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Second Report of the External Compliance Monitor

United States v. Apple, Inc., et al., No. 1:12-CV-2826, and

The State of Texas, et al. v. Penguin Group (USA) Inc., et al., No. 1:12-CV-3394

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October 14, 2014

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Executive Summary

This is the second semi-annual report ("Report") submitted by the External Compliance Monitor (the "Monitor") in *United States v. Apple, Inc., et al.*, No. 12-cv-2826, and *State of Texas et al. v. Penguin Group (USA) Inc., et al.*, No. 12-cv-3394 ("ebooks Litigation").

In the September 5, 2013 Final Judgment and Order Entering Permanent Injunction (the "Final Judgment"), this Court ordered the Monitor to submit reports every six months "setting forth his . . . assessment of Apple's internal antitrust compliance policies, procedures, and training and, if appropriate, making recommendations reasonably designed to improve Apple's policies, procedures, and training for ensuring antitrust compliance."[1] The Monitor is required to evaluate whether Apple's policies and procedures are "reasonably designed to detect and prevent violations of the antitrust laws" and whether Apple's antitrust training program is "sufficiently comprehensive and effective."[2]

We issued our "First Report" on April 14, 2014. At that time, for reasons set forth in detail in the First Report, we had very little information on which to assess the comprehensiveness and effectiveness of Apple's antitrust policies, procedures, and training (Apple's "Antitrust Compliance Program" or "Program"). We had experienced substantial delays in our efforts to obtain relevant documents and interview relevant personnel, in part due to litigation initiated by Apple beginning in late November 2013 and continuing until February 2014, when we were able to resume our work. In addition, although the Final Judgment established that we were to review Apple's Antitrust Compliance Program as of mid-January 2014, Apple had not, by then, completed revisions to various elements of its Program.

For these reasons, the assessment and recommendations we set forth in the First Report were very preliminary. We credited Apple with a promising start to developing and implementing its revised Antitrust Compliance Program, but it was clear that the company still had a great deal of work to do. Our review of various pieces of work in progress, including drafts of Apple's revised policies, some procedures it had developed, and three live training sessions that had taken place, prompted us to make a number of recommendations for improvements to the Program.

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[1] Final Judgment § VI.C.

[2] *Id.*

The time period addressed in this Report is from early March 2014 through the end of August 2014. During the past six months, we were able to perform our work uninterrupted by the legal challenges and other sustained disruptions that characterized the period covered in the First Report. Our relationship with Apple during this period has been more productive and constructive than it was during the first few months of the monitorship. But by no means were we at all times satisfied with Apple's level of cooperation and responsiveness. In fact, we continued to experience some resistance to our monitoring work as well as attempts to limit and delay access to relevant personnel and materials. As a result, on too many occasions, we experienced substantial delays in receiving relevant information, some of our requests for various categories of relevant information were rejected, others were ignored, and our ability to perform live monitoring of antitrust compliance training sessions and other relevant activities was inappropriately limited. These limitations on access to information are fully described in the body of this Report.

Despite these impediments, we are able to report that we have made significant progress during this reporting period in fulfilling our responsibilities. We gathered a substantial amount of information about Apple's businesses through interviews with personnel at various levels of the company, as well as through the collection and review of relevant documents. The interviews included personnel holding various positions in Apple's content businesses, including iTunes, the App Store, and the iBooks Store – parts of the company specifically identified in the Final Judgment. The interviews also included members of Apple's Competition Law and Policy Group, which has been significantly augmented in recent years.

Importantly, after being denied such access during the earlier reporting period, we interviewed during this reporting period most of the senior executives in the company, including its Chief Executive Officer, Tim Cook. The executives we interviewed included the heads of Internet Software and Services, Operations, Hardware Engineering, Software Engineering, and Retail and Online Stores, as well as Apple's Chief Financial Officer. These interviews provided us with relevant and necessary information about Apple's businesses, aspects of the businesses that pose antitrust risks, and the factual foundation for assessing whether Apple's revised antitrust Program has been appropriately constructed for – and tailored to – the risks the company faces. We were disappointed that, despite repeated requests, we were unable to speak with the executives who head Marketing and Design, but we have been promised interviews with those senior executives in the near future.

This Report focuses on Apple's revised Antitrust Compliance Program – the principal components of which were completed and released within the

company on June 30, 2014, and provided to us on July 1. We also provide our assessment of those components and our recommendations for improvement. The elements of Apple's revised program are:

- **An Antitrust and Competition Law Policy (or "Policy").** The Policy is a brief, four-page statement of essential principles of antitrust and competition law. It contains a section on dealing with competitors, which addresses price-fixing, market allocation agreements, group boycotts, bid rigging, and – significantly in the context of this case – a brief subsection on facilitating unlawful agreements. This last subsection warns Apple personnel about sharing competitively sensitive information between competitors because such activity "may create the appearance of facilitating price-fixing or other unlawful agreements among competitors," thus creating the risk of legal liability. The policy also contains a section about dealing with resellers, distributors, and suppliers – addressing price maintenance, tying arrangements, and exclusive arrangements. The Policy concludes by encouraging Apple personnel to consult in-house lawyers with questions and to report actual or potential antitrust violations to the Antitrust Compliance Officer or the Business Conduct Helpline. It also reminds personnel of the company's anti-retaliation policy.

  We view the revised Policy as an improvement over the company's previous antitrust policy – it is more clearly written, includes an endorsement from the company's chief legal officer, and provides more helpful guidance on how to seek advice and report violations. Nonetheless, we believe that its substantive content must be expanded to cover all relevant antitrust risks, and its dissemination throughout the company should be improved: for example, some of the interviewees we asked about the Policy did not recall reading it, and others seemed to confuse it with other Apple compliance documents.

- **A new online antitrust compliance training course.** Apple made its new online antitrust training course available to employees on June 30. It is mandatory for more than 5,000 Apple employees, including personnel in Sales, Internet Software and Services, and Procurement, as well as for Apple's lawyers. The course is an interactive program that incorporates audio and video features, real world examples, questions, and hypothetical scenarios. The course takes between 45 minutes and an hour to complete and is divided into substantive sections entitled "What is Antitrust," "Types of Agreements," and "Monopolies." Apple's Antitrust Compliance Officer provides an

introduction at the beginning of the session. At the end of the online training course, the user must answer ten questions, at least eight of which must be answered correctly to obtain credit for successfully completing the course. Although the course directs the user to download the Antitrust and Competition Law Policy and certify that he or she has reviewed and understood the Policy, our tests showed that one could obtain a Certificate of Completion without downloading or opening the Policy.

We interviewed a total of five Apple employees in July and August who had taken the online training course. They said they had favorable reactions to the style and substance of the course.

- **A revised Competition and Trade Practices section of Apple's Business Conduct ebook.** Apple has expanded the portion of its compliance ebook devoted to antitrust law and competition. The ebook, which we discussed briefly in our First Report, employs storytelling techniques to explain antitrust and competition issues. It uses various media elements to tell the story of the 1990s lysine price-fixing conspiracy involving Archer Daniels Midland, including excerpts from a movie made about the case. The competition and trade practices chapter of the ebook illustrates the central principles of antitrust law regarding agreements with competitors, agreements with resellers, and unfair bidding practices. It features a question-and-answer section with Apple's senior antitrust lawyer and provides information to the reader about whom to contact with antitrust issues. The competition and trade practices chapter of the ebook concludes with a series of examples drawn from many industries illustrating the impact of antitrust on consumers. Although the ebook reflects that substantial time and attention went into its creation and many employees we interviewed were aware of its existence, few had reviewed it to any significant degree.

- **Live training provided to various personnel.** Live, in-person antitrust and competition training is among the most important components of Apple's revised Program. At its best, live training can engage personnel on both the general principles of antitrust law and the specific applications that are most relevant to their work, provide a forum for asking questions of a lawyer experienced in dealing with antitrust issues, and provide instruction on whom to contact with questions and with reports of suspected violations of law and policy. The Final Judgment requires Apple to provide training to its Board of Directors, its CEO, all of its Senior Vice-Presidents, employees

involved in activities relating to the iBooks Store, and "appropriate employees" who work with iTunes and the App Store. To meet this requirement, Apple has conducted six live training sessions since May 2014, four led by senior lawyers in the Competition Law and Policy Group and two of them – the training of the Executive Team and the Board – led by David Boies, a partner at the law firm Boies, Schiller & Flexner LLP.

As discussed more fully in the Report, we have monitored most but not all of the live training sessions either in person or by videotape.[3] We have also reviewed the slides used during the training sessions and any speaker's notes that Apple has made available to us. The four sessions provided by internal personnel were relatively brief, covered the same basic material, and were largely lectures by the trainer rather than truly interactive training sessions. Although the personnel we interviewed who attended the sessions told us that they found the sessions useful and instructive, we found them to be somewhat abstract and removed from the day-to-day business of the people who attended the sessions (mostly iTunes, App Store, and iBooks Store personnel).

Based on our review of these elements of Apple's revised Antitrust Compliance Program, we have concluded that Apple has developed, and has taken important steps toward implementing, the basic elements of the sound antitrust compliance program required by the Final Judgment. Apple has spent substantial time, effort, and thought to revise and expand the Program. As the summary above suggests, Apple has made relatively minor revisions to some parts of its Program (the Antitrust and Competition Law Policy), substantially expanded others (the Antitrust and Competition Section of Apple's ebook), and developed new training programs (online and live training). These are real accomplishments.

While Apple has made significant progress, there remain aspects of its Program we have not yet explored, and areas of weakness and deficiencies that Apple must address before we can determine that its Program is comprehensive and effective. In short, the company has laid the foundation for its Program, but much additional work lies ahead.

In the Assessment and Recommendations section of this Report, we make a number of recommendations that we believe would substantially enhance

[3] The Board training was conducted at the very end of this reporting period, and we did not receive the videotape until the draft of this Report was largely complete. We will discuss the Board training in our next report.

Apple's Antitrust Compliance Program. We also identify important components of the Program about which we have yet to obtain adequate information.

First, our First Report recommended that Apple conduct a formal risk assessment to ensure that its Antitrust Compliance Program was appropriately matched to the risks that exist in Apple's businesses – "a systematic assessment of the risks that arise from Apple's businesses, the activities of its employees, and its third-party interactions."[4] This type of risk assessment is fundamental to any antitrust compliance program. We interviewed two of Apple's in-house antitrust lawyers, who mentioned their involvement in risk assessment discussions, but Apple did not provide us with any written risk assessment, nor did any of the business personnel we interviewed tell us they had participated in a process to assess the antitrust risks involved in their activities.

After several specific inquiries, and a discussion with Apple's most senior antitrust lawyer, Apple belatedly provided us with some basic information about the company's efforts to assess antitrust risk. Because this information was provided to us only days before the end of the reporting period, we have not yet had an opportunity to fully review or evaluate the process by which Apple has conducted these assessments, or the result of its efforts. Apple claims to have started to perform the type of risk assessment that is necessary and that we recommended – but the information Apple has provided requires substantial follow-up and confirmation. As a result, any conclusions about the adequacy of Apple's risk assessment at this point would be premature. As a matter of process, we recommend that Apple explicitly assign ownership within the company of the risk assessment process, and that it develop a procedure for reporting formal results of its antitrust risk assessments to relevant groups within the company. At a minimum, these groups include the Audit and Finance Committee and the Risk Oversight Committee, which are, respectively, the Board and management entities responsible for risk assessment and compliance oversight.

Second, we have found Apple's revised Antitrust and Competition Law Policy, which was introduced to employees on June 30, to be sufficient in many respects – it is succinct, it is clearly written, and it touches on many of the antitrust and competition issues that are most relevant to Apple's business. But we recommend that Apple expand its substantive coverage to address additional antitrust concerns, such as those related to employee hiring agreements, the service of senior executives and directors on other companies' boards, and additional issues Apple identifies as part of its antitrust risk assessment. Apple should take additional steps to ensure that the Policy is fully disseminated,

[4] *See* First Report at 45.

understood, and used. Finally, we recommend, as we did in our First Report, that Apple require appropriate employees to certify that they have read, understand, and agree to comply with the Policy. Apple has not yet implemented such a system.

Third, Apple needs to establish more formal procedures governing components of its Antitrust Compliance Program, including not only risk assessment, but also procedures such as the following:

- **Communications Regarding the Antitrust Compliance Program.** Apple should adopt procedures to ensure that relevant employees receive periodic communications regarding changes or upgrades to the Program.

- **Helpline.** Apple's Business Conduct Helpline provides an important avenue for Apple employees to ask antitrust-related questions and report potential antitrust violations. We recommend that the Antitrust Compliance Officer, in conjunction with Apple's Internal Audit office, undertake audits to measure the use and effectiveness of Apple's Business Conduct Helpline.

- **Record Keeping.** In response to a recommendation we made in our First Report, Apple attempted to improve the accuracy of its live training attendance records. Apple made some progress, but further steps are required to improve the accuracy of these records. It should also extend its record keeping efforts to additional aspects of the Antitrust Compliance Program, such as feedback received from employees, to ensure that progress is tracked and elements of the Program are documented.

- **Detection, Investigation, and Reporting of Violations.** Apple should adopt a set of procedures aimed at detecting potential antitrust violations in areas that the company's antitrust risk assessments identify as posing a moderate or high level of antitrust risk. In addition, Apple must develop procedures to investigate and report potential antitrust violations. These procedures are necessary for Apple's compliance with Section V.G and V.H of the Final Judgment, and they are a critical component of any effective antitrust compliance program.

- **Incentives and Disciplinary Procedures.** In response to our specific inquiries, Apple has advised us of ways in which the company provides employees with positive and negative compliance-related incentives. A system of such incentives is an extremely important

feature of an effective Antitrust Compliance Program. Apple should therefore make additional efforts to communicate the existence of these incentives to employees.

- **Formal Feedback Procedures.** Apple has made limited efforts to collect employee feedback regarding aspects of the Antitrust Compliance Program. The limited nature of these efforts is unfortunate because employee responses provide an important means to improve the Program. Apple should take various steps to obtain additional feedback from employees. For example, Apple should routinely and promptly issue surveys requesting feedback on various components of the Program, including live and online training.

- **Identification of Critical Employees.** Apple has provided us with information on how it has identified employees who are subject to the certification, logging, training, and audit requirements imposed by Section V of the Final Judgment. Nonetheless, the process by which Apple identifies these employees is still less than clear. Apple should incorporate the identification of other critical employees into its antitrust risk assessment and make sure those employees receive appropriate training. The company should ensure it provides all high-risk employees with live antitrust training, while employees whom Apple identifies as posing lower risk should be required, at a minimum, to take the online antitrust training course.

- **Audits.** We recommend that Apple's Antitrust Compliance Officer supplement the steps she originally proposed for the audit required by Section V.E of the Final Judgment with additional steps to make the audit more substantive and comprehensive. These additional steps include conducting employee interviews, distributing a survey to a broad set of employees, and reviewing the materials associated with Apple's New Employee Orientation to ensure the program adequately covers antitrust issues. In addition to the audit required by Section V.E of the Final Judgment, the Antitrust Compliance Officer should conduct annual audits as a regular component of the Antitrust Compliance Program, and she should share the results of those audits with the Audit and Finance Committee.

Fourth, we were favorably impressed with some aspects of the live antitrust compliance training sessions we monitored during this reporting period, but we think the live training can be substantially improved. Apple should incorporate into the training more "real-life," Apple-specific examples and discussion, including examples based on the company's past encounters with antitrust allegations. In addition, Apple should hold future training

sessions in a more informal setting that encourages increased interaction between the trainer and trainees. Although we had been told that live antitrust training sessions conducted before June, when we began monitoring the sessions, were extremely interactive, those sessions that we monitored, which targeted iTunes, App Store, and iBooks Store personnel, were not.

Fifth, Apple should ensure that employees whose activities pose moderate to high levels of antitrust risk receive live, in-person training. Apple should provide appropriately tailored training to additional business groups, including Marketing, Sales, Procurement, and other groups identified in the risk assessment as presenting non-trivial antitrust risk. Apple should also provide specialized antitrust compliance training to its business lawyers, whom we have learned are consulted far more frequently in the first instance than the company's antitrust and competition law specialists when antitrust questions or issues arise.

Sixth, Apple's senior management should address compliance issues more directly, specifically, and explicitly. Apple's Executive Team should take an active role in monitoring the Antitrust Compliance Program. Members of the Executive Team and other managers should use staff meetings and similar venues as opportunities to convey information about the Program, to encourage discussions about such issues, and to communicate other compliance-related messages. Based on our interviews with Apple personnel, they have confidence in their leadership and in the commitment of their leaders to behaving appropriately and ethically. Because of that confidence, an explicit and articulated commitment to compliance generally, and antitrust compliance specifically, would carry substantial weight and is therefore that much more important.

Finally, we have not yet been provided with sufficient evidence to determine whether the company's Board or the Board's Audit and Finance Committee adequately oversees Apple's Antitrust Compliance Program. At this point, we have very little information about whether the Board is more than superficially knowledgeable about – or is satisfied with – Apple's Antitrust Compliance Program. We do know, however, that the Board was not provided with a copy of our First Report, which is surprising and disappointing given that the Report provided an initial assessment of the same Program for which they have critical oversight responsibility.

The Audit and Finance Committee should be fully informed regarding significant and high-risk antitrust areas, the effectiveness of reporting mechanisms, protocols for detecting violations and investigating complaints, and other important aspects of the Program. The Board has a critical role to play in overseeing and supporting a strong culture of compliance. We have not yet seen evidence of such oversight, possibly because of our very limited access to Board

members. Now that Apple's Board members have received live antitrust compliance training, we will be interviewing them in the near future. Those interviews will provide us with a basis for assessing the adequacy of the Board's oversight of the Antitrust Compliance Program generally, as well as its actions to address the strengths and weaknesses identified in the First Report and this Report.

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As our Report demonstrates, Apple has made significant progress during this reporting period. Among other things, it improved its Antitrust and Competition Law Policy, created a new online training course that close to 5,000 employees have completed, and provided live training to groups of personnel engaged in activities that create potential antitrust risk, including personnel in Apple's content businesses and the company's Board and senior Executive Team.

Our assessment is that the company has taken significant steps toward enhancing its Antitrust Compliance Program, especially with respect to its policies and training. However, our review has also revealed weaknesses and deficiencies, especially with respect to the procedures necessary to implement Apple's Program. In addition, there remain significant gaps in our knowledge that prevent us from drawing conclusions about major aspects of Apple's Antitrust Compliance Program, including with respect to Apple's efforts to conduct a comprehensive antitrust risk assessment and regarding the level of Board oversight of the Program. The Antitrust Compliance Program that exists today is undeniably an improvement on what existed before the Final Judgment and reflects the investment of substantial time, effort, and resources, but it remains very much a work in progress. We look forward to working with Apple as it continues to advance, extend, and improve its Antitrust Compliance Program.

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I. Introduction

The External Compliance Monitor ("Monitor") respectfully submits this second semiannual Report pursuant to Section VI.C of the Final Judgment in *United States v. Apple, Inc., et al.*, No. 12-cv-2826, and *State of Texas et al. v. Penguin Group (USA) Inc., et al.*, No. 12-cv-3394 (the "ebooks Litigation").

Section VI.C of the Final Judgment required the Monitor, within 180 days of appointment, to "provide a written report to Apple, the United States, the Representative Plaintiff States, and the Court setting forth his . . . assessment of Apple's internal antitrust compliance policies, procedures, and training and, if appropriate, making recommendations reasonably designed to improve Apple's policies, procedures, and training for ensuring antitrust compliance." The initial report ("First Report") was filed with the Court on April 14, 2014. Under Section VI.C, the Monitor is required to provide subsequent written reports at six-month intervals for the duration of the monitorship. This Second Report covers the period from early March 2014 through the end of August 2014.

Our First Report provided a detailed account of some of the obstacles and challenges we[5] faced at the outset of our work. Those obstacles and challenges necessarily limited our assessment of Apple's antitrust compliance policies, procedures, and training. Since the publication of the First Report on April 14, 2014, we have been working steadily to gather information necessary to make the required assessments of Apple's antitrust policies, procedures, and training (Apple's "Antitrust Compliance Program" or "Program"). During this reporting period, our relationship with Apple has improved; the company has been more responsive to our requests for information; and we have had greater access to the people and materials necessary to perform our assigned role. As a result, we are more informed about the company's business and associated antitrust risks than we were when we submitted our First Report. Even so, there remain major aspects of the company's business that may pose significant potential antitrust risks but about which we know relatively little – e.g., marketing – and other areas of the company's business where we have gained some basic knowledge but need to learn more.

In our First Report, we discussed in detail the history of the monitorship, including this Court's decision to require a Monitor, the Monitor's obligations under the Final Judgment, and the activities conducted by the Monitor from appointment through early March 2014. We concluded by presenting an initial assessment of Apple's antitrust compliance policies, procedures, and training,

[5] Throughout this report, the use of pronouns such as "he," "we," and "our" refer in some instances to the Monitor individually and in other cases to the monitoring team.

and, to the extent we could with the information available at the time, some preliminary recommendations. Although this Report will focus primarily on our activities over the past six months, we have prepared this Report so that it can stand on its own, without requiring frequent reference to our First Report. Accordingly, we have included sections on the background of the monitorship, the Final Judgment, and the events from October 2013 through March 2014, although these matters are covered in far less detail than in our First Report.

II. Background of the Monitorship[6]

On July 10, 2013, after a three-week bench trial, this Court ruled that Apple had violated Section 1 of the Sherman Act.[7] The Court concluded that Apple "facilitat[ed] and encourag[ed]" a "collective, illegal restraint of trade" by five major publishers when it simultaneously negotiated agency agreements to sell the publishers' ebooks through its iBooks Store in late 2009 and early 2010.[8]

The Court concluded that the plaintiffs—the United States Department of Justice ("DOJ") and thirty-three U.S. states and territories (the "Plaintiff States" and, collectively with DOJ, the "Plaintiffs")—were entitled to injunctive relief against Apple. After a series of hearings in August 2013 on the specific contours of the injunction, the Court created the position of external compliance monitor. As the Court would later explain in its January 16, 2014 opinion denying Apple's motion for a stay of the monitorship, it decided a monitorship was necessary because

> Apple made little showing at or before the August 9 conference that it had taken to heart the seriousness of the price fixing conspiracy it orchestrated. Nor did Apple provide the Court with any evidence that it was seriously reforming its internal antitrust compliance policies to prevent a repeat of its violation. Apple's submissions failed to demonstrate that it took seriously the burden that its participation in the price fixing conspiracy imposed on consumers and on the resources of the federal and state governments that were compelled to bring Apple and the publishers into federal court to put an end to that harm.[9]

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[6] This section is a shortened version of the Background section that appears at pages 2 to 6 of our First Report.

[7] 15 U.S.C. § 1.

[8] *United States v. Apple Inc.*, 952 F. Supp. 2d 638, 709 (S.D.N.Y. 2013). The five publishers, also defendants in the litigation, reached settlements with the Plaintiffs before trial. *See id.* at 645.

[9] *United States v. Apple Inc.*, 992 F. Supp. 2d 263, 267 (S.D.N.Y. 2014).

At a hearing on August 27, 2013, the Court explained that it would define the monitor's responsibilities to include evaluating Apple's internal antitrust compliance policies and procedures and its antitrust compliance training program.[10] The Court ruled that it would set the external compliance monitor's presumptive term at two years, rather than the five- or ten-year term the Plaintiffs had requested.[11] Finally, while the Court made clear that it had "tried to fashion an injunction that intrudes as little as possible on [Apple's] business,"[12] the Court expressed the hope that Apple would view the Final Judgment as a valuable opportunity:

> I am hopeful that Apple will bring its culture of excellence and exceptionalism to this task. I am hopeful that it will devote its considerable resources and creativity to construct a training program that will be a model for American business.
>
> But, even if it chooses not to create a model program, it must create a meaningful training program, one that is comprehensive and effective. . . .
>
> Apple could, of course, think of this training and any improvements to its policies and procedures as mere window dressing, the price it must pay to appear to comply with the injunction. I trust, however, that it will make a sincere commitment to reform its culture. I believe that it is in Apple's long-term interest to make these reforms and change its culture to one that includes a commitment to understand and abide by the requirements of the law.[13]

The Court held an additional proceeding on September 5, 2013, during which the terms of the injunction were finalized. The Court issued the Final Judgment later that day.

III. The Final Judgment

The Final Judgment prohibits Apple from engaging in certain types of conduct; requires Apple to take specified affirmative actions, including revising its antitrust compliance training and policies and hiring an internal Antitrust Compliance Officer; and defines the responsibilities of the Monitor.

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[10] 8/27/13 Tr. 17-18.

[11] *Id.* at 17-18, 20.

[12] *Id.* at 20.

[13] *Id.* at 19-20.

A. Sections III and IV: Prohibited Conduct and Affirmative Obligations

Section III of the Final Judgment prohibits Apple from entering and maintaining certain types of agreements and from engaging in specified types of communications with ebook publishers. In particular, Sections III.A through III.C bar Apple from "enforc[ing] any Retail Price MFN in any agreement with an E-book Publisher relating to the sale of E-books,"[14] from "enter[ing] into any agreement with an E-book Publisher relating to the sale of E-books that contains a Retail Price MFN," and from "enter[ing] into or maintain[ing] any agreement with a Publisher Defendant that restricts, limits, or impedes Apple's ability to set, alter, or reduce the Retail Price of any E-book or to offer price discounts or any other form of promotions to encourage consumers to purchase one or more E-books."

Section III.D of the Final Judgment prohibits Apple from retaliating against or punishing an ebook publisher "for refusing to enter into an agreement with Apple relating to the sale of E-books or for the terms on which the E-book Publisher sells E-books through any other E-book Retailer," as well as from threatening such retaliation or punishment or urging another party to engage in such retaliation or punishment. Section III.E prohibits Apple from sharing information related to its negotiations and contractual agreements with one ebook publisher with any other ebook publishers. Finally, Sections III.F and III.G prohibit Apple from "enter[ing] into or maintain[ing] any agreement" with an ebook publisher or retailer "where such agreement likely will increase, fix, or set the price" at which other ebook retailers can acquire or sell ebooks or affect other terms on which ebooks are sold.

