

# Apple, US government spar in antitrust trial finale

June 21 2013, by John Biers

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Apple on Thursday dismissed allegations it conspired to raise the price of e-books and said the US government's antitrust case against it would deter new entrants to concentrated markets.

The two sides delivered closing arguments at the three-week trial, which has shed an uncomfortable light on the technology icon and the clubby world of high-stakes publishing. A decision is expected in the next couple of months.

"The issue in this case is collusion," said Mark Ryan, a Justice Department attorney who outlined the government's case that [Apple](#) conspired with publishers to hike prices, costing consumers hundreds of millions of dollars.

The trial focused on a six-week period in late 2009 and early 2010 during which Apple negotiated contracts with publishers ahead of its iPad launch and proposed a new and more profitable business model.

At the time, publishers were furious at the state of the market dominated by Amazon, which sold most bestsellers for just \$9.99.

Amazon held "wholesale" contracts with publishers in which it set prices. Apple's contracts shifted to an "agency" model where publishers set the price in exchange for a 30 percent commission to Apple.

Prior to Apple's entry, the publishers— all of whom have settled in the

case—would complain about Amazon's \$9.99 price at private dinners in fancy New York restaurants, but each feared taking on the [Internet giant](#) alone.

Apple and the publishers agreed on contracts that let publishers set the price of most bestsellers at \$12.99 or \$14.99, but Apple won a provision that allowed it to match the prices of Amazon or any other retailer.

As Apple was finalizing its deals, publishers successfully pressured Amazon to accept the agency model and higher prices. Several publishers threatened to withhold e-books from Amazon if it did not go along.

Ryan pointed to testimony from Apple [senior vice president](#) Eddy Cue in which he said he knew the publishers wanted to raise prices.

Cue admitted his contracts gave publishers the ability to raise prices and said he provided reassurances about potential Amazon retribution, telling each publisher it would not be alone in signing with Apple.

"This was the publishers acting as a group and Apple bringing that group along," Ryan said. "Only a united industry front could move Amazon off its \$9.99 price."

Apple defense attorney Orin Snyder dismissed the government's case as an example of prosecutorial "overreach," saying Apple's conversations with publishers in late 2009 were merely brainstorming sessions.

Snyder pointed out that Cue had almost no phone contact with the publishers from late December until around January 20, 2010, when the talks intensified ahead of the iPad launch.

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

He pointed to the "paucity" of evidence tying Apple to the publishers' negotiations with Amazon and said [allegations](#) Apple intended to force them to renegotiate with Amazon were based on "inferences."

Other government evidence was "ambiguous at best," Snyder said.

"There's zero evidence that Apple did anything in these negotiations to enforce collective action."

Snyder warned that a ruling against Apple, a new entrant in a sector dominated by Amazon, would have a "chilling and confounding effect" on business.

Antitrust experts said a key question for the judge is whether Apple convinced the publishers they needed to work collectively to pressure Amazon and whether Apple played a role in facilitating that effort.

Scott Hemphill, a Columbia University law professor who attended part of the trial, said the government's documentary evidence was strong.

Among the most compelling evidence, Hemphill said, were remarks from late Apple chief executive Steve Jobs, who told his official biographer that Apple let publishers raise prices.

Jobs recounted how the [publishers](#) told Amazon: "You're going to sign agency contracts or we're not going to give you the books."

The government does not need to show Apple was the "ringleader," or even the "primary coordinator" of a conspiracy, said Daniel Crane, a professor specializing in antitrust at the University of Michigan Law School.

"All they really have to prove is that Apple played some role in

furthering the horizontal conspiracy," Crane said.

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