

# State of Connecticut

RICHARD BLUMENTHAL  
ATTORNEY GENERAL



Hartford

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L. Michelle Wilson  
General Counsel  
Amazon.Com, Inc.  
1200 12<sup>th</sup> Avenue South, Suite 1200  
Seattle, Washington 98144-2734

Dear Ms. Wilson:

In March, I read with great interest an article in the *New York Times* entitled "*A Rift at Amazon on E-Book Prices.*" I have continued to follow some of the issues raised by that article since that time. The article described the dispute between Amazon.Com, Inc.'s ("Amazon") then-wholesale pricing strategy for e-books and that of Apple, Inc.'s ("Apple") competing e-book pricing strategy, referred to as the "agency model". My understanding is that Amazon, consistent with what was contemplated by the article, has now shifted its pricing strategy to incorporate the agency model, at least for the six largest book publishers in the United States. The article raised a concern that this might result in a 30-50% increase in the prices consumers who use Amazon's Kindle reading device will pay for e-books purchased through Amazon's Kindle Store.

Of even greater concern, is the potential broader anticompetitive impact of Amazon's demand that the largest e-book publishers agree to provide Amazon with a "guarantee" that no other competitor will obtain lower prices. Such price guarantees are often referred to as "most favored nation" ("MFN") clauses. Essentially, in this context, an MFN is a promise by a supplier (i.e., the publisher) to treat a buyer (i.e., Amazon) as well as it treats its best, "most favored" customer. In other words, if the publisher lowers its price for e-books to Apple, the publisher must offer that price to Amazon as well. The article also stated that Apple, soon to be a major player in the e-book market (if not already) through its iPad, demanded an MFN as well.

I fully understand that MFNs are not *per se* illegal under our antitrust laws. Yet, as I am sure you are aware, MFNs are not *per se* legal either. MFN clauses - - especially when they are offered to two of the largest e-book retail competitors in the United States - - have the potential to impair horizontal competition by encouraging coordinated pricing and discouraging discounting. The net effect is fairly obvious, in that MFNs will reduce the publisher's incentive to offer a discount to Amazon if it would have to offer the same discount to Apple, leading to the

establishment of a price floor for e-books offered by the publisher. Of course, the concerns are compounded, and hence potentially more troublesome, since this arrangement appears to be something that will be agreed to by the largest e-book publishers in the United States and two competitors who combined will likely command the greatest retail e-book market share.

These concerns appear to have already manifested themselves in the e-book market. My office recently conducted an informal survey of e-book prices offered by Amazon, Apple, Borders and Barnes & Noble for a number of the books in the New York Times Bestseller's list, both fiction and non-fiction. Almost uniformly, the prices were identical among all four sellers.

Firms that demand and get MFN treatment from important suppliers are assured that new entrants (i.e., Apple) and existing competitors will not be able to offer consumers lower costs by getting better e-book pricing from publishers. I am concerned that your acceptance of the agency pricing model, coupled with the MFN, has already resulted in achieving or maintaining uniform prices for e-books, to the ultimate detriment of the consumer.

Given my very real concerns over the possible anticompetitive consequences these pricing policies may have on such a dynamic, burgeoning and exciting market, I would request that your company's counsel arrange to meet with me to discuss the issues I have raised in greater detail. My goal is that through such a discussion, Amazon can allay my concerns. Please contact Assistant Attorney General Michael Cole, Chief of the Antitrust Department at 860-808-5171 to schedule the meeting.

I look forward to your response and anticipated cooperation in this inquiry.

Very truly yours,



RICHARD BLUMENTHAL

RB/pas