

Court backs Apple e-book monitor, within limits (Update)

10 February 2014, by Glenn Chapman



Pedestrians walk by an Apple Store on July 10, 2013 in San Francisco, California

A US appeals court on Monday shot down Apple's bid to derail a court-ordered monitor in its e-book price-fixing case.

The panel of judges specified, however, that the monitor's job is limited to making sure that Apple has an antitrust compliance program put in place and that workers across the board are taught its details.

"It became apparent that the parties differed considerably regarding the proper interpretation of the order as to the scope of the monitor's duties," a panel of three justices from the Second Circuit Court of Appeals said in their ruling.

It is not the monitor's job to ferret out wrongdoing at Apple, according to the court.

With that in mind, the monitor is authorized to interview Apple executives, board members, or others at the California-based maker of iPhones, iPads, iPhones and Macintosh computers.

But "the government conceded that the injunction would not allow the monitor to investigate whether such personnel were in fact complying with the antitrust or other laws," the panel of justices said in the court order.

"We agree with that interpretation of the district court's order."

The US Department of Justice had argued that Apple was out of line asking for an emergency order stopping the monitor from tending to business until the outcome of an appeal in the case.

The Justice Department was pleased with the ruling, according to spokeswoman Gina Talamona.

"Today's ruling makes abundantly clear that Apple must now cooperate with the court-appointed monitor," Talamona said.

Apple declined to comment.

Apple's bid for an emergency stay came after a federal judge rejected a different request by Apple to block the monitor's work and chided the company for failing to cooperate with him.

US District Judge Denise Cote denied the tech giant's request to delay the work of former prosecutor Michael Bromwich, appointed last year to ensure Apple complies with an order to mend its ways after being found guilty of price-fixing.

Cote said that the monitor has "important work to do" and interviewing Apple executives is part of it.

Apple failed to show it would be "irreparably harmed" by complying with the court order or with the monitor, according to the judge.

The company protested Bromwich's intent to question chief executive Tim Cook, lead designer Jony Ive, board member Al Gore and other top

executives who aren't involved in day-to-day operations.

Apple also objected to the \$1,100 hourly rate for himself and the \$1,025 rate for his legal support team.

"The deterioration of the relationship between Apple and the monitor is unfortunate and disappointing," Cote said.

"It is strongly in the public's interest for the monitor to remain in place."

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 effectively reshaped the market for electronic books with a new pricing scheme.

In September, the judge who found Apple guilty of illegal price-fixing for e-books ordered the tech giant to steer clear of new contracts with publishers that could violate antitrust law.

Apple can still sell e-books through its online channels, but it cannot make any special arrangements or collude with publishers to fix prices.

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