The Final Judgment also imposes affirmative obligations on Apple. Section IV.A requires Apple to modify or terminate its agreements with the publisher defendants as necessary to bring the agreements into compliance with the Final Judgment. Section IV.B requires Apple to "apply the same terms and conditions to the sale or distribution of an E-book App through Apple's App Store as Apple applies to all other apps sold or distributed through Apple's App Store." Finally, Section IV.C provides that Apple must "furnish to the United States and the Representative Plaintiff States, within ten business days of

[14] An "MFN" is a "most-favored nation" clause, or a clause under which one party to a contract typically promises to treat the other party as favorably as it treats any other entity. The Court found that, while the inclusion of an MFN clause in a contract is not necessarily unlawful, the MFN clauses incorporated in Apple's contracts with the publisher defendants were an important element of Apple's unlawful conduct in this case, as they were "the term that effectively forced the Publisher Defendants to eliminate retail price competition and place all of their retailers on the agency model." *See Apple*, 952 F. Supp. 2d at 698-701.

receiving such information, any information that reasonably suggests to Apple that any E-book Publisher has impermissibly coordinated or is impermissibly coordinating the terms on which it supplies or offers its E-books to Apple or to any other Person."

B. Section V: Antitrust Compliance Officer

Section V of the Final Judgment requires Apple to appoint an internal Antitrust Compliance Officer ("ACO") to oversee the company's antitrust compliance efforts and to be responsible for many of the company's specific responsibilities under the Final Judgment. Under Section V, Apple's Audit Committee or another committee of outside directors was obligated, within thirty days of the effective date of the Final Judgment, to "designate a person not employed by Apple as of the Effective Date of the Final Judgment to serve as Antitrust Compliance Officer, who shall report to the Audit Committee or equivalent committee of Apple's Board of Directors and shall be responsible, on a full-time basis until the expiration of [the] Final Judgment, for supervising Apple's antitrust compliance efforts."

Specifically, Section V requires the ACO to provide copies of the Final Judgment to certain Apple personnel and their successors ("Section V personnel");[15] ensure that Section V personnel, as well as "appropriate employees in [the] Apple iTunes and App Store business," receive "comprehensive and effective training annually" regarding the Final Judgment and the antitrust laws;[16] and obtain annual certifications that Section V personnel have read and understand the Final Judgment and are not aware of unreported potential violations of the Final Judgment or the antitrust laws.[17] "[I]n consultation with" the Monitor, the ACO is also required to conduct an annual antitrust compliance audit covering all Section V personnel.[18]

In addition, the ACO must inform Apple employees annually of their right to disclose to her, without fear of reprisal, information regarding potential violations of the Final Judgment and the antitrust laws.[19] If she discovers or receives credible information concerning an actual or potential violation of the Final Judgment, the ACO must ensure that Apple's conduct is terminated or modified to assure compliance with the Final Judgment. She must provide the

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[15] Final Judgment §§ V.A-V.B.

[16] *Id.* § V.C.

[17] *Id.* § V.D.

[18] *Id.* § V.E.

[19] *Id.* § V.F.

Plaintiffs with information regarding the actual or potential violation and the corrective action that resulted.[20]

The ACO is also required to communicate certain information to the Plaintiffs: she must provide, on a quarterly basis, non-privileged communications containing allegations of noncompliance with the Final Judgment or antitrust violations,[21] as well as a log of communications between Section V personnel and other specified persons outside Apple.[22] Finally, the ACO is required to provide the Plaintiffs annually with a written statement regarding Apple's compliance with Sections III, IV, and V of the Final Judgment.[23]

C. Section VI: External Compliance Monitor

Section VI of the Final Judgment provides for the appointment of an External Compliance Monitor for a presumptive two-year term.[24] The External Compliance Monitor is required "to review and evaluate Apple's existing internal antitrust compliance policies and procedures and the training required by Section V.C . . . , and to recommend to Apple changes to address any perceived deficiencies in those policies, procedures, and training."[25]

The specific duties of the Monitor are as follows:

- To "conduct a review to assess whether Apple's internal antitrust compliance policies and procedures, as they exist 90 days after his . . . appointment, are reasonably designed to detect and prevent violations of the antitrust laws."[26]

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[20] *Id.* § V.G.

[21] *Id.* § V.H.

[22] *Id.* § V.I.

[23] *Id.* § V.J.

[24] The Court may extend the external compliance monitorship by one or more one-year periods, either *sua sponte* or on the application of any Plaintiff, "if necessary to ensure effective relief." *Id.* § VIII.C.

[25] *Id.* § VI.B.

[26] *Id.* § VI.C.

- To "conduct a review to assess whether Apple's training program, required by Section V.C of [the] Final Judgment, as it exists 90 days after his . . . appointment, is sufficiently comprehensive and effective."[27]

- Within 180 days of appointment and at six-month intervals thereafter, to "provide a written report to Apple, the United States, the Representative Plaintiff States, and the Court setting forth his . . . assessment of Apple's internal antitrust compliance policies, procedures, and training and, if appropriate, making recommendations reasonably designed to improve Apple's policies, procedures, and training for ensuring antitrust compliance." In addition, the Monitor may provide additional written reports if requested by the Plaintiffs and the Court, or on his own initiative.[28]

- To provide the Plaintiffs promptly with any evidence the Monitor "discovers or receives" that suggests "that Apple is violating or has violated [the] Final Judgment or the antitrust laws."[29]

Apple is required to "assist the External Compliance Monitor in performance" of his duties and to refrain from "interfer[ing] with" or "imped[ing]" the Monitor's work.[30] The Final Judgment specifically authorizes the External Compliance Monitor, "in connection with the exercise of his . . . responsibilities under . . . Section VI, and on reasonable notice to Apple," to:

- "[I]nterview, either informally or on the record, any Apple personnel, who may have counsel present; any such interview to be subject to the reasonable convenience of such personnel and without restraint or interference by Apple."[31]

- "[I]nspect and copy any documents in the possession, custody, or control of Apple."[32]

- "[R]equire Apple to provide compilations of documents, data, or other information, and to submit reports to the External Compliance Monitor

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[27] *Id.*

[28] *Id.* § VI.D.

[29] *Id.* § VI.F.

[30] *Id.* § VI.G.

[31] *Id.* § VI.G.1.

[32] *Id.* § VI.G.2.

containing such material, in such form as the External Compliance Monitor may reasonably direct."[33]

The Final Judgment provides a mechanism for the resolution of objections that Apple may have to the Monitor's activities: "[a]ny objections by Apple to actions by the External Compliance Monitor in fulfillment of the External Compliance Monitor's responsibilities must be conveyed in writing to the United States and the Representative Plaintiff States within ten calendar days after the action giving rise to the objection."[34] If the parties are unable to reach agreement, the Court will promptly schedule a conference to resolve the dispute.[35]

IV. Initial Activities: September 2013 to March 2014

This section of the Report provides a brief overview of our activities from appointment through early March 2014. A more comprehensive account of our activities during this period appears in the First Report, at pages 11 to 41.

A. Selection of the External Compliance Monitor

The Court issued an order on September 27, 2013 governing the monitor selection process. On September 30, 2013, the Plaintiffs submitted the names of two candidates to serve as monitor, one of whom was Michael R. Bromwich. On October 16, 2013, the Court issued an order appointing Mr. Bromwich as the Monitor in this case and providing that Bernard A. Nigro Jr. of Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank") would assist Mr. Bromwich ("October 16 Order").

Immediately after appointment, the Monitor assembled a small team to assist in fulfillment of his obligations.[36] The Monitor selected Maria R. Cirincione of Fried Frank and Sarah W. Carroll of Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP ("Robbins Russell") as members of the monitoring team. In June 2014, Lee Turner Friedman of Robbins Russell was added to the team.

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[33] *Id.* § VI.G.3.

[34] *Id.* § VI.H.

[35] *See, e.g.*, *Apple*, 992 F. Supp. 2d at 277. By Order dated February 19, 2014, the Court referred this matter to Magistrate Judge Michael H. Dolinger for resolution of any disputes that might arise, subject to appeal to the Court.

[36] *See* Final Judgment § VI.I ("The External Compliance Monitor may hire, subject to the approval of the United States, after consultation with the Representative Plaintiff States, any persons reasonably necessary to fulfilling the External Compliance Monitor's responsibilities.").

B. The Monitorship Begins: October-November 2013

On October 22, 2013, after initial communications between Apple and the Monitor, members of the monitoring team met with representatives of Apple ("October 22 Meeting") at the New York offices of Gibson, Dunn & Crutcher LLP ("Gibson Dunn"). At the meeting, the Monitor described his approach to the monitoring assignment in this case, including that the Monitor's actions are limited by the terms of the Final Judgment and his hope for a collaborative relationship with Apple. Apple's representatives stated that the company was committed to ensuring that it had an effective and robust antitrust compliance program.

During the October 22 Meeting, we explained that we planned to use the initial 90-day period under the Final Judgment, during which Apple was to revise its policies, procedures and training,[37] to gain important background information that would be necessary to undertake a meaningful assessment. Specifically, in order to assess whether Apple's revised antitrust compliance policies, procedures, and training materials were reasonable and effective for the company, we explained that we needed to understand Apple's reporting oversight structure for antitrust compliance; Apple's existing antitrust policies, procedures, and training; the ongoing processes to revise and update Apple's policies and procedures; and the roles of the Audit and Finance Committee and Risk Oversight Committee in compliance matters. We asked Apple to provide us with documents relevant to those issues.[38]

The Monitor asked to schedule a series of brief preliminary meetings or interviews with various Apple personnel that would be helpful to understanding Apple's businesses and structure. Because the Court had specifically expressed concern with Apple's compliance at the highest levels of the company, the Monitor requested preliminary meetings or interviews during the week of November 18, 2013 with members of Apple's Board of Directors (or "Board"), senior management, and senior personnel responsible for the iBooks Store, iTunes, and the App Store.

Apple expressed concern about the interview requests because, according to its representatives, the proposed interviewees were busy and there remained "a lot of anger" regarding the ebooks Litigation. The Monitor explained that he believed early interviews with high-level personnel were essential but said he was flexible regarding the timing and length of these preliminary interviews.

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[37] Section VI.C of the Final Judgment requires the Monitor to evaluate Apple's antitrust compliance policies, procedures and training as they exist 90 days after the Monitor's appointment, or on January 14, 2014.

[38] As described below, we reiterated this October 22 request on numerous occasions.

Apple responded that any plan that included interviews of senior Apple personnel was problematic.

The Monitor also informed Apple at the October 22 Meeting that the monitoring team would like to observe live antitrust compliance training sessions because such observations would be important to our evaluation of the comprehensiveness and effectiveness of the new training programs Apple was preparing to implement. Apple also expressed concern about that request.

On October 31, 2013, Gibson Dunn sent a letter to the Monitor outlining Apple's objections to the timing and scope of our proposed activities. The letter asserted that we should not interview senior Apple employees or Board members until after January 14, 2014, 90 days after the monitorship began. Concerned that an immediate course correction was necessary, we responded by letter the next day and enclosed a separate letter addressed to Tim Cook, Apple's Chief Executive Officer, and D. Bruce Sewell, Apple's General Counsel. In the November 1 letter to Mssrs. Cook and Sewell, the Monitor introduced himself, outlined his responsibilities under the Final Judgment, and repeated the principles to which the monitoring team would adhere in our monitoring activities. He expressed the hope for a constructive relationship and explained that the relationship with Apple should not be adversarial. The Monitor expressed concern that we had not yet received any of the documents Apple had promised and that the company had not meaningfully responded to our request for brief preliminary interviews with certain Apple personnel.

Mr. Sewell responded to the November 1 letter on November 4, 2013. He promised that he would provide us with a "comprehensive update on [Apple's] progress" and would "facilitate whatever meetings [were] appropriate for [the Monitor] to fully and completely discharge [his] responsibilities." He also explained that the newly hired ACO would "dedicate the next two months to developing new training materials and redesigning [Apple's] compliance program," and that she needed to work "uninterrupted" during that period. Finally, he emphasized that Apple's disputes with our team should "in no way diminish the fact that executives at the highest levels of management . . . are extremely attentive to the issue of compliance with the Final Judgment and are taking active steps to meet the remediation time line expressed by Judge Cote."

Over the next week, the Monitor had numerous communications with Apple's outside counsel, which culminated with Apple offering interviews of two Apple employees – Tom Moyer, the company's Chief Compliance Officer; and Gene Levoff, Senior Director and Associate General Counsel – during the week of November 18. Apple did not make available the other individuals the Monitor had asked to interview.

On November 18, we conducted one-hour interviews with Mr. Moyer and Mr. Levoff, which provided helpful background about the company and its overall compliance and risk management systems. Mr. Moyer summarized Apple's Business Conduct and Compliance Program, providing an overview of the structure of Apple's compliance functions and of the core components of the company's compliance policies and training. Mr. Moyer also shared with us an ebook Apple had developed to communicate its Business Conduct Policy to employees. Through Mr. Levoff's interview, we learned about important components of Apple's risk management and compliance structures—Apple's Audit and Finance Committee and its Risk Oversight Committee. This introductory information was useful.

On November 22, 2013, we sent a letter to Apple's Board of Directors. We took this step because of what we viewed as a disturbing lack of cooperation from Apple in the month since we had assumed our responsibilities despite repeated promises by Apple that it would cooperate. Because the Monitor had been treated from the outset as an adversary, we thought it was important that we bring our concerns to the attention of Apple's governing body in an attempt to avoid further actions that would prevent the Monitor from fulfilling his responsibilities under the Final Judgment.

The letter to the Board explained our responsibilities under the Final Judgment and described our disappointment at Apple's lack of cooperation in the early stages of our work. We described our largely unsuccessful efforts to schedule employee interviews for the week of November 18 and the unexplained delays in Apple's responses to our requests, including our request for documents. The letter concluded by expressing hope that our relationship with Apple would become collaborative and positive, and we requested the Board's support in working toward that goal. We never received any communication in response from the Board or any of its members.

Later that day, we received a letter from Simpson Thacher & Bartlett LLP ("Simpson Thacher"), which included a proposed interview schedule for December 4-6 that included ten Apple employees, as well as Dr. Ronald Sugar, a member of Apple's Board and Chairman of the Audit and Finance Committee. The letter also contained an offer to schedule a telephone interview of Bruce Sewell.

On November 20, 2013, the Court issued an order ("November 20 Order"), pursuant to Federal Rule of Civil Procedure 53(b)(2), which governs the use of "masters," regarding a proposed amendment to the October 16 Order that appointed the Monitor, including a proposal that the Court receive periodic *ex parte* briefings or reports from the Monitor. On November 27, Apple filed objections to the November 20 Order, alleging that the Monitoring team was

"operating in an unfettered and inappropriate manner, outside the scope of the Final Judgment, admittedly based on secret communications with the Court, and trampling Apple's rights." In addition, Apple objected to our requests to interview Board members and senior executives, most of whom Apple claimed were "not . . . relevant to [our] mandate"; our attempts to begin work before expiration of the ninety-day period for revision of Apple's antitrust compliance policies and training documents; and our "personal financial interest [in conducting] as broad and lengthy an investigation as possible."

In response to Apple's November 27 filing, the Court issued an order on December 2, 2013 ("December 2 Order"), stating that neither the parties nor the Monitor had "informed the Court about the Monitor's fees,[39] the work of the Monitor or of any problems associated with that work. There has been no *ex parte* communication between the Court and the Monitor or between the Court and any of the parties about these issues." The December 2 Order provided that, because of Apple's objection, the Court would not receive *ex parte* briefings or reports from the monitoring team. Finally, the December 2 Order directed Apple to resolve its additional objections to the monitorship in accordance with Section VI.H of the Final Judgment.

C. Interviews and Challenges to the Monitorship: December 2013-February 2014

1. December Interviews

From December 4 to December 6, 2013, we interviewed the following nine Apple employees and one member of Apple's Board of Directors:

- Chris Keller, Vice President, Internal Audit
- Doug Vetter, Vice President and Associate General Counsel
- Kyle Andeer, Senior Director, Competition Law & Policy
- Annie Persampieri, Corporate Counsel, Internet Services & Software
- Deena Said, Antitrust Compliance Officer[40]

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[39] Apple's November 27 filing objected to the Monitor's fees, alleging that they violated the Final Judgment.

[40] A more detailed discussion of Ms. Said's background and the process leading to her selection as Apple's ACO was provided at pp. 24-26 of our First Report.

- Dr. Ronald Sugar, Director and Chair of the Audit and Finance Committee
- Rob McDonald, Head, U.S. iBooks Store
- Tom Moyer, Chief Compliance Officer (by telephone)
- Gene Levoff, Associate General Counsel, Corporate Law
- Keith Moerer, Director, iTunes

The December 2013 interviews provided information about each interviewee's job responsibilities, some information about Apple's structure and business operations, and preliminary information about Apple's compliance programs, including the role of its Audit and Finance Committee, the Risk Oversight Committee and the company's Helpline. Some of the interviews, particularly those of Mr. Moerer and Mr. McDonald, helped us to begin to understand Apple's general practices in negotiating contracts with publishers.

We were advised about steps Apple was taking to comply with the Final Judgment, including its recent hiring of an ACO, its collection of the employee certifications required by Section V.D, and initial live training sessions that Mr. Andeer had conducted to ensure that employees whose work focused on the iBooks Store understood the requirements of the Final Judgment. We had our first opportunity to interact with Deena Said, the ACO whom Apple had recently hired pursuant to Section V of the Final Judgment.

On December 10, 2013, we interviewed Mr. Sewell by telephone. Among other matters, Mr. Sewell discussed the structure of the legal and compliance departments at Apple, including some comparisons to those at other companies with which he is familiar; the evolution of Apple's antitrust compliance functions during his time at the company; and his experience with the ebooks Litigation.

2. Subsequent Correspondence in December

On December 17, Apple's outside counsel sent us a copy of a letter the company had written to the Plaintiffs, addressing, among other things, the scope of our responsibilities. Apple proposed that our total fees for 2014 and 2015 be capped at $250,000; that we conduct no further work until after January 14, 2014, when the 90 days provided in the Final Judgment for Apple to revise its antitrust policies and procedures had elapsed; and that we adhere to a plan set out by

Apple.[41] Apple's proposal would have put Apple in charge of determining whom we could interview and which documents would be provided, and it would have placed unrealistic financial constraints on our activities. The proposal was antithetical to the notion of an independent monitor and wholly inconsistent with the Final Judgment.

3. Apple's December 12, 2013 Motion to Stay

On December 12, 2013, Apple filed a Motion by Order to Show Cause for a Stay of the Injunction Pending Appeal ("Motion to Stay"). Apple contended that we were "conducting a roving investigation that is interfering with Apple's business operations," as well as "risking the public disclosure of privileged and confidential information" and "imposing substantial and rapidly escalating costs" that Apple would be unable to recover if it prevailed on appeal. Apple argued that the Court had improperly modified the Final Judgment with the amendments it proposed by the November 20 Order, the Final Judgment was not authorized by Federal Rule of Civil Procedure 53 and violated the constitutional separation of powers, and the Final Judgment "deprive[d] Apple of its right to a 'disinterested prosecutor' without 'a personal interest, financial or otherwise.'" Apple claimed that our "inappropriate demand for access to Apple's senior leadership—including officers, directors, and employees who have little or nothing to do with antitrust compliance or the iBooks Store—ha[d] already inflicted significant and irreparable harm by interfering with Apple's ability to manage its business." It asserted that the Monitor had "consistently demanded that Apple's senior leaders meet with him on his schedule and on short notice—sometimes as short as two days" and that our "investigation significantly interfere[d] with the ability of Apple's managers to lead the company." Apple also contended that, in the absence of a stay, it would suffer irreparable injury through the disclosure of privileged or confidential information and through its payment of costs and expenses associated with the monitorship.[42]

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[41] The plan Apple proposed provided that "there [would] be no further interviews of Apple employees or Board members by Mr. Bromwich prior to his review of Apple's revised antitrust compliance policies, procedures, and training materials"; that after January 14, 2014, Apple would provide us with certain materials required by the Final Judgment and we would, in turn, provide Apple with recommendations regarding those materials; that Apple would make "certain Apple executives and employees" available for interviews after January 14, 2014; and that "Mr. Bromwich [would] not seek interviews with Apple's employees and Board members who are not relevant to his mandate of assessing Apple's revised antitrust compliance policies and procedures and Apple's antitrust training program." Letter from Noreen Krall, Apple Inc., to Lawrence J. Buterman, Department of Justice & Eric Lipman, Office of the Texas Attorney General (Dec. 17, 2013).

[42] The December 17 filing contained numerous mischaracterizations and misrepresentations. Apple's assertions that we were conducting a "roving investigation" and

On December 30, 2013, the Plaintiffs filed their opposition to Apple's Motion to Stay, arguing that the steps the Monitor had taken were fully justified and consistent with the Final Judgment. The Plaintiffs argued that Apple had neither shown a likelihood of success on the merits nor made a showing of irreparable harm if the monitorship were not stayed. Attached as an exhibit to the Plaintiffs' brief was a seventeen-page declaration prepared by the Monitor in an effort to provide the Court with facts relating to the assertions in Apple's December 17 filing. The declaration provided a detailed summary of our interactions with Apple and attached a number of our communications with Apple as exhibits. On January 7, 2014, Apple filed a letter with the Court arguing that the Monitor should be disqualified because submission of the declaration allegedly showed impermissible bias against Apple. That same day, Apple filed a reply brief in support of its motion to stay the injunction.

4. Subsequent District Court Proceedings

On January 13, 2014, this Court held a hearing on the parties' filings, including the Motion to Stay and Apple's January 7, 2014 letter seeking disqualification of the Monitor. The Court expressed its disappointment at the state of the relationship between Apple and the monitoring team, noting that it had been unaware "that the monitor was making all these requests and Apple was doing its best to slow down the process if not stonewall the process."[43] The Court described the 90 days prior to Apple's implementation of revised policies and training as

> the period when the monitor could be expected to want to get the documents he needs and conduct the interviews he needs so that he would be in a position, on the 90th day, to look at whatever Apple submitted to him as its revised, improved new procedures and training program and practices, so that he could efficiently and effectively, and hopefully in a way to Apple helpfully, comment on it and give Apple the benefit of his best advice and counsel so that Apple could have the kind of program put in place that's required by Article VI.[44]

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exercising "broad investigatory powers" were at odds with the extremely modest requests we had made for documents and interviews. Its claims that we had inappropriately sought interviews with members of Apple's Board of Directors and senior management overlooked the flexibility that we had offered in scheduling the interviews, as well as the fact that such interviews were appropriate given the Court's emphasis that the violations occurred at the highest levels of the company. A more complete catalogue of the inaccuracies in the factual assertions contained in Apple's Motion to Stay was provided at pages 27 to 28 of our First Report.

[43] 1/13/14 Tr. 41.

[44] *Id.* at 42.

As the Court noted, we had been effectively stymied during that 90-day period from moving forward with preliminary work necessary to evaluate Apple's Program.[45]

The Court also emphasized that the Final Judgment, not Apple, controls the monitorship, and that the monitoring team must be able to gather enough information about the company to understand the organizational context of Apple's revised antitrust compliance policies and training:

> In terms of practices and policies and training programs, it's not one size fits all. This is to be an effective program within Apple. [The Monitor] has to understand enough about Apple and its business and these practice[s], policies, and training programs in order to recommend to Apple changes to address any perceived deficiencies in those policies, procedures, and training. And looking at paragraph C, these policies and procedures, which are antitrust compliance policies and procedures, have to be reasonably designed to detect and prevent violations of the antitrust law, within Apple, within its business. They have to be comprehensive and effective within Apple, within its business.[46]

The Court noted that Section VI.G of the Final Judgment requires Apple to "assist the monitor" and to refrain from interfering with the fulfillment of the Monitor's responsibilities under the Final Judgment.[47] Furthermore, the Court noted, Section VI.G authorizes interviews of Apple personnel without restraint or interference and to inspect and copy documents in Apple's possession.[48] The Court expressed the hope that the parties would "press a restart button" on their relationship and that Apple "would come to see that it is in its interest to comply" with all of the provisions of the Final Judgment.[49] Summarizing, the Court explained,

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[45] In retrospect, Apple's arguments about the significance that should be attached to the 90 days provided for in the Final Judgment to allow Apple to revise its antitrust compliance policies, procedures, and training are somewhat ironic. Although Apple did, as the Court suggested, submit some draft materials for the Monitor to review in late February, the revisions to Apple's antitrust policies, procedures and training, including materials that the Monitor had not previously reviewed, were not completed until June 30, more than five months after the 90-day period expired.

[46] *Id.* at 45-46.

[47] *Id.* at 46.

[48] *Id.*

[49] *Id.* at 47.

> Now, Apple is not in a position to define for the monitor the scope of the monitor's duties or how the monitor carries out those duties. The injunction is the path we shall all follow. And if the monitor ever imposes upon Apple in a way that is inappropriate or difficult or intrusive, there will be a process. And there has been a process in place and there will be a process in place so that Apple can be heard, because, again, I intend no disruption of Apple's business and have tried to craft an injunction that can rest as lightly upon it as possible and yet achieve the very legitimate ends of this injunction.
>
> So I am hopeful that Apple will show it is serious about cooperating with the monitor going forward, assisting him so he can perform his function, and not interfere with that. I expect the Department of Justice to be responsive to any complaints that Apple might have or requests—it doesn't have to be a [complaint]—a request or a discussion, and to work in cooperation and collaboration with the monitor and Apple to resolve outstanding issues, and to do so promptly. I expect the monitor to adhere to the terms of his mandate in Article VI, and also to work collaboratively and cooperatively with Apple and the Department of Justice so that his responsibilities can be performed effectively and efficiently and promptly.[50]

The Court denied Apple's Motion to Stay and rejected its attempt to disqualify the Monitor, stating that it would file an opinion explaining further its reasoning and analysis. The Court granted a 48-hour stay from the filing of that opinion to allow Apple to appeal to the Second Circuit.

