

Adamant Apple in court to fight ebook conspiracy

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In the trial set to open in US District Court in New York, the technology

icon is going solo in its fight against the [US Justice Department](#) after five large publishers named in the lawsuit settled the charges.

US antitrust watchdogs allege Apple orchestrated a collusive shakeup of the ebook business in early 2010 that resulted in higher prices.

Apple is expected to argue its actions shook up a sector that had been dominated by Amazon, and that it boosted competition and improved conditions for consumers.

Early signals suggest the three-week, non-jury trial could be a tough ride for Apple, which has been struggling of late amid a dearth of new products and recent [allegations](#) that it avoided billions in taxes.

Five publishers originally named as defendants reached settlements in which they agreed to terminate their ebook agreements with Apple.

The largest settlement was with Penguin for \$75 million, while a settlement with Hachette, Harper Collins and Simon & Schuster created a \$69 million fund for refunds to consumers. Macmillan settled for \$26 million.

Apple chief executive Tim Cook dismissed the idea of a settlement because it would call for the company to sign an admission of wrongdoing.

"We didn't do anything wrong there," Cook told a recent California conference. "We're going to fight."

For Apple, the case is not as much about money but maintaining what had been a stellar reputation and deciding its own business practices. A loss could also leave Apple vulnerable to private lawsuits.

"The Apple brand has been built magically over many years," said Roger Kay of Endpoint Technologies Associates, a technology market intelligence company, who added that a defeat "would substantially harm the company's reputation."

The government's case centers on a period when Amazon dominated the ebook business, selling most bestseller titles for \$9.99. Leaders of the major publishing houses held "CEOs dinners" in "private rooms at upscale restaurants" at which they discussed the threat from Amazon.

Into this environment stepped Apple, which was readying the launch of its iPad. Rather than following the Amazon "wholesale" pricing model in which the retailer sets the price, Apple favored the so-called "agency model" where the publishers set the price and the seller—in this case Apple—received a 30 percent commission.

The result was an increase in price to \$12.99 or \$14.99 for most books.

Apple throughout the negotiations informed the publishers of the status of its dealings with other publishers. Apple was the "ringmaster" of the "[conspiracy](#)," the complaint alleges.

The government is expected to use emails and comments from the late Apple CEO Steve Jobs, which indicated that as part of a deal to force a new pricing model, publishers should "hold back your books from Amazon."

"The sharply higher prices [consumers](#) have paid... are the direct, quantifiable result of defendants' conspiracy," the government said.

Judge Denise Cote, who is presiding, ordered Tim Cook to testify in a deposition, overruling protests from Apple. It was not clear if Cook will appear in the trial.

Apple's rebuttal dismisses the "conspiracy" charge and said its negotiations with the publishers as "difficult and contentious."

Apple acknowledged that it did inform publishers about its talks with other [publishers](#), but characterized this as a "standard negotiation tactic that incentivized each publisher to come on board with Apple."

Apple described itself as a "new entrant" to a sector that was dominated by Amazon, which was selling products below cost and endangering the health of the book publishing industry.

The company contends that its entry led to lower ebook prices and grew the market of e-books from 400,000 when it launched the i-Pad to more than 1.7 million today.

"Ruling against Apple would create a dangerous precedent and risk deterring new entry into concentrated markets and punishing innovation," [Apple](#) said in its filing. "The antitrust laws should promote competition, not condemn it."

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