



Department of Justice

FOR IMMEDIATE RELEASE
TUESDAY, DECEMBER 18, 2012
WWW.JUSTICE.GOV

AT
(202) 514-2007
TTY (866) 544-5309

JUSTICE DEPARTMENT REACHES SETTLEMENT WITH PENGUIN GROUP (USA) INC. IN E-BOOKS CASE

Department Continues to Litigate Against Apple Inc. and Macmillan to Prevent Continued Restrictions on Price Competition

WASHINGTON – The Department of Justice announced today that it has reached a settlement with Penguin Group (USA) Inc.—one of the largest book publishers in the United States—and will continue to litigate against Apple Inc. and Holtzbrinck Publishers LLC, which does business as Macmillan, for conspiring to raise e-book prices to consumers.

Today’s proposed settlement was filed in the U.S. District Court for the Southern District of New York. If approved by the court, the settlement will resolve the department’s competitive concerns as to Penguin, ending Penguin’s role as a defendant in the civil antitrust lawsuit filed by the department on April 11, 2012.

The department’s Antitrust Division previously settled its claims against three book publishers—Hachette Book Group Inc., HarperCollins Publishers L.L.C. and Simon & Schuster Inc. The department said that the publishers eliminated retail price competition, resulting in consumers paying millions of dollars more for their e-books. The settlement with those three publishers was approved by the court in September 2012. A trial against Macmillan and Apple currently is scheduled to begin in June 2013.

“Since the department’s settlement with Hachette, HarperCollins and Simon & Schuster, consumers are already paying lower prices for the e-book versions of many of those publishers’ new releases and bestsellers,” said Jamillia Ferris, Chief of Staff and Counsel at the Department of Justice’s Antitrust Division. “If approved by the court, the proposed settlement with Penguin will be an important step toward undoing the harm caused by the publishers’ anticompetitive conduct and restoring retail price competition so consumers can pay lower prices for Penguin’s e-books.”

According to the complaint, the five publishers and Apple were unhappy that competition among e-book sellers had reduced e-book prices and the retail profit margins of the book sellers to levels they thought were too low. To address these concerns, the department said the companies worked together to enter into contracts that eliminated price competition among bookstores selling e-books, substantially increasing prices paid by consumers. Before the companies began their conspiracy, retailers regularly sold e-book versions of new releases and

bestsellers for, as described by one of the publisher's CEO, the "wretched \$9.99 price point." As a result of the conspiracy, consumers were typically forced to pay \$12.99, \$14.99, or more for the most sought-after e-books, the department said.

Under the proposed settlement agreement, Penguin will terminate its agreements with Apple and other e-books retailers and will be prohibited for two years from entering into new agreements that constrain retailers' ability to offer discounts or other promotions to consumers to encourage the sale of the Penguin's e-books. The proposed settlement agreement also will impose a strong antitrust compliance program on Penguin, which will include a requirement that it provide advance notification to the department of any e-book ventures it plans to undertake jointly with other publishers and that it regularly report to the department on any communications it has with other publishers. Also for five years, Penguin will be forbidden from agreeing to any kind of most favored nation (MFN) agreement that could undermine the effectiveness of the settlement.

The department is currently reviewing the proposed joint venture announced by Penguin and Random House Inc., the largest U.S. book publisher. Should the proposed joint venture proceed to consummation, the terms of Penguin's settlement will apply to it.

Penguin Group (USA) Inc. has its principal place of business in New York City. It publishes e-books and print books through publishers such as The Viking press and Gotham Books. Penguin Group (USA) Inc. is the U.S. subsidiary of The Penguin Group, a division of Pearson plc, which has its principal place of business in London.

Hachette Book Group USA has its principal place of business in New York City. It publishes e-books and print books through its publishers such as Little, Brown and Company and Grand Central Publishing.

HarperCollins Publishers, L.L.C. has its principal place of business in New York City. It publishes e-books and print books through publishers such as Harper and William Morrow.

Macmillan has its principal place of business in New York City. It publishes e-books and print books through publishers such as Farrar, Straus and Giroux, and St. Martin's Press. Verlagsgruppe Georg von Holtzbrinck GmbH owns Holtzbrinck Publishers LLC, which does business as Macmillan, and has its principal place of business in Stuttgart, Germany.

Simon & Schuster Inc. has its principal place of business in New York City. It publishes e-books and print books through publishers such as Free Press and Touchstone.

Apple Inc. has its principal place of business in Cupertino, Calif. Among many other businesses, Apple distributes e-books through its iBookstore.

The proposed settlement, along with the department's competitive impact statement, will be published in the Federal Register, consistent with the requirements of the Antitrust Procedures and Penalties Act. Any person may submit written comments concerning the proposed

settlement within 60-days of its publication to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW, 4th Floor, Washington, DC 20530. These comments will be published either in the Federal Register or, with the permission of the Court, will be posted electronically on the department's website. At the conclusion of the 60-day comment period, the court may enter the final judgment upon a finding that it serves the public interest.

###

12-1514