On January 16, the Court issued its opinion on Apple's pending motions. The Court explained its reasons for denying Apple's Motion to Stay, including that some of Apple's arguments had been waived or had become moot, that the dispute resolution mechanisms under the Final Judgment were sufficient to ensure that our activities did not exceed the bounds of the Final Judgment, and that Apple had made no showing that the Monitor should be disqualified or that Apple would suffer irreparable harm if the stay were denied.[51] The Court also provided a detailed summary of the interactions between Apple, the Plaintiffs,

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[50] *Id.* at 47-48.

[51] *Apple*, 992 F. Supp. 2d at 266.

and the monitoring team from the hearings preceding issuance of the Final Judgment through the filing of the January 16 opinion.[52]

Although the Court denied Apple's Motion to Stay, the parties agreed that the Court would stay Section VI of the Final Judgment until noon on January 21, 2014, to allow Apple to pursue its appeal to the Second Circuit.

5. Proceedings before the Second Circuit

On January 21, 2014, the Second Circuit issued an order establishing a briefing schedule and granting the administrative stay requested by Apple until a panel resolved Apple's motion for a stay pending appeal.

On February 4, 2014, a three-judge motions panel heard argument on Apple's motion to stay the injunction pending appeal, and on February 10, 2014, the panel issued an order ("February 10 Order") denying the motion. The February 10 Order explained that, as the parties had agreed at oral argument, the Final Judgment tasks the Monitor with "assess[ing] the appropriateness of the compliance programs adopted by Apple and the means used to communicate those programs to its personnel," including ensuring that "Apple's employees particularly, senior executives and board members are being instructed on what those compliance policies mean and how they work." As the appeals court noted, the Monitor is not authorized to "investigate whether such personnel [are] in fact complying with the antitrust or other laws." Moreover, the February 10 Order provided that "the monitor [is] empowered to demand only documents relevant to his authorized responsibility as so defined, and to interview Apple directors, officers, and employees only on subjects relevant to that responsibility."[53]

We had ceased all monitoring work during the pendency of the temporary stays granted by this Court and the Second Circuit, which amounted to a period of more than three weeks. And, as a practical matter, we were effectively prevented from carrying out our responsibilities for two full months following the filing of the December 12 Motion to Stay. With the issuance of the Second Circuit's February 10 Order, the administrative stay was lifted, and we resumed our monitoring activities.

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[52] *See id.* at 265-78.

[53] From our perspective, the Second Circuit's Order confirmed the scope of the Final Judgment as we had interpreted and applied it.

D. February 2014: Resumption of Monitoring Activities

1. Communications with Apple

Our monitoring activities resumed promptly after the Second Circuit's ruling. Within several days, we were in touch with Apple and arranged for a meeting in Washington, D.C., in early March to discuss the company's progress on revisions to Apple's antitrust compliance policies, procedures, and training programs.

On February 18, 2014, we sent a letter to the Court providing an update on the status of our monitoring activities. The letter explained that we were prepared to reset our relationship with Apple and to attempt to overcome the obstacles that had prevented us from making adequate progress. On February 19, the Court issued an order ("February 19 Order") that required Apple to provide to us "on a rolling basis, with final production being made no later than February 26," the documents we had requested, "including those the Monitor requested in October, as well as any additional documents that Apple wishes the Monitor to review." On February 26, consistent with the Court's February 19 Order, Apple provided us with two sets of additional documents.[54]

2. March 4 Meeting with Apple

On March 4, 2014, we met with Mr. Vetter, Mr. Andeer, Mr. Moyer, Ms. Said, and Matthew J. Reilly of Simpson Thacher ("March 4 Meeting"). The purpose of the meeting was for Apple to share with us the progress it had made in revising its antitrust compliance policies, procedures, and training over the previous several months.

Based on the representations that had been made to us and to the Court between October and January, we had expected that we would be presented with completed revised antitrust policies and procedures, rather than drafts. However, during the course of our subsequent discussions, it became clear that at least one of the reasons the materials were still in draft form was to solicit the views of the monitoring team on the drafts – and consider making changes based on our comments – before distributing them to Apple employees. This was consistent with the Court's suggestion during the January 13 proceedings.

At the March 4 Meeting, Apple provided a detailed presentation of the steps the company had taken to comply with the Final Judgment. Apple described the various audits of publisher contracts that Ms. Said had been

[54] A complete description of the documents produced at this time was provided at page 36 of our First Report.

conducting, the steps Apple had taken to familiarize employees with Ms. Said and emphasize her availability as a resource regarding antitrust issues, and the various ways in which Apple had incorporated the requirements of the Final Judgment into its training and draft revised policies.

Much of the meeting focused on draft documents that Apple had prepared as part of its efforts to revise its antitrust compliance program. These included a revised Antitrust and Competition Law Policy, a revised antitrust section of Apple's Business Conduct Policy, and proposed revisions to Apple's Business Conduct Policy ebook. In addition, Apple showed us an online compliance training program addressed to corruption issues, which as a matter of style and aesthetic would serve as the model for the online antitrust compliance training program that was still in development, as well as some of the proposed text of the online antitrust course. Rather than discuss the details of the draft documents at this point,[55] we will provide our assessment of the final versions of these materials later in this Report.

At the March 4 Meeting, the Apple representatives informed us that some of the policy and training documents were ready to be circulated to employees, but they said that they planned to wait to introduce them simultaneously in June 2014, when all of the materials were ready, so that they could make a "big splash" that would catch employees' attention.[56]

Later in the meeting, Mr. Andeer provided us with abbreviated summaries of the two live training presentations he had made to employees since the issuance of the Final Judgment. He said that each training session was about ninety minutes long: his presentations lasted for about sixty minutes, and he responded to questions from employees for about thirty minutes. Mr. Andeer said that he received many questions at each of the training sessions.

The first presentation, which was an overview of the Final Judgment, was given by Mr. Andeer in September and December 2013 to groups of iBooks Store employees and other personnel identified by Apple as covered by Sections V.A and V.B of the Final Judgment.[57] Mr. Andeer said that he had tried to make the

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[55] We provided our observations on the initial draft versions of these materials at pp. 37-40 and pp. 47-50 of our First Report.

[56] Apple did not explain at the time why it settled on the June 2014 date. Apple subsequently advised us that the timing was dictated by the desire to release all elements of the program at the same time rather than issue them piecemeal.

[57] At the time, Apple had provided us with lists of employees who represented that they planned to attend each live training session, but Apple was unable to confirm which employees actually attended. Apple subsequently issued an electronic survey to the intended participants to confirm their attendance at the September and December 2013 training sessions, and Apple

Final Judgment easily comprehensible to the employees, most of whom do not have legal training. The presentation slides set forth various "[d]os and don'ts (for now)" under the Final Judgment, including with respect to Most Favored Nation clauses ("MFNs"), discounting of "Big 6" publisher titles, threats and retaliation, information sharing, terms affecting other retailers' prices,[58] and App Store terms and conditions. Mr. Andeer explained that he summarized the Final Judgment, section-by-section, and also emphasized that he and other members of the legal team are available to speak with them about potential antitrust issues.

The second presentation, which Mr. Andeer gave at a "worldwide summit" of iBooks Store employees on February 3, 2014, was a general overview of antitrust law.[59] Mr. Andeer said this presentation emphasized the types of conduct that are the most significant potential pitfalls for employees of Apple or a similar company, involving communications with competitors and groups of competitors. Mr. Andeer said that he incorporates real-life examples throughout his training sessions that he believes employees will find helpful in understanding the antitrust concepts he is explaining. The slides for this presentation contain much less text than do the slides for the Final Judgment presentation; many slides have no text whatsoever and include only an evocative image that Mr. Andeer used to launch his oral presentation on the relevant topic.[60] One of the final slides states that "[a]ntitrust [v]iolations MUST be reported" and lists Ms. Said as the relevant contact, with Ms. Persampieri and Apple's competition lawyers listed under the subheading "[q]uestions or concerns." The next slide lists the relevant "[t]akeaways" as "Apple is under scrutiny," "Aggressive regulatory landscape," "Talking about a competitor's price is risky," and "Awareness of what you say."

The March 4 Meeting was the last substantive contact between Apple and the monitoring team before the preparation of the First Report, which was filed with the Court on April 14, 2014.

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provided us with a list of confirmed attendees on May 19, 2014. Apple did not provide us with such a list for the February 2014 training session.

[58] Mr. Andeer told us that he fielded many questions on retail pricing during trainings. Mr. Andeer said he has told employees that they should focus on the terms in Apple's agreements and what is best for Apple.

[59] Presentation slides for the February 3, 2014 live training session are attached as Exhibit A (redacted).

[60] Mr. Andeer explained at the March 4 Meeting that his presentation slides generally do not include much text. He made the Final Judgment presentation slides more text-heavy, he explained, because the Final Judgment is complex and difficult for many employees to understand, so he wanted them to be able to take with them – and be able to refer later to – a document explaining its terms.

V. Activities during the Second Reporting Period: March to August 2014

We have made significant progress during the second reporting period, which ran from the March 4 Meeting through the end of August 2014.[61] During this period, we obtained far more of the information necessary to fulfill our responsibilities under the Final Judgment than we had during the initial reporting period. Even so, we frequently had to deal with delays in receiving requested materials, and, in cases that will be discussed in Section V.D below, Apple has refused to provide certain information. In addition, Apple has unnecessarily complicated our monitoring efforts by making unilateral decisions that have affected our ability to discharge our responsibilities.[62]

A. Objectives

We had three primary objectives during this second reporting period.

First, we needed to develop a better understanding of Apple's business. As noted in our First Report, we knew comparatively little about the structure and operation of Apple's business six months ago, when we issued the First Report. Information about the aspects of a company's operations that create antitrust risks and vulnerabilities, however, is critical both to the development of a comprehensive and effective antitrust compliance program and to our evaluation of that program. For that reason, many of the recommendations and assessments we included in the First Report were preliminary and tentative. Although our knowledge of Apple's business remains far from complete, we have, with Apple's improved cooperation, learned a great deal during the second reporting period, primarily through interviews and meetings with relevant personnel, as well as through documents and other materials Apple has provided to us.

Our second goal during this reporting period was to learn more about Apple's Legal and Compliance functions, including how they are organized and how they interact with the company as a whole. Before this reporting period commenced, we had spoken with some of the relevant personnel, including Tom Moyer, the company's Chief Compliance Officer and Head of Global Security; Deena Said, the ACO; and several Apple lawyers. During this reporting period,

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[61] The period from the March 4 Meeting through April 14 was largely devoted to the preparation of the First Report.

[62] For example, in a set of interviews scheduled for June, Apple unilaterally determined that the interviews would be limited to one hour, even though previous substantive interviews had lasted significantly longer. Though the interviews were eventually extended, the issue could have been entirely avoided by prior consultations. More recently, Apple chose not to video-record makeup training sessions that took place on September 11 and September 23, without notifying us in advance of that decision.

we developed a more detailed understanding of the Legal and Compliance functions. We also obtained useful information from Apple business personnel regarding their contacts and communications with Legal and Compliance personnel.

Our third and ultimate objective was to review and assess the revised antitrust policies, procedures, and training that were introduced to Apple employees as part of the new Antitrust Compliance Program rollout on June 30, 2014 (the "June 30 Rollout"). This is the first date on which Apple rolled out its complete revised compliance program that originally was to be finished by January 14, 2014. The information we obtained regarding Apple's business and Legal/Compliance structure has been critical to making this assessment. We also asked a wide range of interviewees directly about their experience with Apple's Antitrust Compliance Program and, in the interviews we conducted after June 30, about their reactions to the new and revised antitrust materials introduced as part of the June 30 Rollout.

B. Interviews and Meetings

Between March 2014 and August 2014, we interviewed thirty-six people affiliated with Apple, including one outgoing Board member (by telephone); seven of the ten members of Apple's Executive Team, including CEO Tim Cook; ten employees who report directly to Eddy Cue in his Internet Software and Services group; and four members of Apple's Legal team, among others. We also had several meetings with key individuals involved in Apple's antitrust compliance efforts, including Mr. Sewell, Ms. Said, Mr. Vetter, Mr. Andeer, and Apple's outside counsel at Simpson Thacher. With the exception of the telephone interview mentioned above, all of our interviews and many of the meetings took place during four visits to Apple's offices in California: on April 23-25, June 25-27, July 17-18, and August 20-21.

1. Board of Directors

On July 30, we conducted a telephone interview with William V. Campbell, who had resigned in mid-July from Apple's Board of Directors. As described above, we had been seeking to interview Board members since we began our work in October 2013. With the exception of the interview of Dr. Sugar in December and the interview of Tim Cook in April, Apple had made no Board members available to us. Apple's General Counsel, Mr. Sewell, requested in mid-June that our interviews of Board members be deferred until the Board had received antitrust compliance training, which eventually took place on

August 27.[63] Although reluctant to delay Board member interviews still further, we agreed to defer the rest of our Board member interviews until after August 27. However, Mr. Sewell arranged for an earlier interview with Mr. Campbell because his Board service ended in mid-July.

Mr. Campbell, who served on Apple's Audit and Finance Committee ("AFC") from 2006 until his resignation, discussed his views on the compliance-related responsibilities of the AFC. He also provided us with information regarding the types of oversight the Board exercises, his own interactions with Apple's compliance function, and his perception of Apple's response to the Final Judgment and other matters related to antitrust compliance. This interview advanced our understanding of the Board's oversight of antitrust compliance at Apple, an issue we will assess further in the next reporting period.

2. Executive Team

During this reporting period, we interviewed seven of the ten members of Apple's Executive Team:

- Tim Cook, CEO
- Eddy Cue, Senior Vice President of Internet Software and Services
- Craig Federighi, Senior Vice President of Software Engineering
- Luca Maestri, Senior Vice President and CFO
- Dan Riccio, Senior Vice President of Hardware Engineering
- Jeff Williams, Senior Vice President of Operations
- Angela Ahrendts, Senior Vice President of Retail and Online Stores

As mentioned in Section IV.C.1, we interviewed an eighth member of the Executive Team, Bruce Sewell, by telephone during the previous reporting period. The Monitor also met with Mr. Sewell on June 12 in Washington, D.C. That meeting is summarized in more detail in Section V.D.3.

From the outset, we have viewed the Executive Team interviews as particularly important to the fulfillment of our mandate under the Final

[63] At the March 4 Meeting, Apple told us the Board would receive antitrust compliance training in May. In late April, Apple informed us that the Board training session had been postponed until August due to conflicts in the schedule of David Boies, who led the Board training.

Judgment, given this Court's specific concerns regarding compliance among Apple's highest-level personnel.[64] The Executive Team interviews that we have completed thus far have greatly enhanced our understanding of Apple's business, the antitrust risks the company faces, and the ways in which the company has responded to those risks. Each Executive Team interviewee has provided us with an overview of the specific areas of the business he or she oversees and identified his or her direct reports. The interviews have also provided helpful insight into Executive Team members' perspectives on compliance at Apple, including their efforts to communicate the importance of antitrust compliance throughout the company, the sufficiency of the legal and compliance resources that support their activities, and their perceptions of the quality of antitrust compliance resources available to them.

There remain two members of Apple's Executive Team whom we have not yet interviewed: Phil Schiller, Senior Vice President of Worldwide Marketing; and Jonathan Ive, Senior Vice President of Design. We had hoped to interview the entire Executive Team during this reporting period, but, despite our requests, Apple did not schedule interviews with Mr. Schiller or Mr. Ive. It is our understanding that Apple made that decision because Mr. Schiller and Mr. Ive did not receive antitrust training until after we had finished conducting interviews for this reporting period.[65] We have requested to interview Mr. Schiller and Mr. Ive as early as possible in the next reporting period.

3. Personnel in Content Businesses

During this reporting period, we also interviewed several senior but non-Executive Team Apple employees whose work relates to Apple's content businesses. We initially focused these interviews on personnel within Mr. Cue's group, interviewing ten of Mr. Cue's direct reports:

- Robert Kondrk, iTunes Music & Design
- Matt Fischer, iTunes apps
- Tracy Pirnack, iTunes Business Management
- Jennifer Bailey, iTunes Special Projects

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[64] *See, e.g.*, 8/27/13 Tr. 17 (noting that the conduct underlying the ebooks Litigation "demonstrated a blatant and aggressive disregard at Apple for the requirements of the law," including among "Apple lawyers and its highest-level executives").

[65] Attendance lists Apple produced to us on August 29 show that Mr. Schiller attended the Board live training session on August 27 and that Mr. Ive's training date remained "TBD."

- Bill Stasior, Siri
- Todd Teresi, iAd
- Roger Rosner, apps Admin
- Jeff Robbin, iTunes Store apps
- Steven Leung, iTunes Retail
- Patrice Gautier, Maps and iCloud[66]

We also interviewed a number of less senior employees within Mr. Cue's Internet Software and Services organization.[67] In April, we interviewed the three iBooks account managers who are responsible for day-to-day dealings with the publishers who distribute works through the iBooks Store.[68] We interviewed several employees who do App Store–related work and report to Matt Fischer. We also interviewed four employees whose work relates to iTunes operations and who are overseen by Tracy Pirnack.

Like the Executive Team interviews, these interviews provided us with relevant and helpful information regarding Apple's business and the antitrust risks posed by its activities. Given the involvement of Apple's content businesses in the events underlying the ebooks Litigation, we sought to gain a deeper understanding of the content-related activities in which Apple engages. We learned what Apple has done, both before and after issuance of the Final Judgment, to mitigate the antitrust risks associated with its content businesses. For example, we interviewed Mr. Cue's direct reports about their access to legal and compliance resources when confronted with situations they view as presenting potential compliance risks, the ways in which Apple lawyers are embedded in business units and assist in the day-to-day decision-making of non-

[66] An organization chart Apple provided to us shows three additional direct reports to Mr. Cue, including Mr. Cue's administrative assistant and an employee whose responsibilities appear to focus solely on Europe. We plan to interview the one remaining direct report, Val Cole, whose work appears to be relevant to our responsibilities, but have determined that interviews with the other two remaining direct reports are not necessary at this time.

[67] Apple selected many of the personnel we interviewed in November 2013, December 2013, and April 2014 based on its assessment that speaking with them would help us understand the company's content businesses. In April 2014, we also interviewed several people we had specifically requested. Starting with the June 2014 interviews, we specified witnesses we wanted to interview based on information we had obtained about their roles.

[68] In the previous reporting period, we had interviewed these employees' direct supervisor, Rob McDonald, and his supervisor, Keith Moerer. Mr. Moerer reports to Robert Kondrk, whom we have also interviewed.

attorney employees, and the availability and sufficiency of antitrust compliance training and other resources both before and after issuance of the Final Judgment.

4. Members of the Competition Law & Policy Group

In April, we interviewed Sean Dillon and Brendan McNamara, two of the three attorneys hired to join Mr. Andeer in Apple's Competition Law & Policy Group ("CLPG"). The third member of the team, Per Hellstrom, is based in Europe. Mr. Dillon and Mr. McNamara both joined Apple from the Federal Trade Commission, Mr. Dillon in November 2011 and Mr. McNamara in February 2014. Those interviews informed our understanding of how the CLPG interacts with Apple's business personnel, the steps the CLPG has taken to assess and mitigate the antitrust risks Apple faces, and the CLPG's involvement in the revision of Apple's Antitrust Compliance Program.

On August 21, near the end of this reporting period, we also met with Mr. Andeer, with whom we had previously met during the first reporting period. That meeting focused on the feedback Mr. Andeer had received on Apple's revised antitrust compliance materials, his plans for further development of those materials, the evolving role of the CLPG, and the status of our recommendation in the First Report that Apple conduct a formal antitrust risk assessment. The meeting, and the interviews with his colleagues in the CLPG, provided us with important information about all of those topics, which serves as the basis for the discussion and assessments below.

5. Compliance and Legal Personnel

During this reporting period, we also interviewed several compliance and legal personnel who are not members of the CLPG. The goal of these interviews was to learn how the relevant personnel work with Apple's businesses, as well as with Apple's antitrust specialists, and to learn more about the evolution of Apple's Antitrust Compliance Program.

In June, we interviewed Kathleen Emery and Sharon Joyner, both of whose work relates directly to Apple's antitrust compliance infrastructure. Ms. Emery manages Apple's Business Conduct Helpline, a telephone service employees can contact with compliance-related questions, complaints, and allegations. Ms. Joyner works as a project manager and is specifically responsible for the development of online training at the company. She has played an important role in the development of Apple's revised antitrust compliance materials, including the revised policies, the antitrust section of the compliance ebook, online training, and the "Antitrust Intraweb Site" Apple launched on June 30.

We also interviewed two Apple lawyers who work with content-related businesses at Apple: Robert Windom, who provides legal advice in connection with all of Apple's content businesses, and Emily Blumsack, who reports to Mr. Windom and provides legal support related to the App Store.[69]

C. Documents

In addition to our interviews with Apple personnel, we requested and received various Apple documents during the reporting period.

1. July 1 Production

Most of the documents Apple produced to us during this reporting period were produced on a rolling basis, in response to specific requests we made. There were two exceptions, the first of which was a production Apple made relating to the June 30 Rollout. On July 1, Apple provided us with 65 pages of documents reflecting the revisions to the Antitrust Compliance Program the company had just introduced. Specifically, Apple produced:

- The company's revised Antitrust and Competition Law Policy;
- A copy of the email announcement that was sent to employees on June 30 regarding the online antitrust training;
- A copy of the slides from David Boies's June 30 presentation to the Executive Team regarding antitrust law;
- A copy of the email announcement that was sent to employees on June 30 regarding the revised Business Conduct ebook;
- A screenshot of the Antirust Intraweb Site from which employees could download the revised Business Conduct ebook;
- Screenshots of promotions for the Business Conduct ebook on the Antitrust Intraweb Site, the Business Conduct & Compliance intraweb site, and the AppleWeb home page;
- A June 30 email from Eddy Cue to his reports emphasizing the importance of the online antitrust training course;
- A revised summary of the Final Judgment;

[69] During the first reporting period, we interviewed Annie Persampieri, another in-house attorney who also reports to Mr. Windom and provides legal support related to the iBooks Store.

- The text of the Final Judgment certification distributed to Section V employees;
- The text of the communications certifications distributed to Section V employees to cover the first two quarters of 2014; and
- A July 1 memorandum from Ms. Said to the Monitor setting forth her proposal for the audit she is required to conduct under Section V.E of the Final Judgment.[70]

2. July 31 Document Request

On July 31, we sent Apple a document request ("July 31 Document Request"), asking that the documents be produced on or before August 31. The July 31 Document Request was aimed, in large part, at obtaining answers to questions we had highlighted in the First Report.

The requests covered a range of broad categories, including:

- The Board's oversight of compliance-related matters at Apple;
- Additional materials related to the antitrust training that had been provided to Apple employees since issuance of the Final Judgment;
- Any antitrust risk assessments Apple had prepared since receiving our First Report;
- Agendas from Executive Team meetings referring to or reflecting discussion of antitrust compliance;
- Communications from Apple's Board or Executive Team to Apple employees regarding antitrust compliance; and
- Transmission of the First Report to the Board, the Executive Team, or other Apple personnel, and any feedback received concerning that report.

On August 1, Simpson Thacher asked to meet and confer with us regarding the July 31 Document Request. Although Apple did not file formal objections to any of our requests, it expressed initial concern about some of them, and we agreed to narrow the date range of two of our requests. On August 29, Apple produced documents responsive to the July 31 Document Request ("August 29 Submission").

[70] In addition to these materials, Ms. Said provided the monitoring team with the means to gain access to Apple's new online training.

In addition to requests to which Apple represented that no responsive documents existed, Apple refused to produce documents in response to two of our requests. First, Apple produced no documents in response to our request for Executive Team meeting agendas; on September 5, Simpson Thacher emailed us and asked to continue meeting and conferring on that request in hopes of finding other ways to convey information sought from the agendas. Second, Apple also refused to produce emails, even in redacted form, showing transmission of our First Report to Apple personnel, although it did produce a privilege log showing information about two April 14 emails that Apple represented contained advice of counsel regarding the First Report. According to the privilege log, Mr. Vetter and Mr. Sewell sent the emails to Mr. Andeer, Ms. Said, Mr. Moyer, and two individuals who appear to be members of Apple's public relations team. Simpson Thacher confirmed that the First Report was not transmitted to the Board, the Executive Team, or to any additional Apple personnel.

3. Other Documents Produced During the Reporting Period

Among the additional documents produced on a rolling basis during this reporting period were:

- Slides, speaker's notes, and attendance lists for most of the live antitrust training sessions Apple has conducted since issuance of the Final Judgment;
- Brief written reports Ms. Said provided to the AFC in February and May 2014;
- A list of personnel with whom Ms. Said has "standing meetings," grouped by frequency of the meetings;
- The detailed work plan Ms. Said has created to track the progress of Apple's efforts to satisfy various Final Judgment requirements;
- A document reflecting the procedure by which antitrust-related Helpline calls are to be escalated to Ms. Said;
- Updated live training schedules; and
- Organization charts and rosters of the employees who report to Mr. Cue.

D. Issues

As noted earlier in this Report, our relationship with Apple has been more productive and constructive during this reporting period than it was during the first few months of the monitorship. In the First Report, we expressed optimism

that the relationship had taken a positive turn, and that optimism has for the most part proved to be justified: Apple was far more responsive to our requests during this reporting period and was cooperative in scheduling interviews and coordinating other activities. Nonetheless, we encountered several difficulties that warrant brief discussion.

