opening comments.

US antitrust watchdogs have accused Apple of orchestrating a collusive

shakeup of the electronic book business in early 2010 that resulted in higher prices. Apple denies that it conspired with publishers and maintains that it was a new entrant in a sector that at the time was dominated by Amazon.

Witness testimony got underway after Monday's opening statements with Apple associate general counsel Kevin Saul acknowledging to a government attorney that an initial Apple proposal included a provision that said publishers must move all book sellers to a different selling system. Saul's testimony will resume Tuesday and will include a rebuttal from Apple's attorneys.

The California technology giant is on its own in its fight against the US Justice Department, after five of the world's biggest book publishers named in the suit settled the charges and paid fines.

The civil trial is expected to last three weeks, and comes with Apple under pressure for its slumping share price, eroding market share for its iPhones and iPads and accusations in Congress it avoided billions in taxes.

Buterman's statement depicted Apple as the ringleader in a conspiracy that met the publishing industry's wish of ending Amazon's domination of e-books that limited the price of most best-sellers to just \$9.99.

After Apple joined the market with its iPad and online bookstores, many of these books shot up to \$12.99 or \$14.99, according to the government.

Apple negotiated a different pricing system with the publishers whereby Apple as the seller received a 30 percent commission on sales. The other key point was an agreement that allowed Apple to match a lower price if a competitor cut prices.

The government maintains that Apple worked closely with the publishers as they pressured Amazon to accept the different model and effectively create a new, higher pricing range for electronic books.

The government's case will cite electronic messages and public and private comments, including some remarks from late chief executive Steve Jobs that the government says proves a conspiracy.

But Apple argues that the Jobs remarks and many other points of evidence are taken out of context. Apple acted out of self-interest and often in conflict with publishers with which the negotiations were contentious.

For example, Snyder cited correspondence between Apple and HarperCollins that showed sharp disagreement on the terms of the deal and undermine the conspiracy theory. Apple argues that it is not responsible for Amazon's decision to raise its prices.

"Apple cannot be held liable for business decisions made by other players as a result of its entry," Snyder said.

And he argued that after Apple entered the market for ebooks, "prices went down, not up."

Before his opening remarks, Snyder expressed concern following US Judge Denise Cote's comments last month that she tentatively supported the government's case. Cote will decide the non-jury trial.

But Cote assured Snyder that she has an open mind on the case.

"The deck is not stacked against Apple unless the evidence stacks the deck against Apple," Cote said.

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