

Apple says proof of antitrust conspiracy weak

June 20 2013, by John Biers



A fair goer tries out the an e-book reader app on an Apple iPad at the Leipzig Book Fair on March 15, 2012. Evidence is lacking of an Apple conspiracy with publishers to raise the price of e-books, Apple's lawyer said in closing remarks Thursday in a federal antitrust trial.

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"The government has overreached," said attorney Orin Snyder said at the federal court trial in New York. "Any fair consideration leads to one conclusion: Apple acted lawfully and did not violate the [antitrust laws](#)."

Snyder described the intense six-week period during which Apple introduced itself to the publishing world, then negotiated a series of contracts with five major publishers that remade the online book industry.

The government contends that Apple conspired with the publishers to change the e-book selling model in early 2010. At the time, the industry was run on a "wholesale" model dominated by Amazon, which set bestsellers at \$9.99.

Apple shifted the system to an agency model that guaranteed Apple a 30 percent commission, let publishers set prices and priced most bestsellers at \$12.99 and \$14.99. As Apple was finalizing its deals, publishers successfully pressured Amazon to accept the agency model and higher prices.

The government alleges Apple was the "ringleader" of a conspiracy that organized the industry against Amazon in a way that cost consumers hundreds of millions of dollars.

But Snyder accused the government of "taking benign commercial conduct and turning it into the seeds of a conspiracy."

The government has contended that Apple began plotting higher prices in late 2009 with conversations with publishers on the agency model. But these conversations were early brainstorming sessions, not a meeting of the minds on a way to remake the industry, Snyder said.

Snyder pointed out that Apple's leading negotiator Eddy Cue had almost

no phone contact with the publishers in between late December and around January 20, 2010 when the talks intensified ahead of the iPad launch.

"There is no such thing as conspiracy by telepathy," Snyder said.

Snyder pointed to evidence that showed Apple grappling with several different concepts for entering the e-book market before settling on a plan.

Apple initially proposed, but soon discarded a plan requiring [publishers](#) to shift all their retailers to the agency model. The government has maintained that Apple never gave up the plan.

But Snyder pointed to evidence that undermined this "secret deal" argument: a written statement from a Random House executive recounting Apple's assurances that the publisher could remain on wholesale terms with Amazon if it signed agency with Apple.

Snyder warned that a finding against Apple, a new entrant in a sector dominated by Amazon, would be "unprecedented and dangerous."

The case is being closely watched by the business sector, Snyder said.

A ruling against [Apple](#) "would have a chilling and confounding effect" on content companies looking to enter new technology businesses, Snyder said.

The [government](#) was set to present closing arguments later in the day.

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