1. Challenge to Fees Associated with Preparation of First Report

The first significant issue related to Apple's objections to the scope and length of our First Report. The First Report laid out, in significant detail, the procedural history of the first several months of the monitorship, including conflicts between Apple, the Plaintiffs, and the monitoring team. We felt that it was vital that we include this information to provide an accurate account of the early months of the monitorship, since we spent the bulk of our time during these months dealing with these obstacles instead of making substantive progress. We were not parties to the litigation initiated by Apple challenging our activities, and therefore our First Report was the first full opportunity to present an account of the events during the first months after the Monitor's appointment. We also felt this information helped to explain why the First Report could not offer more than a relatively preliminary assessment of Apple's antitrust compliance policies, procedures, and training.

Apple objected strenuously to our inclusion of the procedural history in the First Report. In an April 4 email transmitting Apple's comments on the First Report, Mr. Reilly explained that Apple was surprised and displeased with the length of the report, and particularly with the length of the procedural history. He added that Apple was concerned about being charged for the time spent generating that history, which Apple considered to be outside the proper scope of the report. Mr. Reilly told us that Apple would like to discuss the issue when it received our invoice for the work completed in March.

On May 1, Simpson Thacher provided us with Apple's formal objections to our March invoice. Apple estimated that "at least . . . approximately half of the [First] [R]eport [was] devoted to a rehash of prior submissions that was unrelated to [our] mandate under the Final Judgment." In total, Apple requested that we reduce our March 2014 bill by approximately 35%, noting its view that that proposal represented a compromise and that even the reduced bill would be "excessive under the circumstances."

We responded by email, copying the Plaintiffs, and stated that Apple's position was unacceptable. In accordance with Section VI.H of the Final Judgment and the December 2 Order, Apple and the Plaintiffs met and conferred on May 2 and 5 regarding the objections. When they were unable to resolve the

issue, we appeared, with the parties, before Magistrate Judge Dolinger on May 9 ("May 9 Hearing"). Judge Dolinger rejected Apple's objections to the March invoice and ordered Apple to pay that invoice in full.[71] Apple did not appeal Judge Dolinger's May 9 rulings and has paid our subsequent invoices promptly and without objection.

2. Objections to the Monitoring Team's "Work Plan"

The May 9 Hearing also addressed a second issue—Apple's objections to an allegedly overbroad and overly burdensome "work plan" that the company claimed we had issued.

On April 29, the Monitor spoke with Mr. Reilly and Sara Y. Razi of Simpson Thacher, who suggested that Apple wanted to appear before Judge Dolinger in the near future to clarify the scale and scope of our future activities. The Monitor responded that he did not think it was necessary to present those issues to Judge Dolinger but that, in any event, he would like to discuss the issues in person first.

On May 1, the Monitor, Mr. Nigro, and Ms. Carroll had an in-person meeting with Mr. Reilly and Ms. Razi ("May 1 Meeting"). The meeting focused on Apple's desire to clarify the monitoring team's plan for the next few months and, in particular, which additional personnel we planned to interview. We said that we knew we needed to interview the members of Apple's Board and Executive Team in coming months, but that, with respect to other personnel, it would be useful to know whether Apple believed there were individuals who could efficiently help us understand Apple's business and the associated antitrust risks. Mr. Reilly expressed the view that the interviews we had already conducted had provided us with a great deal of information about Apple's antitrust risks, and he said he was not sure he could suggest any additional interviews. We agreed to give Simpson Thacher an initial list of Apple business people we hoped to interview in the coming months.

On May 5, before we had had the opportunity to prepare a list of proposed interviews, Simpson Thacher sent the Plaintiffs an email setting forth

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[71] *See* 5/9/14 Tr. 38-39 ("[T]o the extent that Apple is criticizing the monitor and saying it shouldn't have to pay for the time spent on at least part of the report, I find that objection to be utterly and completely groundless. The report is an appropriate document. It is necessary for the monitor to be able to set forth the context for the substance that he presents. And whatever went on procedurally and otherwise that led to, shall we say, at least some delays in the monitor being able to grapple with the substance of what Apple was proposing to do in compliance with the judgment, that has to be and is appropriately explained in the report. Apple's request insofar as it's premised on this objection, its request not to have to pay the full invoice is emphatically denied.").

Apple's objections to our "proposed work plan." The email stated that we had "met and conferred" with Simpson Thacher on May 1 and had expressed an intention to engage in activities that would be "well beyond the authority granted to the monitor as part of the Final Judgment, . . . not in any respect cost-effective, and . . . wholly inconsistent with a monitorship that is supposed to 'rest lightly' on Apple." We were puzzled by these objections, not having thought that the May 1 Meeting was a "meet and confer" or that our preliminary statements at that meeting constituted a "work plan."

At the May 9 Hearing, Judge Dolinger rejected Apple's objections to what Apple claimed was our "work plan." He rejected Apple's request for an order limiting our activities going forward, emphasizing the discretion that is inherent in a monitorship such as this one[72] and noting that there was, in any event, "no record on which to deem that to be an appropriate request" due to the lack of "specifics" in Apple's presentation of the issue.[73] As with its challenge to our March invoices, Apple did not appeal Judge Dolinger's rulings on this issue.

3. Live Monitoring of Training

Another significant obstacle involved our request to conduct live monitoring of antitrust training sessions led by Mr. Andeer, Mr. Andeer's colleagues in the CLPG, and Mr. Boies. We became aware during our very first meeting with Apple, on October 22, 2013, that this might be a troublesome issue. At that meeting, Mr. Andeer advised us of Apple's view that the live antitrust training sessions he conducted would be protected by attorney-client privilege, since he planned to provide employees with advice based on real-world examples during the sessions. We told Mr. Andeer that, even assuming the sessions included some privileged communications, we did not think our presence at the sessions would waive the privilege. Nonetheless, we did not press to attend the training sessions Mr. Andeer led in September and December 2013 and in February 2014 because of the many other unresolved issues and because of the litigation Apple initiated.

We had a preliminary discussion during the March 4 Meeting regarding ways we could monitor future training sessions, noting our strong preference to perform live monitoring. Over the next few weeks, the Monitor and Mr. Vetter engaged in an extended email exchange, in which Mr. Vetter reiterated Apple's position that live training sessions might include exchanges that would either

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[72] *See id.* at 40 ("It is apparent that the monitor must be able . . . to determine step by step what additional information he requires and how best to achieve and obtain that information."); *id.* at 41 ("[Although] the monitor has very specific tasks to perform and specific issues to deal with, he must be given some fairly broad discretion in deciding how to proceed.").

[73] *Id.* at 37-41.

implicate the attorney-client privilege or reveal confidential business information. He also expressed a concern that our presence would diminish the openness and robustness of the discussions that would take place at live training sessions. Mr. Vetter offered to provide us with a limited number of redacted video-recordings of live training sessions. We took the position that the training sessions were not privileged and suggested various ways of addressing Apple's privilege concerns, including pursuant to Federal Rule of Evidence 502(d), which authorizes a federal court to issue an order stating that privilege "is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other federal or state proceeding."[74]

Because no training sessions took place in March or April, we made no progress toward resolving the issue for several weeks. On May 14, Simpson Thacher informed us that Apple had decided not to permit us to monitor the June 30 training session for Executive Team members in any manner—either live or by video. Simpson Thacher clarified that Apple would provide us with copies of the slides and handouts associated with the training session and also offered to provide us with a two-angle videotape of one of the upcoming training sessions for non-executive employees.

On May 19, the Monitor emailed Simpson Thacher to formally request (among other things) that Apple videotape all of the non-Board, non-Executive Team training sessions, rather than the single session that Apple had offered. We believed this was particularly appropriate in light of Apple's prior representations that it intended to tailor the training sessions to different employee groups.[75] The Monitor also formally reiterated the monitoring team's request that Apple permit us to attend the Board and Executive Team training sessions, emphasizing that the Court had focused on compliance weaknesses among Apple's highest-level personnel and that live monitoring was necessary for us to fully evaluate whether the training they received constituted a sufficient response to the Court's concern.

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[74] We offered to accommodate Apple's concerns about the disclosure of confidential business information through the protective order that was being negotiated or, if Apple thought it appropriate, through a separate confidentiality agreement. There have been extensive negotiations between Apple, the Plaintiffs, and the monitoring team during the second reporting period regarding a protective order. Although no protective order has been finalized as of the date of this Report, we are prepared to resume discussions at the parties' convenience. In the meantime, the monitoring team has agreed not to share or disclose sensitive or proprietary information without prior approval from Apple.

[75] In fact, in Simpson Thacher's May 12 letter responding to the recommendations we made in the First Report, Simpson Thacher argued that it was not necessary for Apple to develop tailored antitrust compliance *policies* for different employee groups because it would tailor the antitrust compliance *training* provided to different employee groups.

In response, Simpson Thacher offered to videotape and produce non-privileged portions of two upcoming, non-Board and non-Executive Team antitrust training sessions. Apple also agreed for the first time to produce redacted video-recordings of the Board and Executive Team training sessions. We responded that, at a minimum, we believed Apple should video-record all of the non-Board, non-Executive Team training sessions, and we reiterated our request that Apple permit us to conduct live monitoring of the Executive Team and Board training sessions.

On June 2, we discussed these issues with Simpson Thacher by telephone. During that conference call, Simpson Thacher conveyed Apple's offer to videotape all remaining antitrust training sessions, and we discussed potential compromises regarding our monitoring of the Executive Team training session.

On June 4, Simpson Thacher informed the Monitor that Mr. Sewell would like to discuss with him our monitoring of live training. A little over a week later, the Monitor met in person with Mr. Sewell in Washington, D.C. Mr. Sewell said he understood the importance of monitoring Executive Team and Board training but was very concerned that our presence at those sessions would unacceptably chill the discussion between participants and Mr. Boies. He said he will not object to our attending Executive Team and Board sessions in 2015 but would strongly prefer that we not attend those sessions in 2014. As a substitute, he offered to provide us with redacted videos of the 2014 Executive Team and Board training sessions. Mr. Sewell added that he did not object to our attending in person as many non-Executive Team and non-Board training sessions as we wanted, and he promised that Apple would also video-record all of those sessions.

In the spirit of compromise, we agreed to Mr. Sewell's proposal. Members of our team attended two live training sessions: Mr. Nigro attended a June 17 session for App Store employees, and the Monitor attended a June 23 session for Productivity Engineers.[76] Consistent with the agreement we reached with Mr. Sewell, Apple provided us with redacted video-recordings of all of the sessions that took place between June 10 and the end of this reporting period. The Executive Team session contained approximately 35 minutes of redacted video footage. Although we requested on three separate occasions that Apple provide us with a list of the issues or subjects discussed during the redacted portions of the training session, Apple ignored our request and follow-up requests. We have never received this information.

[76] Our substantive evaluations of those training sessions are discussed in Section IX.E below.

4. Monitoring of New Employee Orientation

We have also requested to monitor Apple's New Employee Orientation ("NEO"), an extensive training program that many interviewees told us incorporated compliance-related material and that, in their view, set the tone for the attitude towards compliance at Apple. We viewed monitoring at least one of these sessions to fall within our mandate under the Final Judgment to evaluate the comprehensiveness and effectiveness of Apple's antitrust compliance policies, procedures, and training. Nonetheless, Apple rejected the request as beyond the scope of our mandate and, to date, has not permitted us to monitor NEO.

We first learned during our April interviews that Apple's NEO program might incorporate antitrust-related information. For example, a member of the CLPG told us that, although the NEO session in which he participated had lasted for an entire morning and covered a broad range of issues, his ears had "perked up" during the discussion of competition law, which he thought was well done. Other interviewees also recalled that NEO included discussion of antitrust topics. We also hoped to evaluate new employees' exposure to compliance more generally and the emphasis Apple gave this information relative to other instruction received during NEO.

For these reasons, we asked at least as early as April 29 to conduct live monitoring of NEO. On May 14, Simpson Thacher informed us that Apple would not permit us to monitor NEO, representing (contrary to what we had heard from three people we interviewed) that NEO was "not pertinent to antitrust compliance or training." Simpson Thacher told us that NEO covers "a wide range of topics meant to familiarize a new employee with Apple, but little if any of this relates to business conduct policies," although Simpson Thacher promised to confirm with Apple that that understanding was correct. We subsequently reiterated our request more than once; it took more than two months for us to receive a substantive response.

On July 24, Simpson Thacher again told us that Apple would not allow us to monitor NEO because it did not relate to antitrust. We informed Simpson Thacher later that day that, although we viewed our request as very reasonable, we did not plan to take the issue to Judge Dolinger for resolution. We said that we would note Apple's delay in responding to the request, as well as the ultimate decision to reject the request, in this Report.[77]

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[77] In response to our draft report, Apple contended that it has informed us that our attending these sessions "would cause significant disruption to an important, multi-day orientation that only briefly touches on business conduct issues generally, not antitrust compliance specifically." We disagree. If our attendance were handled appropriately, there

5. Video Recordings of Town Hall Meetings

During this reporting period, we also learned that Apple holds periodic "town hall" meetings in which senior executives address Apple employees regarding issues that are important to the company. We have inquired repeatedly about whether these meetings ever incorporate compliance messages and whether they are video-recorded. As with our NEO request, Apple rejected our request to monitor town hall meetings, after lengthy delays, and only after we followed up with the company many times.

We first asked in late April whether Apple records its town hall meetings. In an April 29 telephone conference, Simpson Thacher attorneys represented that they did not know the answer. Despite reminders in April, May, and June that we were interested in such materials, we did not receive a substantive response. Finally, in July, Simpson Thacher told us that at least some town halls were recorded but that Apple had reviewed the recordings and represented that they did not involve antitrust or compliance. As with NEO, we informed Simpson Thacher later that day that we viewed the request as very reasonable and were disappointed at the response.[78]

6. Antitrust Risk Assessment

One of the most specific recommendations in our First Report was that Apple undertake a formal risk assessment to identify and assign priorities to the antitrust-related risks the company faces. For example, we explained in the First Report,

> An antitrust risk assessment is a fundamental component of any antitrust compliance program, and a systematic assessment of the risks that arise from Apple's businesses, the activities of its employees, and its third-party interactions will help ensure that its Antitrust Compliance Program makes sense for Apple. We believe that such an assessment is a key component in making Apple's Antitrust Compliance Program comprehensive and effective. . . . [I]f current and geographically relevant risk assessments do not exist, Apple should conduct an antitrust risk assessment to identify

would be little or no disruption, and we would be able to monitor the extent to which compliance issues are addressed during an employee's introduction to the company.

[78] In response to the draft report, Apple asserted that it had informed us that "these town hall sessions are outside the scope of [the] monitorship," as they do not relate to "business conduct issues" or the antitrust laws.

> the specific needs that the company should be addressing through its Antitrust Compliance Program.[79]

We strongly believe that, to develop a comprehensive and effective antitrust compliance program, a company must undertake a comprehensive and systematic assessment of the particular antitrust risks that it faces. Apple did not object to this recommendation, but we received little information related to it—and no information presented as specifically responsive to the recommendation—until the very end of this reporting period.

Beginning with our April 2014 interviews, after the submission of the First Report, we asked Apple personnel, primarily in Eddy Cue's content groups, whether they had been involved in any kind of antitrust risk assessment. Most interviewees said that they had not, although some of the CLPG members we interviewed in April suggested that Apple had been deliberating about how best to implement our recommendation.

In the July 31 Document Request, having heard nothing additional about Apple's response to our risk-assessment recommendation, we asked the company to provide us with "[a]ny antitrust risk assessments prepared since March 2014." Several days after we transmitted the request, Simpson Thacher told us that, *if* a written risk assessment existed—and Simpson Thacher did not tell us whether one did, in fact, exist—Apple would be concerned about waiving privilege by producing it to us. We responded that we believed any privilege concerns could be remedied through appropriate redactions.

We also raised the issue in our late August meetings with Ms. Said, Mr. Vetter, and Mr. Andeer. Ms. Said told us that Apple had discussed our risk assessment recommendation at length. Oddly, during our August 21 meeting with him, Mr. Andeer asserted that the First Report had not included a specific recommendation that Apple conduct a formal antitrust risk assessment, a point that was simply contrary to fact. He then described the CLPG's efforts to assess antitrust risk, including through weekly meetings and the preparation of lists of questions to use in assessing risk. He told us about the means through which he transmits the CLPG's conclusions to others at Apple, such as monthly briefings he makes to Mr. Sewell, although, in response to our questions, Mr. Andeer said he has not briefed the Board or the AFC.

Mr. Vetter highlighted Apple's privilege concerns and emphasized that, even if Apple had not memorialized a risk assessment on paper, the company had done a great deal to assess and react to potential antitrust risks. The Monitor responded that we attached a high priority to confirming that an organized and

[79] First Report 45-47.

disciplined risk-assessment process had taken place, and expressed disappointment that Apple had not raised these issues more promptly after issuance of the First Report and provided us with a window on the company's risk assessment activities.

In subsequent days, Mr. Vetter gave us additional information regarding Apple's efforts to assess antitrust risk, although he continued to resist our request that Apple provide us with the substance of those assessments. He said that Apple had begun to conduct antitrust risk assessments long before the Final Judgment was issued and continued to do so through the present. For example, he said that, when Mr. Andeer joined Apple, he met with all of the senior leaders in Apple's Legal department and with "key business leaders" to understand the risks associated with Apple's businesses. He also cited the frequent conversations that the CLPG and other Apple lawyers have with employees regarding antitrust-related issues, as well as conversations between the CLPG and the lawyers who support various business units. Mr. Vetter explained that, shortly after issuance of the First Report, and presumably in response to our recommendation, the CLPG began to hold additional weekly meetings that are devoted solely to discussing antitrust risks Apple faces. He added that, in connection with the meetings, the CLPG created questionnaires, one of which he sent us, to help its lawyers "drill down" into Apple's business units and assess risk in a systematic way.[80] Mr. Vetter also noted that Mr. Andeer meets regularly with Mr. Vetter, Mr. Moyer, and Ms. Said to discuss developments in Apple's antitrust compliance program, and he emphasized that Mr. Andeer is given information regarding Apple's unannounced products and offerings, which he characterized as a very significant fact given the high level of secrecy that exists within the company regarding such matters.

Mr. Vetter also emphasized the ways in which Apple's revised antitrust compliance materials incorporated the risk assessment the CLPG had conducted, both in the substance of the guidance provided and in the hypotheticals, quizzes, and examples the materials incorporated. He expressed the view that it is unnecessary to reduce the CLPG's findings to writing because the findings are consistently shared across a broad group of legal and compliance personnel; Mr. Vetter wrote that there is an ongoing, collaborative, and robust discussion at Apple about antitrust risk, which is and will continue to be reflected in Apple's antitrust compliance materials.

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[80] In subsequent correspondence, Mr. Vetter explained that Apple had developed the questions that are included in the questionnaires over the last three and a half years. He said that the questionnaires themselves, however, had been created in the last six months and had arisen from the CLPG's weekly risk assessment meetings initiated after issuance of our First Report.

VI. Apple's Business Organization

Apple's operations are organized into several distinct business units. These are: Internet Software and Services, Operations, Hardware Engineering, Software Engineering, Channel Sales, Retail and Online Stores, Marketing, and Design. Each of the above businesses reports through regional operating segments, and among the corporate support personnel assigned to each business by region is a dedicated team of lawyers. [redacted] Because of the domestic focus of our work, we have concentrated almost exclusively on the company's U.S. operations and have included information about international operations only when necessary to provide context.

We have gathered information about each of Apple's business units in order to assess the effectiveness and comprehensiveness of the company's Antitrust Compliance Program in the context of Apple's business activities. We have interviewed key personnel and received information from Apple regarding each of Apple's main business units, with the exception of the Marketing and Design organizations. We had hoped to learn about all of Apple's business units prior to issuance of this Report and made repeated requests to schedule interviews with senior executives responsible for Marketing and Design. Apple has not yet made those executives available. We hope to include a review of Marketing and Design in our next report.

Below is a brief summary of Apple's business units, which highlights information of greatest relevance to our assessment of Apple's Antitrust Compliance Program.

A. Internet Software and Services

Eddy Cue manages Apple's Internet Software and Services business, which includes but is not limited to Apple's content businesses. The Internet Software and Services business includes approximately [redacted] people. The groups in Internet Software and Services include iTunes, the App Store, the iBooks Store, Siri, Maps, iCloud, and iAd. We interviewed Mr. Cue, almost all of his direct reports, and several people within the Internet Software and Services organization at various levels of seniority. From these interviews, from information provided by Apple, and from publicly available information,[81] we have gained a basic understanding of the structure and operations of the groups

[81] Some information in this section was taken from Apple's public financial filings and other publicly available Apple documents.

Mr. Cue oversees. Below we provide a high-level summary of relevant information for each of these groups.

1. iTunes

"iTunes," as used in Apple's corporate structure, refers to more than just the iTunes "product," which is Apple's platform for storing and organizing user music, movies, and TV shows. iTunes is integrated with the iTunes Store, the App Store, and the iBooks Store, and the iTunes group therefore includes employees that support all three of these stores. During this reporting period, we interviewed various personnel from the iTunes Content, Operations, Retail, and Engineering groups. These included, for example, iTunes Content personnel with responsibility for acquiring book content for the iBooks Store, Operations personnel who support app development for the App Store, and Engineering personnel who support the iTunes Store.

iTunes Content is responsible for the acquisition and sale of music, TV, and book content. A separate team handles the acquisition of apps for the App Store. [redacted]

iTunes Operations is responsible for the general operations of the content distribution stores. The group focuses on acquiring music, movies, TV, and books; customer support; production support; pricing; compliance; analytics; internal and external reporting; music publishing; the iTunes gift card business; and Engineering Project Management. Most of the pricing-related work done by the iTunes Operations group involves implementing prices submitted by content providers by making the adjustments to Apple's system that are necessary to make product prices visible to users. [redacted] In addition, some senior members of the group are occasionally involved in negotiations for content with major music labels and in relationship management. Members of the group also attend various trade association meetings. Although teams within the group have other external contact with third parties, that contact is generally limited to technical coordination.

iTunes Retail is responsible for the iTunes gift card business, which is a global business with approximately $[redacted] in annual sales. The iTunes Retail group includes teams dedicated to sales, marketing, and merchandising. Physical retailers, such as Target, Walmart, and Best Buy, conduct a significant

part of the business through sales of gift cards, while a smaller portion is conducted through online sales by retailers and through the iTunes Store. Members of this group have external contact with multiple competing retailers and "integrators," which are third-party intermediaries that activate gift cards and collect payment from retailers. Members of the group also help develop financial models for the business.

iTunes Engineering is responsible for technical and engineering matters related to iTunes, Apple TV, and iOS applications. The group includes teams dedicated to the Music Player, Video Player, and iAd; User Interface Design; the iTunes Store; Digital Rights Management; Engineering Project Management; iOS Apps; Quality Assurance; Mac and Windows Engineering; and Apple TV Engineering. The team is largely internal-facing. However, at times senior leaders in the group have been involved in license negotiations with providers of services (such as streaming services) that relate to the products covered by the Engineering team. Their involvement in license negotiations largely has been technical in nature.

2. iTunes Store, App Store, and iBooks Store

The iTunes Store is a platform for purchasing and downloading music and TV shows, and for renting and purchasing movies. iTunes U, which is part of the iTunes Store, provides downloads of free lectures, videos, and other content from universities, museums, and other institutions. iTunes Radio, which is also part of the iTunes Store, is a free streaming service available on iOS devices, Mac, Windows computers, and Apple TV.

The App Store is Apple's platform for downloading and purchasing apps and in-app content.[82] The App Store contains apps developed by Apple and by third parties, some of whom compete directly or indirectly with Apple on apps, app platforms, and other products. The App Store organization includes teams dedicated to Store Management (business development), Editorial, and Marketing. The Store Management and Marketing teams have extensive, direct contact with app content developers for the development and acquisition of apps sold in the App Store, including discussions about app feature development, marketing and placement, and the price of apps. Although the editorial team has some contact with developers when products are presented to Apple, that contact is relatively limited.

The Productivity Group includes Productivity Engineers who are part of the Apps Software Engineering organization and who report to Roger Rosner, a direct report of Eddy Cue. Productivity Engineers are responsible for creating

[82] "In-app content" refers to premium content, virtual goods, and subscriptions.

proprietary Apple apps used for "productivity," such as Numbers (spreadsheet), Pages (word processing), and Keynote (presentations). While largely internally facing, the team has contact with suppliers when purchasing software or hardware and also has contact with customers when soliciting feedback for app features.

The iBooks Store is Apple's platform for offering ebooks from both major and independent publishers. We interviewed several account managers with responsibility for acquiring book content from various publishers. [redacted]

3. Siri

Although Siri is grouped within Internet Software and Services, it is not a content business like the businesses described above. Siri is Apple's voice-activated knowledge manager, which interacts with consumers seeking information through their iPhones and iPads. The organization includes teams dedicated to data analytics, search, user interface, engineering, "intelligent suggestions," speech technology, and servers. Members of the Siri organization have little contact with external parties. However, some personnel within the organization have contact with partners that provide data feeds and with suppliers that license technology to Apple.

4. Maps

The Maps group is responsible for developing and maintaining Apple's Maps app, which provides turn-by-turn navigation directions. The Maps organization includes teams dedicated to software development, data collection and aggregation, and quality assurance. [redacted]

5. iCloud

iCloud is Apple's data-storage cloud service for music, photos, apps, contacts, calendars, documents, and other data. The iCloud organization includes teams dedicated to engineering, quality assurance, and design. Aside from the

limited purpose of licensing tools it uses in internal work, the iCloud team does not have contact with third parties.

6. iAd

iAd, Apple's mobile advertising platform, allows third-party app developers to place ads directly in applications sold in the App Store. The organization includes teams dedicated to product management, engineering, operations (both internal and across customers), sales, and marketing. Third-party app developers can join the App Network, through which they voluntarily opt in to the iAd program and permit iAd to place advertisements on their apps pursuant to a revenue-sharing agreement. Pricing is determined through a "dynamic auction market." Members of the iAd organization have frequent and direct contact with marketers, advertising agencies, and publishers of third-party apps. Members of iAd also attend industry events at which competitors are present.

