

Duel over Apple's punishment for e-book price-fixing

August 10 2013, by Glenn Chapman



US antitrust attorneys defended their push to restrict Apple in the e-books market as hearings opened Friday on how to punish the the tech giant found guilty of price-fixing. Attorneys for the US Justice Department suggested that publishers were already joining hands again to prevent prices from falling, and insisted Apple should be forced to end its current contracts with them.

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giant found guilty of price-fixing.

In a submission to a federal court in New York, anti-trust attorneys for the US Justice Department suggested that publishers were already joining hands again to prevent prices from falling, and insisted Apple should be forced to end its current contracts with them.

But Apple, backed by the publishers, argued in its own submission that the judge in the case made numerous legal missteps that gave it grounds to appeal the verdict.

And it said the proposed [sanctions](#) were "draconian" and disproportionate to the purported harm from the price-fixing scheme.

The maneuvering came in briefs and letters submitted to federal court ahead of Friday's hearing.

In its filing, the DOJ defended its proposed remedies in the case as "necessary to rid the e-book market of the effects of a successful and long-running price-fixing [conspiracy](#) and to restore this market to competitive health."

The department has recommended that Apple be forced to end its current e-book deals with five top publishers—Hachette Book Group, HarperCollins, Macmillan, Penguin and Simon & Schuster.

All had already struck deals with prosecutors to settle price-fixing conspiracy charges.

It said that Apple should only be able to set new contracts with them in the e-book market if those contracts would not limit price competition.

And it said that Apple should be compelled to allow other e-book

retailers to sell their products through Apple's iPad and iPhone apps for two years.

Going further, the DOJ order would prohibit Apple from seeking to drive up prices by signing agreements similar to its e-book deals " with suppliers of e-books, music, movies, television shows or other content"—a move which puts Apple's powerful iTunes service in DOJ sights.

In a letter to the court, Lawrence Buterman of the DOJ antitrust division acknowledged that Apple's punishment would effectively extend by three years a restriction placed on publishers in their settlements in the case.

Buterman argued that was justified, after the publishers joined together to argue against the proposed restrictions on Apple.

"There is reason to believe that the Publisher Defendants are positioning themselves to pick up where they left off as soon as their two-year clocks run," he said in the letter.

"The very fact that publisher defendants have banded together once again, this time to oppose two provisions in the proposed final judgment that they believe could result in lower e-book prices for customers, only highlights why it is necessary to insure that Apple (and hopefully other retailers) can discount [e-books](#) and compete on retail price for as long as possible."

On Wednesday, the publishers argued that some of the proposed sanctions would contradict the deals they negotiated with prosecutors for their roles in the price-fixing scheme.

"The plaintiffs are attempting to impose a specific business model on the

publishing industry, despite their express and repeated representations that they would play no such role," they said.

Apple has condemned the DOJ proposal, and on Friday sought to move to reverse the July verdict, submitting a list of evidence it argued was "improperly admitted, excluded, or disregarded" before or during the trial.

Apple attorneys called the proposed punishment "a draconian and punitive intrusion into Apple's business, wildly out of proportion to any adjudicated wrongdoing or potential harm."

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