B. Operations

Jeff Williams heads Apple's Operations business unit, which consists of approximately [redacted] employees, a significant percentage of whom are based overseas. The Operations group is responsible for Apple's supply chain and production process; it includes subdivisions that are responsible for procurement, manufacturing, "enclosure activity,"[83] sales operations planning, supplier responsibility, and worldwide service and support, including AppleCare, Apple's paid customer service business.

Although many of the group's functions face inwards, personnel in procurement negotiate deals with a large number of third-party suppliers. In addition, Apple outsources most of its hardware manufacturing to a small group of third parties. Mr. Williams's group sometimes negotiates deals that include exclusivity provisions. When Apple has worked with a supplier to build a customized component and Apple has invested significant resources into the item's development, it has in various circumstances limited the supplier's ability to distribute the product to other companies for a period of time. The head of the strategic deals team within the organization is a lawyer.

[83] Mr. Williams told us that the group that focuses on "enclosure activity" determines how to build and assemble Apple products, including locating and purchasing the necessary raw materials.

C. Hardware Engineering

Dan Riccio oversees Apple's Hardware Engineering business unit, which consists of approximately [redacted] people. The Hardware Engineering business deals with a broad range of technical and engineering issues relating to the iPhone, iPad, iMac, wireless connectivity (antennas and wireless subsystems), wireless electrical engineering, safety compliance, display technologies, and "special projects."[84]

Mr. Riccio's team works closely with the procurement team (part of Operations) when contracting with manufacturers for hardware components, such as batteries, displays, and chips. Mr. Riccio's team provides technical input, based on a product's engineering specifications, for these procurement-related transactions but does not directly negotiate the procurement contracts.

[redacted]

Global Supply Managers ("GSMs") within Hardware Engineering communicate with component manufacturers. GSMs are typically assigned to a particular component, such as plastic or batteries, and are thereafter responsible for communicating with third-party manufacturers regarding functionality and the "look and feel" of relevant products.

[redacted]

[84] "Special projects," as used throughout this Report, denotes confidential Apple projects. Consistent with Apple's extraordinary secrecy about products and services not yet announced, we were not provided with information about such projects.

D. Software Engineering

Craig Federighi manages Apple's Software Engineering business unit, which consists of approximately [redacted] people. [redacted]

Mr. Federighi said that his organization is largely inward facing and that any interactions with external parties are brokered by Apple's Marketing and Legal teams. Like the Hardware Engineering business unit, however, Mr. Federighi's teams provide technical input for business negotiations with third parties, with their contributions typically relating to feasibility issues. These issues are addressed in direct meetings between members of Mr. Federighi's team and engineers and other representatives from third-party partners. In addition, we understand that the wireless team communicates directly with wireless carriers. Although the IMG group interacts with vendors regarding chips, all procurement deals are undertaken by Operations.

E. Sales

Apple's Sales organization covers sales to third-party resellers, educational institutions, and the government. The group is organized geographically [redacted] Before Mr. Cook became CEO, Sales and Operations reported to him in his role as Head of Operations. [redacted] Apple has a dedicated sales team for the Americas, including both North and South America; Greater China, including mainland China, Hong Kong, and Taiwan;

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[85] This software supports WiFi, Bluetooth, cellular voice, and data.

[86] This group is responsible for the software that supports high performance 3-D graphics.

[87] This group is responsible for developing the tool set for developers to build OS X apps.

[88] This group is the iOS counterpart to OS X Platform Experience and Developer Technologies.

[89] This group includes web technologies, Safari, and the WebKit, as well as communication apps, such as iMessage and FaceTime.

Asia, including the remaining countries in Asia, except for Japan; Japan; and Europe, including Europe, the Middle East, and Africa.

F. Retail and Online Stores

Angela Ahrendts began managing Apple's Retail and Online Stores in May 2014. There are a total of [redacted] employees in Ms. Ahrendts's group, which we understand comprises more than half the personnel employed by Apple. Apple's retail stores are organized by geography, with managers for each region reporting directly to Ms. Ahrendts. These regions are organized into the following regional segments: China; Europe and emerging markets; the Eastern half of the Americas and Canada; the Western part of the Americas and Mexico; and Southeast Asia and Japan. Apple's Online Stores and Market Support are managed globally. Ms. Ahrendts's organization also includes a corporate support team, which includes Finance, Human Resources, Technical Support, Legal, and Supply Chain teams. Mr. Andeer is the primary legal contact for Retail and Online Stores. Ms. Ahrendts explained that her teams interact with customers but otherwise have little or no communication with external parties.

G. Marketing

Phil Schiller manages Apple's Marketing organization. Through interviews of other Apple personnel and senior executives, we believe that Mr. Schiller's organization is highly relevant to our evaluation of Apple's antitrust compliance efforts. [redacted] Apple also holds a Worldwide Developer Conference that is attended by Apple engineers and thousands of app developers. Partnership Managers are involved in encouraging participation in the conference and also attend other industry events, including events attended by Apple competitors. In addition, we understand that Marketing is heavily involved in the negotiation of various third-party agreements across Apple's business units.

As noted in Section V.B.2, Apple has not yet made Mr. Schiller available for an interview, and we have interviewed only one person from the Marketing group. Accordingly, we are unable to report on the structure and relevant components of Mr. Schiller's organization in this Report. Apple has informed us that Mr. Schiller will be available for an interview in the near future.

H. Design

Jonathan Ive manages Apple's Design organization. As noted in Section V.B.2, Apple has not yet made Mr. Ive available for an interview. Accordingly, we are unable to report on the structure and relevant components of Mr. Ive's organization in this Report. Apple has informed us that Mr. Ive will be available for an interview in the near future.

VII. The Structure of Apple's Legal and Compliance Functions

During this reporting period, we learned more about the structure of Apple's legal and compliance functions, as well as the ways in which legal and compliance personnel interact with each other and with Apple's business units.

A. The Legal Function

1. Overall Structure

Apple has a large team of attorneys, led by Senior Vice President and General Counsel Bruce Sewell. Mr. Sewell oversees a broad range of legal matters at Apple. He told us in his December 2013 interview that Apple's Legal department employs approximately [redacted] people, about [redacted] of whom are lawyers. Among Mr. Sewell's direct reports are Mr. Andeer, whose responsibilities as head of the CLPG will be discussed in more detail in the next section; Mr. Vetter, who is responsible for overseeing the legal support that is provided to major business groups at Apple (and who has acted as our primary in-house contact since February); and Gene Levoff, who is responsible for corporate law matters and serves as counsel to various Board committees, including the AFC.[90]

During this reporting period, we focused on learning about two primary groups of in-house counsel at Apple—first, the lawyers who support Apple's content-distribution businesses, and, second, the CLPG. Robert Windom, who reports to Mr. Vetter, supervises the group that focuses on content distribution. Mr. Windom told us that he has approximately thirteen direct reports, about half of whom are lawyers. Many of the lawyers in Mr. Windom's group are embedded in particular content-distribution business units at Apple: for example, Annie Persampieri is integrated into the iBooks team, and Emily Blumsack is integrated into the App Store team. It is our understanding that a business group's assigned lawyer acts as a generalist within that group, assisting with all types of legal matters that arise in that business and interacting on a day-to-day basis with the group's personnel. A significant number of business

[90] Mr. Sewell identified several additional direct reports, including Mr. Moyer, the Chief Compliance Officer, who is discussed in Section VII.B, and individuals who oversee litigation, government affairs, privacy, intellectual property, and international law.

people we interviewed told us that they consult with their business group's assigned lawyer frequently and consider that lawyer to be their first resource when they encounter a legal question. Although those lawyers handle all types of issues that arise in their assigned groups as an initial matter, they can and do escalate issues to more senior Apple lawyers or to attorney specialists (such as the CLPG, for antitrust-related issues) when needed.

2. The Role of the CLPG

The CLPG consists of four attorneys who specialize in antitrust and competition law—Kyle Andeer, Sean Dillon, Brendan McNamara, and Per Hellstrom, all of whom have significant prior government experience.[91] We interviewed Mr. Andeer in the previous reporting period. During this reporting period, we had one meeting with Mr. Andeer, as well as initial interviews with Mr. Dillon and Mr. McNamara. We have not met Mr. Hellstrom, who is based in Brussels and whose work focuses on European competition law.

Mr. Andeer reports to Mr. Sewell. He told us in December 2013 that he meets with Mr. Sewell at least once a month, and he also interacts with Mr. Vetter quite frequently. When we met with him in August, Mr. Andeer told us that he has never interacted with the Audit and Finance Committee or other members of Apple's Board. Mr. Dillon, Mr. McNamara, and Mr. Hellstrom report to Mr. Andeer.[92]

Apple began to create what is now the CLPG when it hired Mr. Andeer in late 2010; before that time, Apple never had a dedicated in-house antitrust lawyer. The CLPG spends much of its time counseling Apple's business personnel regarding day-to-day antitrust issues and advising the company on contemplated "landmark" business events, such as acquisitions and new product offerings. Apple has emphasized that, despite the company's famous secrecy about new products and other ventures, Mr. Andeer is "disclosed" on – i.e., informed about – confidential information as much as necessary to evaluate antitrust risks and to advise the company. The group also frequently interacts with antitrust regulators, and it has a role in antitrust litigation to which Apple is a party.

The CLPG members are antitrust generalists, handling issues interchangeably within the group, rather than individually specializing in particular subject matters or business groups (although Mr. Hellstrom focuses on

[91] Mr. Andeer told us in August that he could envision the CLPG expanding to include members based in Asia and/or Washington, D.C.

[92] We understand that Mr. Hellstrom also reports directly to Mr. Sewell in a government affairs capacity.

European issues). The CLPG generates weekly reports of the issues with which its members are dealing, which the group discusses at a weekly meeting and also shares with Mr. Sewell. Since we issued the First Report, we have been advised that the CLPG has begun to hold an additional meeting each week that is specifically devoted to the assessment of antitrust risk. The CLPG—Mr. Andeer in particular—has also played an important role in shaping the substance of Apple's revised antitrust compliance materials and has had primary responsibility for the live antitrust training sessions that have taken place since issuance of the Final Judgment.[93]

All three of the CLPG members we interviewed emphasized that, when they arrived at the company, they spent a great deal of time getting to know Apple's business lawyers and business people in order to learn about the company's antitrust risks, to prepare themselves to respond to inquiries from regulators, and to make Apple personnel feel comfortable approaching the CLPG with antitrust issues.

The business lawyers we have interviewed appear to be comfortable discussing issues with and requesting assistance from the CLPG. Mr. Windom told us that he personally has sought advice from the CLPG on multiple occasions, and he said that the lawyers he supervises frequently approach the CLPG with antitrust issues that arise in their businesses. Similarly, Ms. Blumsack and Ms. Persampieri said that they each consult with the CLPG regularly—perhaps once a week, on average. They said they tend to interact with the CLPG on an ad hoc basis, presenting particular issues as they arise, rather than interacting in a more formal or structured way.

The CLPG also has direct interaction with business people at Apple. Although personnel we interviewed from some business groups had not interacted with the CLPG much or at all,[94] personnel involved in Apple's content-distribution business expressed general familiarity and comfort with the CLPG.[95] For example, Mr. Cue told us that Mr. Andeer has been actively

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[93] Mr. Andeer led all but three of the live training sessions that occurred during this reporting period. The sessions Mr. Andeer did not lead are the June 30 and August 27 training sessions that David Boies provided to Apple's Executive Team and Board, respectively, and the June 17 session for App Store personnel, which Mr. Dillon led.

[94] For example, Luca Maestri, Apple's Chief Financial Officer, and Dan Riccio, Apple's Senior Vice President for Hardware Engineering, said in their interviews that they had had very limited interaction with the CLPG.

[95] Ms. Ahrendts, who joined the company in May 2014 and leads Apple's Retail and Online Stores division, said she was very familiar with Mr. Andeer. However, that familiarity arises primarily from Mr. Andeer's additional role as Apple's head sales lawyer, rather than from his role on the CLPG.

involved in many major business decisions his group has made. He told us that Mr. Andeer has "become part of the team" and his involvement is "now just part of the normal process"; Mr. Andeer is routinely present at the meetings during which new initiatives are discussed. With respect to non-executive members of Mr. Cue's team, while the CLPG encourages Apple business people to approach the group directly with antitrust-related issues, many employees told us they feel far more comfortable approaching their dedicated business lawyers first, who then seek assistance from the CLPG if needed. Business personnel whom we interviewed tended to be more familiar with Mr. Andeer than with Mr. Dillon, Mr. McNamara, and Mr. Hellstrom.

B. The Compliance Function

1. Overall Structure

Apple's Compliance group is led by Tom Moyer, who reports directly both to Mr. Sewell, the General Counsel,[96] and to the Audit and Finance Committee of the Board of Directors. Mr. Moyer has two direct reports: Joe Santosuosso, who is Apple's Director of Business Conduct and Global Compliance, and Deena Said, the ACO, whose role will be discussed in the next subsection.

Mr. Santosuosso oversees various compliance subgroups, including groups that are responsible for compliance training, the Helpline, channel compliance,[97] and compliance issues in specific geographic regions. As described above, during this reporting period, we interviewed two people from these groups: Kathleen Emery, who manages the Helpline, and Sharon Joyner, who specializes in the development of online compliance training at Apple.

2. The Role of the ACO

After issuance of the Final Judgment, Apple hired Deena Said as the company's new ACO. Ms. Said reports directly to Mr. Moyer, as well as to the Audit and Finance Committee. (In his November 2013 interview, Mr. Moyer told us that he and Ms. Said would have the same reporting relationship to the Audit and Finance Committee.) Ms. Said also interacts frequently with members of Apple's Legal group, working closely with lawyers in connection with the June 30 Rollout and other matters. She also has told us that she consults regularly with Apple's business lawyers and non-lawyer personnel regarding training and

[96] As noted in our First Report, Mr. Sewell told us that he believes it is a corporate best practice to have the compliance officer report to the General Counsel. *See* First Report 26 n.72.

[97] Channel compliance involves the evaluation of third parties that sell Apple products.

other issues related to the fulfillment of Apple's obligations under the Final Judgment.

As explained in more detail in Section III.B, the Final Judgment gives the ACO substantial responsibility for the enhancements Apple must make to its antitrust compliance program. Among other duties, Ms. Said is required to ensure that certain personnel receive "comprehensive and effective training annually" regarding the Final Judgment and the antitrust laws, to conduct an annual antitrust compliance audit in consultation with the Monitor, to take action in response to allegations of actual or potential violations of the Final Judgment, and to log information regarding certain types of allegations and ebook-related communications.

During this reporting period, Ms. Said had primary responsibility for managing and tracking the various projects Apple undertook to prepare for the June 30 Rollout and otherwise comply with the Final Judgment. In early May, she provided us with a work plan that included a detailed schedule for the completion of specific tasks associated with these initiatives. The vast majority of the work reflected on the work plan took place in the first several months of 2014, in preparation for the June 30 Rollout, but the work plan includes some tasks in late 2014 and 2015, including Ms. Said's quarterly reports to the Board and quarterly review of publisher contracts. She has told us that she will also focus in coming months on her antitrust compliance audit, the collection of certifications required by the Final Judgment, revisions to training materials, and development of a training plan for 2015. In addition, Ms. Said has regular meetings with various Apple personnel, including weekly meetings with Mr. Andeer, Mr. Moyer, Ms. Joyner, and Leslie Gaines, a contract project manager assigned to assist Ms. Said; bi-weekly meetings with Mr. Vetter, Mr. Santosuosso, Ms. Emery, Mr. Dillon, and Mr. McNamara; and less frequent (but still regular) meetings with Ms. Persampieri, Dr. Sugar, Mr. Sewell, Mr. Cue, Mr. Windom, and Ms. Blumsack, among other personnel. Overall, Ms. Said's role has become largely that of a project manager of the Antitrust Compliance Program, a role that she appears to have performed quite ably, having overseen the June 30 Rollout with no major problems of which we are aware.

Ms. Said provided two reports to the Audit and Finance Committee during this reporting period—an oral report (accompanied by a short PowerPoint presentation) in May and a short written memorandum in August. Both of those reports focused on compliance with the Final Judgment and the progress of the June 30 Rollout. Ms. Said also was present at the Board's antitrust training session in late August, although, to our knowledge, she did not have any substantive contact with the Board during that session. Finally, we are told that Ms. Said met with Dr. Sugar on August 26 to discuss the June 30 Rollout, but we have no details about the duration or substance of that meeting.

We understand these interactions to be her only contact with the Board or any of its members during this reporting period; Apple has represented that, aside from her written reports to the Audit and Finance Committee, there is no written correspondence between Ms. Said and any Board member, and she told us that no member of the Board has ever contacted her.

3. Antitrust Compliance Program Committee

Ms. Said's February 19 and August 20 memoranda to the Audit and Finance Committee refer to an "Antitrust Compliance Program Committee," which, according to the August 20 memorandum, consists of Ms. Said, Mr. Andeer, Mr. Moyer, and Mr. Vetter. Neither memorandum provides much detail about the Committee's activities; both state simply that the Committee's objective is "to ensure progress on program goals." Based on interviews, meetings, and telephone calls, our understanding is that Ms. Said, Mr. Andeer, Mr. Moyer, and Mr. Vetter comprise the core group that has been working to revise Apple's antitrust compliance program materials and ensure compliance with the Final Judgment. In a May 16 telephone conference, Ms. Said told us that the group had been meeting on an ad hoc basis to discuss the development of Apple's revised training materials.

C. The Board and Its Audit & Finance Committee

Apple currently has an eight-person Board of Directors, consisting of seven independent directors and Mr. Cook. As we discuss in more detail in Section IX.G.3, it is well recognized that the oversight role exercised by a company's Board of Directors is critical to ensuring that the company's compliance program is effective.[98] Apple's publicly available Corporate Governance Guidelines reflect this principle:

> The Board oversees the Chief Executive Officer . . . and other senior management in the competent and ethical operation of the Corporation on a day-to-day basis and assures that the long-term interests of the shareholders are being served. To satisfy its duties, directors are expected to take a proactive, focused approach to their position, and set standards to ensure that the Corporation is committed to business success through the maintenance of high standards of responsibility and ethics.[99]

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[98] *See infra* Section IX.G.3.

[99] Apple Inc., Corporate Governance Guidelines (Feb. 23, 2012), *available at* http://files.shareholder.com/downloads/AAPL/3456999969x0x443011/6a7d49f1-a3af-4e69-b279-021b81a93cdf/governance_guidelines.pdf.

The Corporate Governance Guidelines provide that directors are expected to attend Apple's annual meeting of shareholders, as well as Board meetings, which take place at least four times per year.[100]

Particularly relevant to our mandate under the Final Judgment is the Audit and Finance Committee, which is required by its charter to include at least three independent Board members[101] and currently includes four—Arthur D. Levinson, Robert A. Iger, Ronald D. Sugar, and Susan L. Wagner.[102] The Audit and Finance Committee's charter requires the group to assist the Board in, among other things, "oversight and monitoring" of "compliance with legal, regulatory and public disclosure requirements" and enterprise risk management.[103] The Committee is required to meet at least once per quarter, and it is also required to meet with Apple management, as well as the company's Vice President of Internal Audit, at least quarterly.[104]

The charter requires the Audit and Finance Committee to "[r]eview and discuss with management the program that management has established to monitor compliance with the Corporation's Business Conduct Policy" and "[r]eview and discuss with management . . . management's program to identify, assess, manage, and monitor significant business risks of the Corporation, including financial, operational, privacy, security, business continuity, legal and regulatory, and reputational risks [and] management's risk management decisions, practices, and activities," along with other responsibilities.[105] The Audit and Finance Committee must report the substance of these discussions to the full Board and, "as necessary, recommend to the Board such actions as the Committee deems appropriate."[106] We understand, based on the two Board interviews we have conducted thus far, that the Audit and Finance Committee makes a short presentation to the full Board each quarter.

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[100] *Id.*

[101] Apple Inc., Audit and Finance Committee Charter (Dec. 7, 2012), *available at* http://files.shareholder.com/downloads/AAPL/3456999969x0x443005/adc3ad8b-5a18-4add-8b5b-2221773c5b3b/audit_charter.pdf. Mr. Campbell told us in his interview that Apple's Board revises its committee charters annually, although the most recent Audit and Finance Committee Charter is dated December 2012.

[102] *See* Apple Inc., Apple Leadership, https://www.apple.com/pr/bios/ (last visited Sept. 10, 2014).

[103] Audit and Finance Committee Charter, *supra* note 101.

[104] *Id.*

[105] *Id.*

[106] *Id.*

To date, we have interviewed the Chairman of the Audit and Finance Committee, Dr. Sugar, and one former member of that Committee, Mr. Campbell. Those interviews provided us with a limited window into the Audit and Finance Committee's fulfillment of its important responsibilities. Although Dr. Sugar and Mr. Campbell expressed the general view that the members of Apple's Audit and Finance Committee take a "hands-on" approach in the exercise of the Committee's oversight responsibilities, they did not provide us with specific information to support this view.[107] Dr. Sugar said he speaks with Mr. Moyer on at least a quarterly basis, although they "occasionally" interact between those meetings. Dr. Sugar and Mr. Campbell said that compliance and enterprise risk issues are discussed at every quarterly Board meeting; Mr. Campbell added that the Board is provided with "formal training" at the end of its meetings about twice per year. Both Dr. Sugar and Mr. Campbell expressed the view that Apple's compliance programs have grown and improved significantly in the course of their interactions with the company.

We have also begun to learn about the formal means through which Apple provides the Board and the Audit and Finance Committee with information relevant to their oversight roles. It is our understanding that Mr. Sewell provides updates regarding legal and compliance issues at every Audit and Finance Committee meeting and that Mr. Moyer reports to the Committee twice per year. Mr. Campbell told us in his interview that the Audit and Finance Committee has a "calendar" of topics that need to be discussed at various points in each year, but he said that Mr. Sewell, Mr. Moyer, and other Apple personnel raise additional issues as they arise. Mr. Campbell described the Board's meetings with Mr. Moyer as highly interactive. As noted in Section VII.B.2, there have been only a few limited interactions between the Audit and Finance Committee and Ms. Said, the ACO, during this reporting period, even though Ms. Said at least formally reports to the Audit and Finance Committee.

Apple's Risk Oversight Committee helps the Audit and Finance Committee fulfill its oversight responsibilities with regard to risks faced by the company. The Risk Oversight Committee was created in 2010 and consists of Apple executives and senior employees; among the group's responsibilities are the evaluation, ranking, and formulation of responses to various risks.[108] During

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[107] After reviewing a draft of this Report, Apple provided excerpts from their internal interview memoranda in an effort to support Dr. Sugar's and Mr. Campbell's view that the Committee has taken a hands-on approach. We find the material submitted by Apple unconvincing on this point. However, this is an issue we will address in future interviews with Dr. Sugar and other members of the Audit and Finance Committee. We look forward to obtaining additional information through those interviews and through relevant documents that support Apple's view.

[108] Risk Oversight Committee Charter (Apple Document 000007).

the previous reporting period, Apple provided us with redacted documents reflecting these assessments between 2011 and 2013. The Risk Oversight Committee is required to report to the Audit and Finance Committee at least once per year, although it is our understanding that, in practice, the Risk Oversight Committee participates in every meeting of the Audit and Finance Committee.

To deepen this preliminary understanding of how the Board and Audit and Finance Committee fulfill their responsibilities, we need significantly more information. We have repeatedly asked to interview members of Apple's Board, and we have made many requests for other information relevant to the oversight activities of the Board and the Audit and Finance Committee. Apple has consistently resisted and been unresponsive to these requests, however, ultimately deferring the interviews until after the Board's training session on August 27 and generally providing little information in response to our requests for documents and other materials. For that reason, we currently have very limited knowledge of the Board's exercise of that function. Because—as set forth in more detail in Section IX.G.3—we view the Board's oversight role as critical to Apple's compliance with the Final Judgment, we plan to devote significant attention to learning about Apple's Board and Audit and Finance Committee during the next reporting period.

VIII. Apple's Revised Antitrust Compliance Program

As part of Apple's efforts, as required by the Final Judgment, to enhance its Antitrust Compliance Program, Apple introduced significant updates to its antitrust compliance materials on June 30. The June 30 Rollout included (a) a revised Antitrust and Competition Law Policy (or "Policy"); (b) a new antitrust and competition eLearning (online) course; (c) a new antitrust and competition law chapter in the company's Business Conduct ebook;[109] and (d) a new Antitrust and Competition intranet site accessible to Apple personnel. In addition to the online training and the launch of these other compliance-related materials, Apple has conducted several live antitrust training sessions since May 2014 in furtherance of its obligations under the Final Judgment to develop a comprehensive and effective antitrust compliance program.

[109] As discussed in Section IX.C, the ebook is a more detailed and more technically innovative version of Apple's Business Conduct Policy. The Business Conduct Policy and the ebook each contain a section dedicated to antitrust and competition compliance. The Competition and Trade Practices section of the Business Conduct Policy is discussed further in Section IX.C.

A. New Antitrust and Competition Law Policy

1. Development and Rollout

As discussed in Section IX.C.2 of our First Report, Apple's revised Antitrust and Competition Law Policy has been a work in progress over the last year. In November 2013, Apple provided us with its original policy. Apple then produced a revised draft in February 2014. The draft was discussed at the March 4 Meeting, after which we provided comments on the draft. Apple incorporated many of our suggestions into the final four-page version that was distributed to Apple employees on June 30.[110]

2. Content

The June 30 version of the Antitrust and Competition Law Policy begins with a short letter to Apple employees from Mr. Sewell. It explains the importance of competition and innovation and the need for Apple to "work vigilantly to prevent antitrust violations." The letter emphasizes that antitrust violations can subject Apple and individual employees to investigations, lawsuits, fines, and even criminal charges. Finally, it notes that employees are obligated to report potential antitrust issues to Ms. Said or to Apple's Business Conduct Helpline. It refers employees with questions to their "local legal counsel" or to Apple's competition law team.

The remainder of the document sets forth Apple's policies regarding various types of business conduct that could implicate the antitrust laws. It highlights and briefly describes potentially problematic dealings with competitors (price-fixing, market allocation agreements, group boycotts, and bid-rigging). This section also emphasizes that Apple "should be careful never to facilitate or encourage price-fixing between competing suppliers or resellers" and that Apple employees should be careful about sharing competitively sensitive information about one company with that company's competitors. Second, it highlights potentially problematic dealings with resellers, distributors, and suppliers (price maintenance agreements, tying arrangements, and exclusive arrangements). This section emphasizes that, because Apple is often perceived as holding a dominant market position, these types of agreements with resellers, distributors, and suppliers could subject the company to antitrust scrutiny.

The Policy concludes by directing Apple employees to contact legal counsel or the competition law team with questions about the meaning and

[110] The final version of Apple's Antitrust and Competition Policy is attached as Exhibit B (redacted).

application of the Policy. It again notes that any misconduct that raises antitrust risks must be reported to the Antitrust Compliance Officer (although it does not provide Ms. Said's contact information) or through Apple's Business Conduct Helpline. Finally, it explains that Apple will not tolerate retaliation against an individual who files a good-faith antitrust complaint.

3. Revisions from Prior Versions

The final Antitrust and Competition Law Policy differs in several ways from the one Apple had in place in November 2013. Substantively, it covers many of the same topics, in particular the categories of potentially problematic dealings with competitors and distributors. The categories of agreements are, however, more clearly described and delineated. The new Policy emphasizes more forcefully than earlier versions that Apple employees must exercise caution not just in their communications with competitors and distributors, but also in their communications and relationships with content suppliers. The Policy also emphasizes that employees should avoid sharing competitively sensitive information about one supplier with another. The concept of Apple's "perceived" market power, and the potential scrutiny that comes along with that perception, is also new – the prior versions of the policy noted only that companies with a dominant market share may be subject to additional scrutiny. The opening letter from Mr. Sewell, stressing the importance of antitrust compliance at Apple, is also a new addition, as is the reference to Apple's anti-retaliation policy. Finally, the new Policy more clearly emphasizes whom Apple employees should contact with questions: the Antirust Compliance Officer, Apple's Business Conduct Helpline, and the CLPG are mentioned both at the beginning and at the end of the document.

Many of these additions result from the collaborative drafting process that has taken place over the last year. For example, following the March 4 Meeting, in response to feedback we provided, Apple revised the February 2014 working draft of the Policy to emphasize that Apple should not facilitate unlawful agreements between competitors and to emphasize why Apple's relationships with resellers, distributors, and suppliers might give rise to antitrust scrutiny in light of Apple's perceived market power.

B. Online Antitrust Training Course

1. Development and Rollout

Apple's new online antitrust training course was also among the materials included in the June 30 Rollout. Apple has informed us that this course will be mandatory for employees in the United States and Canada who work in Sales,

Internet Software and Services, Legal, and Direct Procurement (within the Operations organization), which altogether include more than 5,000 employees.

As briefly discussed in Section IX.C.4 of our First Report, the online antitrust training course was developed over several months. In February 2014, Apple provided us with drafts of some of the proposed text and video clips that would be incorporated into the online training, although the training module was not yet complete. After the course was assigned to employees in June, Apple provided us with log-in credentials to view the training. Members of the monitoring team have reviewed the training.

2. Summary of Content

The new training is an interactive program that allows Apple employees to enter, exit, and move around various sections of the online training at their own pace. The slides have audio and video features and include real case examples, as well as questions and hypothetical scenarios to promote trainee engagement. The training is designed to be viewed on an iPad or Mac, but it can also be viewed on a PC using the Google Chrome browser.

When a trainee signs into the website, an introduction to antitrust appears on the screen, stating the general goal of the antitrust laws: "to protect consumers through open and unfettered competition." It states that the course—which should take about 60 minutes to complete – is intended to help Apple employees detect potential antitrust issues before they become a problem.

A main menu displays the following sections:

- Introduction
- What is Antitrust?
- Types of Agreement
- Monopolies
- Wrapping it Up
- Conclusion
- Knowledge Check

Each section contains between one and eleven slides, as well as a dropdown menu with links to the slides for that section. For example, within the "Introduction" section, trainees can select four slides: "Antitrust Awareness at Apple," "A Few Tips Before You Start," "A Message from Deena Said," and "Course Objectives." Each link takes the trainee to a single slide on that topic. For example, the "A Message from Deena Said" slide has a brief video of Ms. Said introducing herself, explaining the importance of antitrust at Apple, and encouraging employees to contact her with questions. Once an employee has

viewed a slide within a section, "back" and "next" arrows (or the swipe feature on the iPad) can be used to move between slides.

The "What is Antitrust?" section covers high-level points about antitrust law: the basic purpose (to protect competition) and prohibitions (agreements that restrain trade, monopolies); an introduction to the Sherman Act and EU antitrust laws; and the elements of prohibited agreements (agreement, harm to competition). Interactive slides are interspersed throughout this section, requiring trainees to analyze whether various scenarios would violate the antitrust laws. No explanation for the answers – either correct or incorrect – is provided in this section. The section does, however, conclude with a hypothetical that asks trainees to consider whether various communications between an Apple employee and a film executive at Sundance about pricing would be problematic from an antitrust perspective. The training explains why the answers selected by trainees to this hypothetical are correct or incorrect.

The "Types of Agreement" section instructs trainees about four different kinds of agreements: price-fixing, market allocations, bid rigging, and group boycotts. First, a slide explains that these four types of agreements between competitors are always unlawful, whereas agreements between manufacturers and suppliers or distributors are tested for their reasonableness. Price-fixing gets the most attention in this section, including an interactive slide asking trainees to identify examples of price-fixing and a hypothetical involving an Apple employee who discusses the prices of LCD panels with competitors over lunch. The slides explaining the types of agreements use real world examples, such as the Samsung LCD price-fixing case and FTC investigations into market allocations. Trainees are then given four business scenarios and asked to match each with one of the four types of restraints described in this section. Finally, there is a hypothetical scenario regarding an agreement between Apple and a distributor/reseller, to reinforce the point that Apple, as a matter of policy, does not set resale prices, which would be considered a serious offense under the antitrust laws.

The "Monopoly" section opens by noting that, although Apple is not dominant in any market, it should "still be aware of the scrutiny and perception that comes with being one of the world's most successful companies and valuable brands." The presentation notes that many large firms, including Microsoft, IBM, and Google, have encountered antitrust scrutiny for maintaining monopoly positions through predatory behavior. Trainees are informed of the two elements of monopoly offenses: (1) monopoly power, usually tied to market share; and (2) exclusionary or predatory conduct. The remainder of the section focuses on two kinds of exclusionary conduct: exclusive dealings and tying/bundling. The slides use examples from real cases, including the Microsoft case involving the bundling of operating systems and Internet

browsers that was pursued by the Department of Justice in the 1990s. The section concludes with a takeaway message from the Microsoft case: there may be nothing wrong with tying or bundling products, but employees should contact the CLPG before entering into any such arrangement.

The "Wrapping It Up" section emphasizes that the antitrust laws are complex and that the line between legal and illegal can be blurry. A "Key Takeaways" slide emphasizes three prohibitions: (1) do not agree with competitors on prices; (2) do not agree to allocate markets; and (3) do not refuse to seek help from the CLPG. This section encourages trainees to contact Apple legal counsel or the CLPG with questions and notes that all potential antitrust violations must be reported to the Antitrust Compliance Officer. It provides contact information for Ms. Said and for the Business Conduct Helpline. Ms. Said provides a closing video message.

Trainees receive credit for the course only if they score 80% or higher on a ten-question assessment that is placed at the end of the training course. The questions highlight the main aspects of the training: prohibited communications and agreements with competitors, problematic minimum resale price agreements, the four kinds of unlawful agreements between competitors, exclusionary conduct by a dominant company, and personnel to contact at Apple with questions. When trainees successfully complete the knowledge check, explanations of why the correct answers are correct – but not why incorrect answers are incorrect – become available for review.[111]

Finally, to receive a Certificate of Completion, trainees must certify that that they have reviewed and understood Apple's Antitrust and Competition Law Policy. The training provides a link to AppleConnect, where the Policy can be downloaded. In our review of the training, we were able to certify having read and understood the Policy without having physically opened or downloaded the Policy. We have no evidence one way or the other as to whether any Apple employee in fact certified completion without reviewing the Policy.

C. Business Conduct Ebook

1. Development and Rollout

Among the materials introduced on June 30 was a new antitrust and competition law chapter in Apple's Business Conduct ebook.[112] The ebook is

[111] In response to our draft report, Apple states that it is willing to consider providing further explanation of the reasons why incorrect answers are incorrect.

[112] Screenshots of the antitrust chapter in the Business Conduct ebook are attached as Exhibit C (redacted).

available on an iPad and Mac. As briefly discussed in Section IX.C.3 of our First Report, Apple developed this ebook chapter over several months. We reviewed draft materials at the March 4 Meeting and provided comments on the draft shortly thereafter.

2. Summary of Content

The cover page of the new antitrust chapter begins with a quote emphasizing that "[c]ompetition fuels innovation." It then launches into a story about "how one man and an ugly green lamp brought down an international price-fixing cartel." The story explains price-fixing by recounting the details of an international scheme between biotech and chemical companies, including Archer Daniels Midland (ADM), in the mid-1990s to fix the price of lysine. A senior ADM executive cooperated with the FBI by placing a green lamp equipped with audio and video recording capabilities in hotel conference rooms around the world where cartel meetings were taking place. As a result of the investigation, ADM was fined $100 million dollars, and a class action lawsuit by consumers resulted in more than $45 million in restitution.[113] Apple's presentation of the story ends by emphasizing that DOJ has collected more than a billion dollars in fines involving price-fixing cartels. As Apple employees read through the green lamp story, a link to a six-minute video clip from the 2007 film "Fair Fight in the Marketplace" is displayed at the bottom of the screen. The video describes the lysine price-fixing scheme through clips of interviews with DOJ personnel and others.

The next page of the ebook highlights some of the main principles of antitrust law regarding agreements with competitors, agreements with resellers, and unfair bidding practices. It provides a link to the CLPG's contact information and a link to the Antitrust and Competition Law Policy. From here, Apple employees can also link to a Q&A sequence featuring Kyle Andeer that contains several pages of text addressing basic antitrust questions, such as why antitrust matters to Apple, what types of behavior the antitrust laws prohibit, what red flags employees should look for, and when employees should get help with antitrust issues. Employees are directed at several points to contact the CLPG with questions and to report potential antitrust violations to Ms. Said. The anti-reprisal policy is noted here as well.

The last page of the ebook contains a flip-through gallery describing various real-life examples of "how antitrust impacts consumers around the world": a monopoly in the artificial teeth industry; the Samsung LCD price-

[113] The lysine conspiracy is described generally in the training materials without mentioning ADM by name. The ADM price-fixing example is not used in the online training course and has not been used in the live antitrust training sessions.

fixing case; a minimum resale price agreement for baby formula distributors; the DRAM price-fixing case; a DOJ investigation into market allocation, bid rigging, and price-fixing in the market for rubber parts for cars; the 1990s Microsoft bundling case; and a Mylan pharmaceutical case involving attempts to limit access to generic drugs.

D. Antitrust and Competition Intranet Site

As part of the June 30 Rollout, Apple launched a new Antitrust and Competition Intranet Site, which is available to all Apple employees. Apple included screenshots of the intranet site in its July 1, 2014 document production.[114] Ms. Said also showed us the new site, as it appears on the Apple network, during our July 17-18 trip to Cupertino.

The screenshots show that the home page of AppleWeb, Apple's main intranet site, contains a teaser for the FBI price-fixing cartel story now contained in the ebook, stating, "Learn how the FBI and an ugly green lamp brought down a global price fixing cartel." The link takes Apple employees to the Business Conduct intranet site. From there, Apple employees can download the new Business Conduct ebook to read the price-fixing story. The home page also provides a direct link to the online antitrust training and provides Ms. Said's contact information.

From the Antitrust Intranet home page, Apple employees can link to a separate screen for the Business Conduct Policy. This provides another way to download the ebook, as well as answers to technical FAQs related to the ebook, such as how to download it in other languages, how to search it, and how to bookmark or save pages.

From the Antitrust Intranet home page, Apple employees can also link to a separate screen for Antitrust & Compliance. This area of the website contains the same Q&A session with Kyle Andeer contained in the ebook. It also provides contact information for the competition law team and for Ms. Said. Finally, there is a section of "related links" where Apple employees can download and access the Antitrust & Competition Law Policy, Summary of Antitrust Final Judgment, ebook Final Judgment, Antitrust & Compliance Training, Overview of Recruiting Requirements, Recruiting Final Judgment, Recruiting Competitive Impact Statement, and Recruiting No Direct Solicitation List.[115]

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[114] These screenshots are attached as Exhibit D (redacted).

[115] The last four items relate to Apple's 2010 Settlement with the Department of Justice regarding employee non-solicitation (no-poach) agreements.

E. Live Antitrust Compliance Training

1. Overview of Training Sessions

The Final Judgment requires Apple to provide training to each member of its Board of Directors, its Chief Executive Officer, each of its Senior Vice-Presidents, and each of its employees engaged, in whole or part, in activities related to Apple's iBooks Store.[116] To meet this requirement, and in addition to the training discussed in Section IX.C.5 of our First Report, Apple has conducted six live antitrust training sessions since May 2014.

Two senior attorneys in the CLPG, Kyle Andeer and Sean Dillon, have conducted most of the training sessions. Mr. Andeer led four training sessions – on May 13, June 10, June 23 and July 23, 2014. Mr. Dillon led a fifth session on June 17, 2014. The May 13 session was for the senior personnel in Apple's Internet Software and Services group who report directly to Eddy Cue, Apple's Senior Vice President for Internet Software and Services. The four other sessions were attended primarily by iTunes and App Store personnel. The sign-in sheets Apple provided to us reflect that, altogether, 105 Apple employees participated in these five training sessions, and Apple permitted an additional thirteen employees to remotely stream video of the June 10 and June 23 sessions.

On June 30, 2014, David Boies, of the law firm Boies, Schiller and Flexner LLP, conducted a live antitrust compliance training session in Cupertino for Apple's Executive Team. This training was attended by eight of the ten members of Apple's Executive Team – Tim Cook, Craig Federighi, Jeff Williams, Luca Maestri, Dan Riccio, Angela Ahrendts, and Bruce Sewell – as well as by other Apple personnel and two of Mr. Boies's law firm partners. Mr. Boies also conducted a training session for Apple's Board of Directors on August 27, 2014.[117]

Members of the monitoring team attended the June 17 and June 23 training sessions. In addition, all of the sessions, except the May 13 session, were videotaped, and Apple provided us with the recordings. Mr. Andeer and Mr. Dillon used very similar PowerPoint presentations during their training sessions, and Mr. Boies used a different PowerPoint presentation during his training. Apple has provided us with copies of all of the PowerPoint presentations.

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[116] *See* Final Judgment §§ V.A-V.C.

[117] We received the materials relating to the August 27 session on September 23, too late for us to analyze for this Report. We will discuss the antitrust compliance training for Apple's Board of Directors in our next report.

The training sessions conducted by Mr. Andeer and Mr. Dillon were substantially similar: they followed the same format, addressed the same content, and largely used the same PowerPoint slides.[118] Although it had been our understanding that Apple intended to tailor each training session to the particular business group at which it was directed, we saw very little differentiation in the training sessions we monitored live and by video. Mr. Andeer explained to us on August 21 that we had not observed differences in the training sessions conducted thus far because all of these sessions were directed at employees working in content-distribution groups and, in Mr. Andeer's view, all of those groups face similar antitrust risks. Thus, unless otherwise noted, the following summary generally describes all four sessions (June 10,[119] June 17, June 23, and July 23). A separate summary of Mr. Boies's training session for Apple's Executive Team follows ("the ET training session").

(a) The Apple Non-Executive Live Training Sessions

The live training sessions had three main components: (1) an introduction, (2) a presentation of basic principles of antitrust law, and (3) a discussion of the ebooks Litigation and the Final Judgment. In addition, personnel attending the training had the opportunity to ask questions.

By way of introduction, the trainer (either Mr. Andeer or Mr. Dillon) explained that the purpose of the training was to enable the attendees to spot antitrust issues in their daily business and reach out to counsel with questions. The trainers then asked: "What comes to mind when you hear the word antitrust?" They displayed a slide with several pictures, including of John D. Rockefeller, the Microsoft Windows 98 logo, and the Monopoly board game. The trainers used this first slide to explain the origin of the antitrust laws in the United States, including the central role played by Standard Oil in the early 1900s. They explained, in generally similar terms, Standard Oil's monopoly of oil production, the enactment of the antitrust laws, and the resulting lawsuit by DOJ that ultimately caused Standard Oil to be split into more than thirty different companies. The trainers distilled a central message from this example: antitrust is an area of law that Apple needs to take very seriously because high-profile companies like Apple will inevitably face scrutiny, and the enforcement of these laws can have dramatic consequences, including companies' dissolution. They also stressed that antitrust violations can result not only in significant fines, but also in jail sentences for individual executives involved in the violations (in particular, price-fixing). The trainers noted that many familiar companies have

[118] Mr. Dillon used more slides in his presentation (45 slides) than Mr. Andeer did in his (22-30 for each session) but the content covered was substantially similar.

[119] Presentation slides for the June 10, 2014 live training session are attached as Exhibit E (redacted).

dealt with antitrust issues over the years, including Google, Microsoft, and AT&T. Mr. Andeer and Mr. Dillon also noted that scores of different jurisdictions around the world have antitrust laws today, which Apple needs to be aware of because of the company's global presence.

The trainers then discussed the purposes of antitrust: protecting competition and consumers and ensuring consumer choice. They summarized the basic principles of antitrust law, emphasizing that it has many grey areas and no clear list of "Dos" and "Don'ts," and that Apple personnel should always keep the primary purpose of antitrust law – the protection of competition and consumers – in mind.

The trainers explained that the main focus of antitrust law is on agreements between competitors. Here, Mr. Andeer used Amazon as an example, noting that any agreement between Apple and Amazon, which compete directly for music, television, and movie sales, would generate substantial suspicion and scrutiny if the agreement affected the terms of that competition. Mr. Andeer and Mr. Dillon both explained that an "agreement" does not need to be in writing to be problematic from an antitrust perspective; an agreement can be inferred from emails, casual conversations, or circumstantial evidence. During some but not all sessions, the trainer showed a slide with a picture of a beer coaster with writing on it; the purpose of the slide was to show the kind of evidence antitrust regulators can might rely on to assess whether an agreement was reached.

The trainers discussed the types of agreements that can be problematic under the antitrust laws, beginning with price-fixing, which they described as one of the few clear "no-nos" of antitrust law. They described various Samsung price-fixing litigations to make this issue concrete, and they stressed the importance of taking price-fixing very seriously, explaining that DOJ has been focusing on price-fixing in its antitrust enforcement efforts in recent years. Next, the trainers discussed other types of agreements that might raise antitrust concerns, displaying a slide that said, "Competitors cannot: Agree on other terms of sale; Agree to cut supply or restrict output; Agree to allocate markets: Products, Geographies, Customers; Agree to refuse to deal with a supplier or customer. When in doubt, ASK!" The trainers discussed each of these topics, providing examples for each one. For example, on the topic of prohibited agreements to allocate markets, they offered the hypothetical example of someone from Apple proposing to Netflix that they divide up the market (i.e., Apple streams TV shows, Netflix streams movies). After discussing the examples, the trainers concluded their presentation of examples by emphasizing that when in doubt, Apple employees should seek legal counsel.

The next topic addressed was information sharing. The trainers explained that regulators become very suspicious when competitors sit down to discuss sensitive information. They noted that this is where the publishers in the ebooks Litigation got in trouble, and they briefly outlined the relevant facts. They emphasized that Apple employees need to be careful in how they communicate and the substance of what they communicate. They also discussed information sharing with content providers at length, providing various examples of how the issue might arise in Apple's business and emphasizing that Apple employees should be wary of sharing with one content provider the terms of Apple's negotiations with another supplier. They noted that there are legitimate ways of dealing with multiple suppliers, such as by offering standard terms, but that Apple employees should be careful in communications with suppliers.

The trainers then briefly discussed monopolies, although they noted that they could not think of any markets in which Apple has a monopoly. The trainers explained that Apple employees should nonetheless be extremely careful because of a difference between "perception and reality," a theme emphasized throughout. [redacted] The trainers briefly addressed a list of issues that can be problematic for dominant market players, or those market players that appear dominant: exclusive arrangements, market share agreements, refusals to deal, and MFNs.

Finally, the trainers touched briefly on mergers and acquisitions. They explained that regulators scrutinize acquisitions to make sure companies are not merging in a way that would harm competition. They displayed a slide with a picture of runners at the start of a race and the text, "Gun-Jumping. Cannot assert operational control prior to closing an acquisition. Dictating negotiations with third parties. Hiring/Firing Employees. Terminating contracts. Must be careful about exchanging competitive sensitive info." In connection with this slide, the trainers emphasized that, during negotiation of a merger or acquisition, it is very important to continue to treat the other party as an independent and separate company.

After presenting these basic principles of antitrust law, Mr. Andeer and Mr. Dillon each spent approximately five to ten minutes discussing the requirements of the Final Judgment. They used different slides to convey this information and presented the requirements in a different order, but each covered the following five points:

- Apple's agreements with book publishers must not include retail MFNs;
- Apple must apply the same terms and conditions to ebook apps as to other apps;
- Apple may discount books of the five defendant publishers without limitation, even within its current agreements;
- Apple cannot retaliate against book publishers for refusing to agree to Apple's terms, or because of its terms with other retailers; and
- Apple cannot share with any publisher competitively sensitive information it learned from another publisher.

The trainers opened each session for questions. No questions were asked at the June 17 or July 23 training sessions. One question was asked during the June 23 training session, but it was a question about one of the examples and was asked during the presentation, not at the end. Several questions were asked during Mr. Andeer's June 10 session, which was the most interactive. The questions, which were interspersed throughout that session, largely focused on how to distinguish antitrust violations from acceptable agreements and information sharing with content providers. Some questions sought additional detail about particular issues, such as the meaning of a refusal to deal, the threshold for a monopoly, and whether minimum advertised price agreements implicate the antitrust laws. Some questions and answers were redacted for privilege, consistent with an agreement between Apple and the Monitor.

The trainers concluded their training sessions by displaying a slide with contact information for the CLPG, encouraging attendees to contact legal counsel with questions. The slide also stated that antitrust violations must be reported to Deena Said, Apple's Antitrust Compliance Officer, and that Apple has a strict "no retaliation" policy for reporting violations. Finally, the Business Conduct Helpline was mentioned as an available resource at two training sessions, but not at the others.

(b) Executive Team Training Session

The Executive Team training session took place on June 30, 2014, the same day that the bulk of Apple's revised antitrust compliance program was made available to employees. Before introducing Mr. Boies, Mr. Sewell, Apple's General Counsel, began the training session by encouraging the attendees to tell their staffs about the newly available suite of antitrust materials and to "waterfall" the materials to the rest of the company.[120]

[120] Although Mr. Sewell was not specific about how the senior executives should help disseminate and "waterfall" information about antitrust and the new antitrust compliance

Mr. Boies spent approximately thirty minutes discussing the fundamentals of antitrust law. By way of introduction, he said that the two basic areas of antitrust law are "horizontal" relationships between competitors and "vertical" relationships with suppliers and customers. He explained that the antitrust laws are designed to promote and protect competition – not to protect competitors – and that courts are increasingly trying to align the antitrust laws with this purpose. He noted that violations of the antitrust laws are extremely expensive, resulting in large civil fines and penalties as well as criminal liability. He emphasized that, because the antitrust laws provide for triple damages, as well as attorneys' fees, the costs can be quite substantial.

Mr. Boies explained that relationships with competitors, suppliers, and customers fall under Section One of the Sherman Act, which addresses agreements in restraint of trade, whereas Section Two of the Sherman Act deals primarily with unilateral conduct, meaning monopolization. He briefly discussed the various types of problematic agreements among competitors (price fixing with competitors, market allocations, agreements to boycott particular customers or suppliers) and with customers or suppliers (exclusivity agreements, market share agreements, MFNs, resale price maintenance). He also touched on mergers and acquisitions.

All antitrust violations other than monopolization claims, Mr. Boies explained, have to start with proof of an agreement. The problem, he noted, is that it is not always clear when an "agreement" has been reached. To illustrate this point, he used the example of the LCD antitrust case, describing the evidence that was used to establish an agreement. Once an agreement is established, Mr. Boies explained, the second element of an antitrust claim is that the agreement must harm competition and consumers. He explained the difference between agreements deemed "per se" unlawful – such as those that involve price fixing, market or customer allocation, bid rigging, and boycotts – and those evaluated under the "Rule of Reason." He emphasized that if a company is considering any kind of horizontal agreement with a competitor, a very careful legal analysis needs to be conducted, since those agreements are rarely lawful. He explained, however, that certain joint ventures, mergers, or "no poach agreements among particular competitors may very well . . . be legal," depending on the context.[121]

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materials, we have followed up with the senior executives whom we interviewed after the June 30 Executive Team training session. These executives have advised us that they either have already taken steps to disseminate information about the antitrust compliance materials and to arrange for specific relevant antitrust training, or, in response to questions about how they planned to implement Mr. Sewell's recommendation, that they are actively considering such steps.

[121] Following Mr. Boies's explanation of the types of problematic agreements, Apple redacted a long portion of the training video for privilege (approximately 25 minutes). Another

Mr. Boies emphasized the importance of documentation. He encouraged the Executive Team to make all of their documents as truthful, accurate, and precise as possible, and to avoid including phrases like "Destroy after Reading" that could be taken out of context. He stressed the importance of having a document retention policy that is followed consistently, since abrupt changes in document retention practices can raise red flags. He noted that this is particularly important in the era of electronic documents and that Apple should have a program that manages electronic documents in a way that is comparable to how paper documents are managed.

Finally, Mr. Boies made two brief points about mergers and acquisitions. He stressed the importance of conducting an antitrust analysis before any acquisition. He said it is important to remember the Hart-Scott-Rodino Act, which requires pre-merger notification to antitrust enforcement agencies. He said this notification can sometimes result in an elaborate process and can delay mergers, and that it is very important to keep the merging entities separate during this time.

The second part of the training focused on the Final Judgment and on responding to questions asked by the attendees. Mr. Boies noted that the Final Judgment, which has a five-year duration, prohibits certain conduct and requires certain conduct. He focused on two aspects of the Final Judgment. First, he discussed the prohibition against sharing with any publisher competitively sensitive information learned from another publisher. Mr. Boies said this prohibition was at the heart of the Final Judgment. He emphasized that, although this discussion was about a court order, everyone in the room should recognize that they should be careful, even outside the context of the Final Judgment, about sharing with one firm non-public, competitively sensitive information learned from that firm's competitor. He also discussed the Final Judgment's prohibition of coercion or threats aimed at ebook publishers who refuse to deal with Apple on Apple's terms. A question was asked on this topic, which led to a substantial discussion about the line between normal business conduct and impermissible threats.

Mr. Boies covered the remaining sections of his presentation without discussion: the terms and conditions that must be offered for the ebook app compared to other apps offered through the App Store; the appointment of an Antitrust Compliance Officer; the emphasis on anti-reprisal; the obligation to

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redaction (approximately 4 minutes) occurs later in the training. Taken together, the redacted portions of the training session amount to close to a third of the session as a whole. Apple provided a privilege log confirming that these portions of the training reflect the transmission of legal advice, but without any information, even in general terms, about the subject matter of the questions.

report to the government evidence of collusion among ebook publishers; the obligation to furnish a copy of the Final Judgment to certain employees and executives and obtain annual certifications of compliance; the obligation to log communications with ebook retailers and publishers; antitrust and compliance training; and how Apple should handle suspected violations of the antitrust laws or Final Judgment. Finally, Mr. Boies noted that the Final Judgment is not simply something that says, "Don't commit these violations"; instead, it is an order that might preclude Apple from doing things it might ordinarily do when competing.

Members of the Executive Team asked questions at various points during the training session, but Mr. Boies also reserved time for questions at the end. Mr. Sewell brought up one issue he thought was particularly important for the group to understand: whether Apple – when working vertically and unilaterally with multiple suppliers – can tell them that others are participating in order to secure their participation. Mr. Boies admitted that he had to provide an unsatisfying answer to this question: it depends on the facts. He said the closer you get to talking about agreements on pricing, the more red flags are raised. He said the important thing is to recognize that this is a dangerous area where a person needs to be careful about what he says and to whom he says it.

Other questions focused on whether the Final Judgment relates solely to e-products, and on agreements and communications with suppliers, such as MFNs, pricing discussions, and exclusive arrangements. Mr. Boies responded to each question by explaining where the line might be between legal and prohibited conduct, encouraging the executives to consider in every case how their actions might be perceived from an antitrust perspective in order to reduce the risk that actions taken now will be misinterpreted later.

2. Further Dissemination of Antitrust Training

We understand that the CLPG has provided additional training sessions since issuance of the Final Judgment, in part because of Mr. Sewell's directive as well as discussions we have had with those senior executives during interviews. For example, when we interviewed Luca Maestri, Senior Vice President and CFO, on July 18, 2014, we asked him how he intended to waterfall or cascade the new antitrust materials to the employees in his organization. Mr. Maestri said he intended to have Mr. Andeer train his direct reports at a staff meeting. Mr. Andeer informed us on August 21, 2014 that he had provided that live antitrust training to Mr. Maestri's direct reports, which he acknowledged had been a result of the monitoring team's interview with Mr. Maestri. Mr. Andeer agreed to supply us with materials related to that training, but those materials have not been provided as of the date of this Report. Similarly, Jeff Williams, Senior Vice President of Operations, explained that, within his organization, procurement

likely presents the most significant antitrust risks.[122] Mr. Williams said that he planned to invite Mr. Andeer to one of his staff meetings so that even his reports whose activities create relatively little antitrust risk will understand the most important issues. We expect that that these and other training sessions will be videotaped so that we can properly assess and evaluate whether Apple is in fact tailoring its antitrust compliance training to different audiences as it has said it would do. Our understanding is that the training provided to Mr. Maestri's direct reports was not recorded.

Apple has informed us that the company is continuing to evaluate what, if any, additional groups of personnel might require live antitrust training. For example, we have had discussions with Apple about a separate live antitrust training for the attorneys who are embedded in Apple's business units and who serve as the first line of legal support for the business people.[123] We also understand that Apple's sales team has received "Deals 101" training.[124]

IX. Assessment and Recommendations

A. Context of the Assessment

Because of the work we have done over the past several months, we are in a significantly better position to evaluate Apple's Antitrust Compliance Program than we were when we submitted our First Report. We have interviewed a significant number of people from Apple's executive, legal, compliance, and business teams. Apple has provided more information and generally has been more responsive to our requests. Since the First Report, we have gained a much better understanding of Apple's business organization and operations and the manner in which its lawyers work with its legal team. Most importantly, as of

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[122] Mr. Williams's procurement team has received training from Mr. Andeer in the past year at an annual training session regarding procurement deals, but Mr. Williams's stated intention is to extend the antitrust training more broadly.

[123] Mr. Andeer has suggested that a course on antitrust law might be offensive to experienced lawyers. We are confident that Mr. Andeer and his colleagues are capable of fashioning a training session that is appropriately calibrated for lawyers who deal with antitrust issues from time to time but who are not specialists. After all, continuing legal education, which is a common feature in the legal community and required in many states, is based on that principle.

[124] We received slides from a Deals 101 presentation as part of the August 29 Submission. Some of the slides overlap with those used by Mr. Andeer and Mr. Dillon in their live trainings to iTunes and App Store employees, suggesting that Deals 101 covered some of the same basic antitrust principles as those trainings (agreements between competitors, perception of monopoly, mergers and acquisitions). There was also a slide about the poaching case. Otherwise, the slides shed little light on the substance of the Deals 101 training.

June 30, Apple has developed, modified, and introduced specific components of its enhanced Antitrust Compliance Program.

Even so, we still lack information that is necessary for a comprehensive analysis of Apple's Program. First, we have not had the opportunity to interview all members of Apple's Executive Team. Despite requests to interview all ten Executive Team members during this reporting period, Apple has not yet made two Executive Team members available. Second, with the exception of former Board member William Campbell, Dr. Ronald Sugar, and Tim Cook, we have not interviewed any other members of Apple's Board of Directors. Apple has agreed to make the Board members available for interviews and we hope to meet with them in the very near future.

As discussed in this Section of the Report, Apple's senior leaders, including its Executive Team and its Board, are key to the success or failure of Apple's Antitrust Compliance Program. The Board and Executive Team are responsible for exercising adequate oversight of the Antitrust Compliance Program, establishing the company's tone on antitrust compliance standards, and displaying a strong commitment to following the antitrust laws. The tone must be established at the top and transmitted throughout the company on a continuing basis by word and deed. Our assessment of Apple's Antitrust Compliance Program will remain incomplete until we have greater access to the personnel responsible for compliance oversight, especially Apple's Board members.

The United States Sentencing Guidelines,[125] direction from this Court, and other compliance standards set the framework for assessment and evaluation of Apple's Program. During our initial discussions with company representatives, we learned that Apple, like most companies, looks to the Sentencing Guidelines for the framework and guiding principles of its own Program.

Our view is that over the last few months Apple has developed, and has taken important steps toward implementing, the basic elements of a sound antitrust compliance program. This is far beyond what existed previously. As discussed in Section VIII, the June 30 Rollout consisted of several critical Program components, including revised policy documents and resources, live and online training courses, and an internal website dedicated to antitrust compliance. We discuss our specific assessment of these components in greater detail in this Section.

We have observed two main weaknesses in Apple's Program. First, perhaps because of its infancy, the Program lacks clear procedures for its full

[125] U.S. Sentencing Commission, Organizational Compliance Guidelines § 8B2.1.

implementation. We recommend that Apple adopt adequate procedures to implement its Program (such as risk assessment and feedback solicitation), including the procedures to detect risk that should be embedded in its regular operations.

Second, we have not yet seen evidence that Apple's Program is adequately overseen by the Board or the Board's Audit and Finance Committee. Indeed, because of the delayed rollout of the Program and our lack of access to Board members, we have very little information about whether the Board is knowledgeable regarding Apple's Antitrust Compliance Program, and no information about whether the Board is satisfied with the company's efforts to implement the Program. Finally, perhaps because of our lack of access to the Board, we have seen little evidence of the Board's engagement in, or oversight of, the Program.

B. Antitrust Risk Assessment

1. Recommendations from the First Report

We recommended in the First Report that Apple undertake a formal antitrust risk assessment as a central component of its Antitrust Compliance Program. At a minimum, our recommendation was meant to require a "systematic assessment of the risks that arise from Apple's businesses, the activities of its employees, and its third-party interactions."[126] In addition, we recommended that the assessment include consideration of antitrust concerns that have historically been relevant to the company, including non-public instances in which antitrust issues have been detected and addressed internally.[127] Finally, we recommended that Apple structure a formal risk assessment process that is dynamic, so that Apple's Antitrust Compliance Program continues to develop as Apple's business changes and expands[128] and

[126] First Report 45.

[127] *Id.*

[128] The new product and service Apple announced on September 9 (Apple Watch and Apple Pay, respectively), highlight the dynamism of Apple's business. *See, e.g.*, Press Release, Apple, Apple Unveils Apple Watch—Apple's Most Personal Device Ever (Sept. 9, 2014), *available at* http://www.apple.com/pr/library/2014/09/09Apple-Unveils-Apple-Watch-Apples-Most-Personal-Device-Ever.html; Press Release, Apple, Apple Announces Apple Pay (Sept. 9, 2014), *available at* https://www.apple.com/pr/library/2014/09/09Apple-Announces-Apple-Pay.html. Apple also frequently engages in acquisitions that expand the lines of business in which it engages. *See, e.g.*, Press Release, Apple, Apple To Acquire Beats Music & Beats Electronics (May 28, 2014); *available at* http://www.apple.com/pr/library/2014/05/28Apple-to-Acquire-Beats-Music-Beats-Electronics.html.

as the antitrust regulatory environment changes.[129]

Our recommendations were based on several important factors. First, we believe that an antitrust risk assessment is a necessary component of any comprehensive and effective antitrust compliance program. As this Court recognized, compliance programs are not "one size fits all."[130] An effective and comprehensive antitrust compliance program must be structured to match the company's antitrust risks, which are determined by assessing potential exposure created by the company's operations and activities. As Apple has acknowledged,[131] applying general compliance concepts or adopting an off-the-shelf compliance program would not lead to an effective and comprehensive Antitrust Compliance Program for the company.

In addition, the Antitrust Division of the U.S. Department of Justice and several other respected authorities[132] have recognized the importance of aligning a company's compliance program with identified risks. The Antitrust Division has recently reminded the business community that an effective antitrust compliance program must be "designed to account for the nature of a company's business and for the markets in which it operates."[133]

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[129] *See* First Report 45.

[130] 1/13/14 Tr. 45-46.

[131] On numerous occasions Ms. Said, Mr. Moyer, Mr. Vetter, and others have described Apple's goal to develop a customized Program that is tailored to Apple's culture, operations, and antitrust risks.

[132] The United States Sentencing Guidelines contain a general provision requiring periodic risk assessments. *See* U.S. Sentencing Commission, Organizational Compliance Guidelines § 8B2.1(c), *available at* http://www.ussc.gov/guidelines-manual/2011/2011-8b21 ("The organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement set forth in subsection (b) to reduce the risk of criminal conduct identified through this process."). The OECD has issued similar guidance on the importance of risk assessments, *see* OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance, adopted 18 February 2010, *available at* http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/44884389.pdf, as has the United Kingdom, *see* Ministry of Justice, The Bribery Act 2010 (Mar. 2011), *available at* http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf. Finally, the International Chamber of Commerce's Antitrust Compliance Toolkit includes risk identification and assessment as a foundational element of a compliance program. *See* ICC Comm'n on Competition, The ICC Antitrust Compliance Toolkit (2013), *available at* http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2013/ICC-Antitrust-Compliance-Toolkit/.

[133] Brent Snyder, Deputy Assistant Attorney General, Antitrust Division, U.S. Dep't of Justice, Compliance is a Culture, Not Just a Policy, Remarks as Prepared for the International Chamber of Commerce/United States Council of International Business Joint Antitrust

Second, periodically conducted risk assessments allow the company to modify its program to respond to new risks as they develop. The markets in which Apple is active are constantly evolving, and, as its most recent product announcements demonstrate, Apple continues to enter new markets.[134] The antitrust regulatory environment is also dynamic. These facts deepen the need for a risk assessment that will keep the company's compliance standards in line with or ahead of its business activities. To ensure that Apple's program endures beyond the life of the Final Judgment in a way that comprehensively and effectively guards against future antitrust risks, Apple's Antitrust Compliance Program should be informed by a comprehensive risk assessment that is reviewed and modified on a regular basis.

Finally, we explained in the First Report that a formal risk assessment would allow for a more efficient evaluation of various elements of Apple's Antitrust Compliance Program. Although our recommendation was framed in terms of our ability to evaluate the comprehensiveness and effectiveness of Apple's Program, a risk assessment is central to the ability of the Board and senior management to ensure that the company's Antitrust Compliance Program is properly designed to address the antitrust risks Apple faces.

2. Apple's Prior Formal Risk Assessments

When we issued the First Report, we understood formal risk assessments to be a standard part of Apple's auditing and internal controls functions. Apple informed us that the Audit and Finance Committee is generally responsible for overseeing risk assessments. The Audit and Finance Committee consists of independent members of Apple's Board of Directors and, according to its charter, is responsible for monitoring and overseeing "compliance with legal, regulatory and public disclosure requirements" as well as enterprise risk management.[135] The Risk Oversight Committee, which consists of Apple executives and senior employees, assists the Audit and Finance Committee in fulfilling its oversight responsibilities with regard to risks faced by the company.[136]

Through our interviews of Apple employees after issuance of the First Report, and interviews of members of the CLPG in particular, we learned that Apple was considering our recommendation to implement a formal risk

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Compliance Workshop (Sept. 9, 2014), *available at* http://www.justice.gov/atr/public/speeches/308494.pdf.

[134] *See supra* note 128.

[135] Audit and Finance Committee Charter, *supra* note 101, at 1.

[136] Risk Oversight Committee Charter, *supra* note 108, at 1.

assessment process. Sean Dillon described a seemingly informal process to assess risk that had taken place since he joined the company. He described discussions with Mr. Andeer regarding areas of the business that could create antitrust exposure, and "whiteboarding" as a brainstorming process that he and Mr. Andeer used to identify potential antitrust risk in the Apple businesses. He said that he and Mr. Andeer had met with various business units to learn about each unit's operations and that together he and Mr. Andeer had assessed antitrust risk through a "continuing process." He said that the company was considering a more formal process in light of the First Report's recommendation, but noted his belief that enacting a formal process would simply memorialize a process already taking place.

Although Apple made no objection to our recommendation to conduct a formal antitrust risk assessment, as of July 31, 2014, more than three months after submission of the First Report, Apple had not provided us with any evidence that such an assessment had taken place. The information Mr. Dillon and others provided shortly after submission of the First Report[137] suggested that relevant informal conversations and brainstorming were taking place, but such activity did not necessarily accomplish the formal risk assessment we had recommended in the First Report. Accordingly, we asked in the July 31 Document Request that Apple provide documents and information relating to any risk assessment conducted since we had shared the First Report with Apple.

As described in Section V.D.6 above, in response to the July 31 Document Request, we engaged in oral and email discussions with Apple concerning the company's response to our request for documents regarding the company's performance, if any, of a formal antitrust risk assessment. On August 21, 2014, members of the monitoring team met with Mr. Andeer to discuss our request in greater detail. Despite comments from Mr. Dillon and others at Apple regarding contemplation of a formal risk assessment in response to our recommendation, Mr. Andeer's initial response to our request for further information was that the First Report did not include a clear recommendation that Apple conduct a formal risk assessment. Moreover, Mr. Andeer asserted that a formal risk assessment *process* was already in place, but he told us that no written document reflecting such an assessment existed. Mr. Andeer firmly stated his opposition to preparing a written record of a risk assessment that went beyond the "summary form" that his team had previously used.[138]

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[137] *See supra* Section V.D.6.

[138] As of the date of this Report, we have not been provided with the "summary form" of a risk assessment that Mr. Andeer described.

Through email correspondence after the August 21 meeting with Mr. Andeer, Mr. Vetter informed us that, after we issued the First Report, Apple had indeed engaged in "multiple very serious discussions about [an antitrust risk assessment] and [the Monitor's] request for a written report." Although those discussions never resulted in a response to the Monitor's recommendation, Apple apparently concluded that the activities it had undertaken since issuance of the First Report (as described in Section IX.B.3 below) in substance satisfied the Monitor's recommendation to undertake a formal risk assessment.

3. Apple's Antitrust Risk Assessment Efforts

Beginning with the August 21 meeting with Mr. Andeer, and extending through multiple emails following that meeting, Apple for the first time provided us with some information regarding the risk assessment process it had conducted, which the company believes is an adequate response to the First Report's recommendation. Apple represented to the monitoring team that the company had undertaken the following efforts with respect to an antitrust risk assessment:[139]

- **Communications with Legal Personnel.** Apple told us that Mr. Andeer began his tenure at Apple by meeting with all of the senior leaders in Apple's Legal Department to better understand the businesses they support and the risks they encounter. In addition, Apple told us that Mr. Andeer, Mr. Dillon, and Mr. McNamara, as well as other lawyers working with specific business groups (such as Emily Blumsack and Annie Persampieri), identify risks on a daily basis based on the questions asked by Apple employees. Apple told us that Mr. Andeer and others incorporate the antitrust considerations raised by those questions into an ongoing, unwritten risk evaluation. Because it is unwritten, we obviously have not received or reviewed it.

  Apple also informed us that Mr. Andeer has met with numerous in-house lawyers in key roles (most on multiple occasions) for the sole purpose of assessing antitrust risks they may encounter in the businesses they support. Apple stated that these lawyers include Annie Persampieri (iBooks Store); Emily Blumsack (App Store); Jay Lee (iPhone carrier relationships); Kim Cooper (iPhone carrier relationships); Robert Windom (iTunes content); Michael Miramontes (Global Supply Chain); and Doug Vetter (all Apple product offerings).

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[139] The information concerning Apple's risk assessment process was summarized in a series of lengthy emails by Mr. Vetter to the Monitor over the course of the two weeks following the August 21 meeting.

Apple told us that, even before Mr. Andeer was promoted to Chief Sales Counsel approximately one year ago, he met with Mr. Vetter, who was the then-acting Chief Sales Counsel, for the specific purpose of discussing antitrust risk in the Sales groups. Apple further informed us that Mr. Andeer also met with the lawyers leading Channel Sales Support in the United States and Apple's Chief International Lawyer. Apple considers Mr. Andeer to be "embedded" in the Sales business.

- **Communications with Business Personnel.** Apple informed us that Mr. Andeer has also met with business leaders to better understand their businesses and to start analyzing the types of competition law risks they may face. Apple said these business leaders include Eddy Cue and members of his team (all forms of iTunes content); John Brandon and his team (Channel Sales); and Mike Fenger (iPhone carrier relationships). Apple represented that these meetings are in addition to the day-to-day interactions that Mr. Andeer, other CLPG members, and Apple business lawyers have with the business people in the relevant business units when fielding questions and discussing potential antitrust risks.

- **Internal Antitrust Risk Discussions.** Apple informed us that, beginning shortly after issuance of the First Report, Mr. Andeer began meeting once per week with his antitrust team solely to discuss relevant antitrust risks (separate and apart from his regular staff meeting, which is held on a different day of the week). Apple described the meeting as an opportunity for Mr. Andeer and his lawyers to strategize about where the company may have antitrust exposure and how best to address these risks. We are not aware whether these discussions have been memorialized in writing.

- **Collaboration between Legal and Compliance.** Apple states that Mr. Andeer meets regularly (at least every other week) with Mr. Moyer, Ms. Said, and Mr. Vetter to discuss the status of Apple's antitrust compliance efforts, including new information learned from follow-ups on the live training sessions, feedback from the online training course, and any business developments that might affect the antitrust risk assessment. Apple considers one of Ms. Said's main contributions in her role as the Antitrust Compliance Officer to be working with Mr. Andeer to analyze the trainings and to determine how to better tailor them to potential risks.[140]

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[140] We do not know whether or to what extent the training has been tailored based on these discussions. We have no way of testing Apple's representation, made in response to the

- **Additional Support from Outside Counsel.** Apple informed us that the company has worked with Simpson Thacher to survey Apple-specific risks based on the relevant business units, interactions with competitors, and collaboration with business partners and suppliers. Apple represented to us that the findings from this survey are reflected throughout Apple's revised antitrust trainings and policies, both with respect to the substance of the guidance provided and in the specific hypothetical examples and quizzes embedded throughout the online training. We currently have no detail about this – i.e., we have no information on which aspects of the survey led to which hypothetical examples or which quiz questions.[141]

- **Elevated Access to Information.** We understand from Apple that Mr. Andeer is "disclosed" on Apple's unannounced products and service offerings, which Apple argues is a significant step because information on unannounced products and services is tightly controlled within the company. Apple informed us that it recognizes that, as the company enters new markets or modifies the way in which it does business, such actions may change the company's antitrust risk profile. We were told that Mr. Andeer is one of the first people in the company to be provided insight into these changes.[142]

- **Risk Assessment Tools.** Apple told us that Mr. Andeer and his team have been preparing questionnaires for the various business units that will be used as a template to drill down further into the organizations as the CLPG continues its risk assessment efforts. Apple provided us with

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draft report, that it has used information derived from these sources to focus on issues relevant to specific business groups.

[141] Apple notes that its communications with outside counsel in connection with its revised Antitrust Compliance Program are privileged. We fully accept the privileged nature of such communications, but we are confident much of the information we are seeking could be supplied without implicating such communications.

[142] We appreciate the importance and significance of this development, and we think it is an absolute necessity in allowing Apple to assess antitrust risks at critical stages of product and service development. It would be a matter of great concern if antitrust risks were not considered at the earliest possible stage and antitrust advice were not sought. We understand that Mr. Vetter, as New Products Counsel, has for the past fourteen months consulted Mr. Andeer in connection with new products that may have antitrust implications; previously, Mr. Andeer was consulted by Bruce Sewell or former New Products Counsel, Kevin Saul. To be clear, Mr. Andeer is not provided such access for all new products, but only those which Mr. Vetter believes may have antitrust implications. Based on the information Apple recently provided, it is unclear whether Mr. Andeer's access today is greater than before Mr. Vetter became New Products Counsel.

the questionnaire prepared for the iTunes business unit,[143] but has so far declined to provide questionnaires for other business units or to identify the full set of business units for which such questionnaires were being prepared based on claims of privilege.

4. Further Assessment and Recommendations

As we learned about Apple's risk assessment efforts only at the end of this monitoring period, we have had no opportunity to fully evaluate or assess them. We have had to rely solely on Apple's representations that such efforts have taken place. As they have been described to us, Apple's efforts to undertake an antitrust risk assessment since the First Report would constitute a reasonable foundation for assessing potential antitrust risk. The Monitor hopes to engage with Apple in the near future to obtain more detail regarding the specific risk assessment efforts that have been undertaken and to provide a more complete assessment of those efforts in future reports. The Monitor's preliminary evaluation and assessment of the company's risk assessment activities, as represented by the company, is discussed in more detail below. We must include the important caveat that we have not yet confirmed or verified these representations.

Apple's representations suggest it has taken several positive steps toward implementing a risk assessment process. Frequent communication with leaders from each of the business units, as well as with the legal personnel who support those business units, is an essential first step for understanding antitrust risks within the company. Business unit leaders and the lawyers who support them are in the best position to provide a basic understanding of the operations, personnel, and third-party interactions that implicate antitrust risk for each of the business units.

Equally important, if we are able to confirm them, are Apple's efforts to broaden the risk discussions within the CLPG and across the compliance team and devote significant time to such discussions. The company has made a substantial investment in its internal antitrust resources by hiring Ms. Said as the company's Antitrust Compliance Officer, as required by the Final Judgment, and adding members to the CLPG. We need to learn more about the evolving relationship between the CLPG and compliance teams in identifying and addressing antitrust risk.

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[143] In return, we agreed that we would not contend that the disclosure of this questionnaire would constitute a waiver as to claims of privilege with respect to other questionnaires.

We currently lack clarity on the process by which results of any risk assessment efforts will be incorporated in Apple's Antitrust Compliance Program. For example, although we are aware of Apple business units and employees that manage sales to channel partners, have pricing responsibilities, and interact with Apple competitors, we are aware of no procedures in place to formally monitor and audit these particularly risky activities.[144] Apple would benefit from a formal process for identifying, ranking, and connecting these risks to the Program, especially with respect to new risks that develop as Apple's business and relevant markets evolve.

In addition to Mr. Andeer's elevated access, we recommend that Ms. Said, as the person charged with day-to-day management and oversight of the Antitrust Compliance Program, be provided elevated access to information about confidential product and offerings. Mr. Andeer's elevated access to unannounced products and offerings is another positive step toward giving key personnel the right tools to increase the effectiveness and comprehensiveness of the Antitrust Compliance Program. Without specific knowledge of the company's full operations, any antitrust expertise offered by the CLPG would be significantly limited. Ms. Said also should have full information regarding the identification and assessment of antitrust risks and the implementation of Program components to address those risks. As a court-mandated official with key responsibility for Apple's Antitrust Compliance Program, we believe it is just as important that Ms. Said have access to such information as it is that Mr. Andeer have such access.

With specific regard to Apple's risk assessment tools, we believe the iTunes antitrust risk questionnaire that Apple provided to the monitoring team on August 26 provides valuable insight into Apple's developing process for learning about the operations and functions of each business that could expose the company to antitrust risk. Apple informed the Monitor that, although the questionnaire was memorialized in written form as a result of the First Report,[145] the questions contained in the questionnaire were developed over the last three and a half years as the result of numerous conversations between the CLPG and various iTunes business and legal personnel.[146]

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[144] Section IX.D.5 contains further discussion of procedures to monitor activities with a high-risk profile.

[145] Apple told the Monitor, "A determination was made that it might help to document the precise nature of the questions that have been asked of these individuals in the course of this process." Thus, Apple prepared a written questionnaire.

[146] Apple told us that these iTunes business and legal personnel included Robert Windom, Annie Persampieri, Keith Moerer, Eddy Cue, Robert Kondrk, Josh Lipman, Patrice Gautier, Kevin Saul, Emily Blumsack, and a number of others.

Although the iTunes questionnaire appears to be a very helpful preliminary tool for assessing antitrust risk in the iTunes business, we have relatively little information about it. For example, we currently do not know how the iTunes questionnaire is used in practice and how information learned from answers to the questionnaire is incorporated into the Antitrust Compliance Program. Further, we understand that Apple has prepared similar antitrust risk questionnaires for other business units, including Procurement and Sales. As of the date of this Report, Apple has not provided these documents, even in redacted form, or the names of the other business units for which they have been prepared. We believe there are ways to provide us with these additional questionnaires while addressing Apple's concerns, and we will work with Apple to that end.[147]

Based on the risk assessment information we received from Apple, we remain unclear as to who within the company owns the risk assessment process and what the procedures are for sharing the results of the assessment with the Risk Oversight Committee and the Audit and Finance Committee. Although we understand that Mr. Andeer and other attorneys have been responsible for the risk assessment efforts described above, Apple should make ownership of the process explicit to ensure clarity. In addition, a procedure should be defined for reporting the results of antitrust risk assessments to the Risk Oversight Committee and the Audit and Finance Committee. The results of the antitrust risk assessment will inform the Committees about the company's antitrust risk profile and will, in turn, guide the Committees' evaluation of Apple's Antitrust Compliance Program.

Although Apple's representations regarding its risk assessment efforts suggest important steps in the right direction, more is required. In the First Report, we recommended a formal risk assessment; we view this to mean an organized process that is institutionalized, dynamic, and continuing. In addition, the risk assessment should result in a formal report that is reviewed and analyzed by the Risk Oversight Committee and the Audit and Finance Committee. Although Apple has latitude regarding the specific method for conducting a risk assessment, Apple's chosen method must adequately inform the Antitrust Compliance Program and be a basis for evaluation by the Risk Oversight Committee and the Audit and Finance Committee. We do not possess enough information at this time to conclude that Apple's efforts satisfy this requirement.

Although Apple provided more insight into efforts relating to risk assessment in the weeks leading up to issuance of this Report, many employees,

[147] In response to our draft report, Apple continued to press its arguments regarding privilege but also expressed its commitment to work with the Monitor to resolve these issues.

including Executive Team members, told us that they had never met with Mr. Andeer or anyone on his team to discuss risk in their respective organizations. Many told us that they were unfamiliar with Mr. Andeer and the members of his team until the live antitrust training session they attended. This is troubling, especially given the importance of such discussions and the inconsistency between that evidence and the information Apple conveyed to us about its risk assessment efforts. Apple must further develop and deepen its efforts to identify, assess, and rank antitrust risk.[148]

As suggested above, Apple has declined to provide us with substantial information regarding its risk assessment efforts, in part because of privilege and work product concerns. We need to confirm that Apple has a process in place for identifying and prioritizing antitrust risks and addressing those risks through the company's Antitrust Compliance Program. We are confident that the company can provide adequate detail for us to evaluate its risk assessment process without revealing privileged information. For example, in our discussion with Mr. Andeer on August 21, he offered to walk the Monitor through his approach for conducting a risk assessment and to provide an outline of the process. We welcome Mr. Andeer's offer and any additional efforts from Apple to make risk assessment information available.

C. Apple's Revised Antitrust Compliance Policies

The Monitor is required to evaluate whether Apple's antitrust policies are "reasonably designed to detect and prevent violations of the antitrust laws."[149] As described above, Apple's June 30 Rollout included three revised antitrust policy documents.[150] First, Apple issued a revised version of its Antitrust and Competition Law Policy. Second, Apple revised the section on Competition and Trade Practices in the company-wide Business Conduct Policy. Third, Apple issued a revised version of the chapter on Antitrust and Competition Law in its company-wide compliance ebook.

1. Antitrust and Competition Law Policy

As noted in the First Report, Apple provided us with several versions of its Antitrust and Competition Law Policy, the latest of which was distributed to

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[148] In response to the draft report, Apple stated, "It is Apple's position that Mr. Andeer and his team have met on a day-to-day basis with numerous key businesspeople and members of the legal and compliance team, and that they will continue to solicit input from relevant employees (including the Executive Team, as appropriate) in connection with this process."

[149] Final Judgment § VI.B.

[150] Apple also prepared a summary of the Final Judgment and distributed it to Apple employees whom Apple identified as covered by Sections V.A and V.B of the Final Judgment.

employees as part of the June 30 Rollout. The final version of the Policy reflected various changes, including changes made in response to our comments.

While Apple has provided three revised policy resources as enhancements to its program, we view the Antitrust and Competition Policy as the most critical. Based on our interviews of Apple employees and information received from the company, we believe the Policy's style, format, and level of detail make it a useful tool for the Apple personnel who will need it the most. We view the Policy as Apple's primary substantive antitrust guide, while the Business Conduct Policy and the Business Conduct ebook are important high-level supplements to the Policy.

Our review of the final version of the Policy was greatly enhanced by the additional information we acquired about Apple's business organization and about the company generally during this reporting period. Our evaluation of the final Policy focused on several criteria, including (i) affirmative communication of the company's standard of conduct with respect to antitrust compliance, (ii) comprehensive coverage of substantive antitrust issues, (iii) adequate explanation of Apple's anti-reprisal policy, (iv) sufficient information to elevate questions, concerns, or potential violations, (v) adequate dissemination, and (vi) comprehension and use of the Policy by employees.

(a) Affirmative Communication of the Company's Standard of Conduct

Apple's Policy clearly and effectively communicates the company's standard of conduct with respect to antitrust compliance. The Policy begins with a written message from Mr. Sewell that emphasizes each employee's responsibility to guard against antitrust violations. Following Mr. Sewell's letter is a statement of Apple's standard of conduct regarding antitrust compliance. The statement includes a description of Apple's commitment to competition, innovation, and compliance with the antitrust laws. It also contains a description of potential penalties for violations, including employment termination, fines, and imprisonment. Finally, the statement encourages employees to contact the CLPG with questions.

(b) Comprehensive Coverage of Substantive Antitrust Issues

We recommended in the First Report that Apple move forward with its plans to tailor separate antitrust policies to each of its relevant business units. We understood at that time that Apple's initial intention was to create separately tailored antitrust policies based on the antitrust risks and challenges faced by different business units. Apple informed us in May 2014 of its desire to maintain

a single, comprehensive policy that would be globally applicable. Based on Apple's representation of its intention to tailor live training sessions for each of its business units, and with the understanding that the Policy would be broad enough to cover all areas of antitrust risk faced by the company, we agreed on May 23, 2014 to hold in abeyance our recommendation for tailored polices until after our review of Apple's final Policy and tailored training sessions.

Apple's Policy appears to provide adequate coverage of most substantive antitrust issues applicable to Apple and individuals affiliated with the company.[151] The body of the Policy contains a brief overview of the substantive provisions of the antitrust laws, as well as a list of practices that employees must avoid and must report if encountered or suspected. The Policy also describes certain activities that employees must not undertake without first consulting with counsel.

To satisfy Apple's goal of adopting a single, comprehensive policy for all Apple operations and individuals, however, Apple must expand the substantive coverage of its current Policy. For example, the Policy does not currently discuss antitrust concerns related to employee hiring agreements or service of senior executives or Directors on other company boards,[152] two activities for which Apple has come under antitrust scrutiny in the past. Although these activities will not have broad application to Apple employees, these issues merit formal attention in Apple's Antitrust and Competition Law Policy. We recommend that Apple modify the Policy to include coverage of these activities, and as necessary based on the results of its risk assessment efforts. As we continue to learn more about Apple's business operations, we may have further recommendations for substantive expansion of the Policy.

(c) Adequate Explanation of Apple's Anti-Reprisal Policy and Sufficient Information to Elevate Questions, Concerns, or Potential Violations

Apple's Policy concludes with a statement regarding the company's anti-reprisal policy, a statement requiring that potential or actual violations be

[151] Further discussion of the issue of appropriately tailoring training sessions is contained in Section IX.E.3.

[152] Apple has provided a policy document called "Guidelines Regarding Director Conflicts of Interest" which provides procedures for membership of senior executives and Directors on other boards. However, the main focus of this document is on conflicts of interest, such as a contract or other transaction, or pending or threatened litigation, between the company and a Director. While the guidelines also note a prohibition on the use of confidential information by a company with which a Director has a material financial interest, the guidelines do not adequately cover potential Clayton Act Section 8 and related concerns regarding interlocking directorates or incorporate procedures to address those concerns.

reported to the Antitrust Compliance Officer or the Business Conduct Helpline, and a statement encouraging employees to contact local counsel or the CLPG with antitrust questions. We believe these statements meet applicable requirements of the Final Judgment, and our interviews suggest that the anti-reprisal policy and reporting mechanisms are generally known. However, we recommend that contact information, including names, telephone numbers, and email addresses for all members of the CLPG and the Antitrust Compliance Officer, be included in the Policy. We believe this addition will remind employees about the individuals available to them for assistance, and how to contact them.

(d) Adequate Dissemination

We recommended in the First Report that all Apple employees be required to certify compliance with the Antitrust and Competition Law Policy, reasoning that a separate annual certification for the Policy would provide assurances that employees had in fact reviewed the document. After we filed our First Report with the Court, Apple represented that all employees who took the online antitrust training course would be required to certify that they had read and understand the Policy. On May 23, 2014, we agreed to hold our recommendation in abeyance, so long as all appropriate groups of employees received online training and completed the certification regarding the Antitrust and Competition Law Policy as described by Apple.

There remains room for significant improvement in Apple's dissemination of the Antitrust and Competition Law Policy. We evaluated dissemination through direct questions during interviews of Apple personnel. Of those employees we directly asked about use of the Policy, some said they were familiar with the Policy, some could not recall reading it, and others seemed to confuse it with other Apple compliance documents.

We also measured Policy dissemination using statistics Apple provided regarding employee views and downloads of the Policy. We have no way of confirming how many relevant employees actually accessed Apple's revised Antitrust and Competition Law Policy, let alone read or understood the Policy. Apple's records showed that the Policy was viewed or downloaded a total of 60 times from the Antitrust Intraweb Site from the June 30 Rollout through August 22. Unfortunately, Apple's records do not include the number of times the Policy was viewed or downloaded through the online antitrust training course, which contained a link to the Policy and required employees to certify they had read it. Further, we determined through our own review of the online training course that a user was not required to physically open or download the Policy in order to certify to having read and understood it, and to receive credit for completing the course. Thus, it is possible that employees completed the online training

without ever reading the Policy. Accordingly, we are unable to conclude that the employees who are expected to read and understand Apple's Antitrust and Competition Law Policy have even seen the Policy. We simply have no evidence one way or the other on this issue.

Against this background, we conclude that the online training process is not an adequate substitute for a separate certification and recommend that the certification be required for relevant employees. The certification should state that an employee has read, understands, and agrees to comply with the Policy. Because relevant employees should review the Policy itself, and because Section V.F of the Final Judgment imposes specific requirements on what must be communicated to Apple employees about protected disclosures to the Antitrust Compliance Officer concerning any potential violation of the Final Judgment and the antitrust laws, we believe that, at a minimum, all Apple employees specified in the Final Judgment should be required to certify that they have read and understand the Policy, as well as other personnel identified as having jobs with heightened antitrust risk.

(e) Comprehension and Use of the Policy by Employees

As noted above, most of the Apple employees we interviewed after the June 30 Rollout exhibited some confusion about the existence of the Antitrust and Competition Law Policy. From these anecdotes, and our inability to confirm actual review of the Policy by individual employees, we conclude that Apple personnel are not receiving the full benefit of the written Policy. Apple needs to take additional action to ensure complete dissemination, comprehension, and use of the Policy.

2. Business Conduct Policy (Competition and Trade Practices Section)

As noted in the First Report, Apple provided us with several versions of the Competition and Trade Practices section of Apple's Business Conduct Policy. Although the latest version was not introduced to employees as part of the June 30 Rollout, Apple has previously presented the revised document as part of its efforts to enhance its Program. We understand that the Business Conduct Policy, including the chapter on Competition and Trade Practices, is available to employees on AppleWeb as well as the external Apple investors' page.[153] The Business Conduct Policy is Apple's version of a business code of conduct featuring the company's policies regarding categories labeled as follows:

- Individual Conduct,

[153] Every new employee also receives a copy of the revised Business Conduct Policy.

- Responsibilities to Apple,
- Customer and business relationships,
- Governments and communities, and
- Employee obligations to take action.

The final version of the Competition and Trade Practices section provided by Apple reflects our comments and was otherwise largely unchanged from the version we reviewed and discussed in the First Report.[154]

Apple has confirmed that the Competition and Trade Practices section of the Business Conduct Policy is a shorter summary of the larger Antitrust and Competition Law Policy. Like the other topics covered in the Business Conduct Policy, the summary on antitrust and competition is meant to capture the most important antitrust compliance points that are relevant to a company-wide audience. As we recommended in the First Report, the Competition and Trade Practices section contains a link to the standalone Antitrust and Competition Law Policy. The Business Conduct Policy is available on the Business Conduct webpage.

We believe that the Competition and Trade Practices section of the Business Conduct Policy meets its limited purpose, as explained by Apple. With the standalone Antitrust and Competition Law Policy serving as a more comprehensive explanation of Apple's antitrust policy and employee obligations, the dedicated chapter in the Business Conduct Policy adequately serves its purpose. Employees can use the chapter as a quick guide to the company's most basic Policy components and as a resource to access the more comprehensive Antitrust and Competition Law Policy or contact information for antitrust resources. Further, based on our interviews with employees, we do not believe a lengthier and detailed section in the Business Conduct Policy is necessary or would be frequently consulted.

[154] The final version of the Business Conduct Policy is attached as Exhibit F.

3. Business Conduct ebook (Antitrust and Competition Law Chapter)

The Business Conduct ebook is an interactive, highly polished, and detailed version of Apple's Business Conduct Policy. It was originally completed in fall 2012 and has since been revised a number of times. We learned at the March 4 Meeting that, before issuance of the Final Judgment, the ebook included only one page dedicated to antitrust compliance. The final ebook, as made available to employees as part of the June 30 Rollout, contains a new chapter dedicated entirely to antitrust and competition issues. The ebook is available on an iPad and Mac to Apple employees globally in nine languages.[155]

In addition to substantive information from the Competition and Trade Practices section of the Business Conduct Policy, the ebook contains several interactive features. It includes training modules, a question and answer session with Kyle Andeer, and an interactive "widget" that explores the impact antitrust violations have on consumers. The ebook also features information about the ADM price-fixing case.

The antitrust and competition law chapter of the ebook is a helpful supplemental resource for employees. The ebook is a user-friendly tool that achieves Apple's goal to achieve a look and feel that employees (and the outside world) have come to associate with Apple. As we noted in our First Report, we agree that the ebook has great potential as a vehicle for communicating additional information regarding antitrust compliance, as well as many other subjects. The final version is consistent with what we have learned about the style of communication that resonates with Apple personnel. The ebook presents Apple's compliance message in a way that will be useful and convenient for Apple employees and will help to make concepts that can be difficult for non-lawyers to understand more comprehensible, without excessive simplification. The main drawback we have identified is that, although most of the employees we interviewed seemed generally aware of the existence of the ebook, few of the employees we interviewed after the June 30 Rollout had reviewed its revised antitrust and competition law chapter.

[155] The ebook can be accessed via Apple's intranet homepage, the Antitrust Intraweb Site, and the Business Conduct homepage. The ebook has also been disseminated to employees through Switchboard, an internal app store for Apple employees. The revised ebook is not mandatory reading for employees.

D. Apple's Revised Antitrust Compliance Procedures

1. Establishing Adequate Procedures

Apple's Antitrust Compliance Program generally lacks adequate procedures for implementing a comprehensive and effective Antitrust Compliance Program. Apple has implemented such formal procedures for two components of the Program. First, Apple has a set of procedures to be followed for calls received by the Helpline, which assist the call recipient in determining whether the call could be antitrust-related, and the steps that should be followed to properly route the call. In addition, Apple has a set of procedures to identify employees covered by Section V of the Final Judgment. These are the only formal procedures included in Apple's Antitrust Compliance Program of which we are aware.

We recommend that Apple establish procedures for other components of the Antitrust Compliance Program, including the antitrust risk assessment; detection, investigation, and reporting of potential violations; and collection of Program feedback.

Throughout this section we recommend that Apple adopt and implement various procedures that are more formal and permanent than what currently exists. By doing so, Apple will ensure that these procedures remain in place even when key personnel changes take place.

2. Communications Regarding the Antitrust Compliance Program

Prior to issuance of the First Report, Apple informed us of its plans to announce the June 30 Rollout to employees. We understood that Apple planned to develop an internal antitrust compliance website (the Antitrust Intraweb Site), which would include resources and information on antitrust law and the Final Judgment, as well as contact information for reporting suspected antitrust violations. The company also planned to launch antitrust "marketing segments" through AppleWeb and RetailMe, the company's intranet sites for corporate and retail employees, respectively. Apple explained to us that it planned to launch the Antitrust Intraweb Site and the marketing segments from the intranet sites as part of the June 30 Rollout.

Apple advertised the June 30 Rollout through a promotion tile icon showing a green lamp on AppleWeb, Apple's internal intranet home webpage, for a two-week period. The green lamp icon linked to the Antitrust Intraweb Site. The Business Conduct and Compliance webpage also contained the green lamp icon, which linked to the Antitrust Intraweb Site. When we conducted

interviews in July at Apple, Ms. Said demonstrated the new Antitrust Intraweb Site and its links to training and resource materials. Finally, Apple provided us with an email Mr. Cue sent to employees in the Internet Software and Services organization, announcing the new mandatory online training course.

As noted in the First Report, we believe that the way Apple communicates information about antitrust compliance and the Antitrust Compliance Program is vital. In Section IX.F, we discuss these communications in the context of senior commitment to compliance and reasonable expectations for the role of Apple's senior leaders. However, the Program managers, and Ms. Said in particular, should also be responsible for promoting and maintaining awareness of antitrust compliance and the many components that make up the Program. While the effort to market the new Program on Apple's intranet sites was a good start, we believe that the Program itself should include built-in procedures that guarantee communications about the program are updated, frequent, and routine. For example, some companies distribute newsletters and other compliance updates to employees or the legal team. A compliance update on relevant antitrust developments or important case studies would serve multiple purposes: employees would stay current on potentially relevant antitrust developments; routine updates would signal a strong commitment by senior leaders to antitrust compliance; and updates would signal the ongoing relevance of antitrust issues to Apple personnel.

3. Business Conduct Helpline

As discussed in the First Report, Apple's Business Conduct Helpline ("Helpline") is not a recent addition to the Program. The Helpline has existed since sometime before 2009. Tom Moyer, Apple's Chief Compliance Officer and Head of Global Security told us that, under his oversight (which began in 2009), employee use of the Helpline has increased, which he views as evidence that there is broad awareness of the Helpline within the company. The Helpline is operated by employees of Apple, as well as by a third-party provider,[156] but all calls are ultimately referred to Kathleen Emery, who manages the Helpline and reports to Mr. Moyer. Apple has told us that the Helpline is global and that Ms. Emery has counterparts in Europe and Asia. In accordance with Apple's "Escalation Procedure for Calls in Regards to Anti-Competitive Behavior," all calls and emails received by the Helpline that relate to anti-competitive behavior must be reported immediately to the ACO.

[156] At the March 4 Meeting, Apple told us that employees can choose between speaking with an Apple employee or a third-party provider when they call the Helpline.

A successful helpline is an important component of any effective compliance program[157] and will continue to be an important part of Apple's Antitrust Compliance Program. Employees must have access to a potentially anonymous means of communicating antitrust questions or concerns. Employees must also feel comfortable using the Helpline and must have confidence in Apple's policy against retaliation for making reports. Finally, employees must trust that their questions and concerns are properly routed and investigated. It will be important for Apple to provide follow-up to those employees who report an antitrust question or concern.

While we believe that it is important for Apple to maintain the Helpline as a resource for employees, particularly for those who wish to report anonymously, we have learned through our interviews of employees that Apple's Helpline may not necessarily be the first or the most widely used resource by employees requiring antitrust advice or assistance. Apple's legal structure and real world operations make employees more likely to report questions or concerns to their primary legal contacts; in fact, Apple has represented that the Helpline has not received *any* calls related to antitrust issues or questions.

Even if the Helpline is not the first or most used resource for antitrust-related assistance, we believe that the Helpline provides one of many opportunities for Apple employees to report antitrust issues and questions. Throughout interviews with employees, we learned that some feel the Helpline could be improved. For example, one employee expressed disappointment that his call to the Helpline was routed to voicemail. We recommend, as discussed in Section IX.D.10, that Ms. Said undertake audits to measure the use and effectiveness of the Helpline by speaking candidly with employees. Through these audits, Apple will be able to improve its Helpline and learn about other more effective channels for employee communication that may require additional efforts by the company.

4. Record Keeping

As we discussed in the First Report, Apple must keep accurate and comprehensive records of its antitrust compliance efforts. Many requirements of the Final Judgment are predicated on accurate and detailed records; more

[157] The U.S. Sentencing Guidelines state that an effective compliance program must have "a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation." U.S. Sentencing Commission, Organizational Compliance Guidelines § 8B2.1(b)(5)(C).

generally, an antitrust compliance program that is reasonably designed to detect and prevent violations of the antitrust laws requires accurate record keeping.

At the time of the First Report, we had been provided very few records created for the Antitrust Compliance Program. The Program was in the early stages of development, and the most pressing need for record keeping at the time related to training attendance. Apple provided us with various lists of employees who accepted invitations to attend the training sessions Mr. Andeer conducted in September and December 2013 and in February 2014, but we learned that these lists were not necessarily accurate records of which employees actually attended the training sessions. We concluded that Apple had to make significant improvements to its record keeping procedures.

Since the First Report, Ms. Said has improved the procedures for maintaining training attendance records, but we believe there is room for further improvement in Apple's record keeping procedures. All attendees at live training sessions are now required to sign a physical attendance sheet at the entrance to the training room. Apple has hired a contract employee to help maintain these records. However, since the First Report, on at least one occasion, attendees at the training session never physically signed the attendance sheet. In addition, in Section IX.D.8 we discuss specific discrepancies in recent training records provided by Apple.

We recommend that Apple take steps to improve the accuracy of its training attendance records. For example, Apple could invest in technology to electronically track training attendance. By doing so, the process would become automated and records would be searchable for future reference and auditing, much like the electronic completion records we received for the online training course. We believe that a more automated process could allow Ms. Said to focus on more substantive components of the Program, and electronic records would be more accessible, especially as the volume of records increases. If such an automated process is not feasible, Apple can adopt a different method of ensuring more accurate record keeping.

Record keeping will become even more important as Apple's Antitrust Compliance Program grows and evolves, and the need for accurate record keeping will extend to new areas. For example, feedback received regarding the antitrust live and online training and the compliance policies should be documented and accessible.

5. Detection, Investigation, and Reporting of Violations

Section V.G of the Final Judgment requires Apple, within three business days of discovering or receiving credible information concerning an actual or

potential violation of the Final Judgment, to terminate or modify Apple's conduct to assure compliance, and to provide to the Plaintiffs, within seven business days of discovering such information, a description of the actual or potential violation of the Final Judgment and corrective actions taken. Section V.H of the Final Judgment requires Apple to provide to the Plaintiffs on a quarterly basis any non-privileged communications regarding allegations of Apple's noncompliance with any provisions of the Final Judgment or violations of the antitrust laws. Ms. Said has agreed that a process should be in place with respect to Apple's obligations under both Sections V.G and Section V.H of the Final Judgment.

Separate from the Final Judgment requirements, a comprehensive and effective compliance program must include procedures for detecting, investigating, and reporting potential violations. The Department of Justice considers such procedures to be part of a "proactive compliance program."[158] The U.S. Sentencing Guidelines contain several provisions highlighting the importance of the detection and investigation of potential violations. The Guidelines state that an organization must "exercise due diligence to prevent and detect criminal conduct,"[159] "establish standards and procedures to prevent and detect criminal conduct,"[160] and "take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program."[161]

The Final Judgment specifies that Apple's Program must be "reasonably designed to *detect and prevent* violations of the antitrust laws,"[162] and therefore a set of procedures to accomplish these goals must be a core element of Apple's Antitrust Compliance Program. These procedures will, of course, include reporting mechanisms, like the Helpline, incentives, and disciplinary procedures (as discussed in Section IX.D.6); audits (as discussed in Section IX.D.10); and other general procedures discussed in this Section. However, additional procedures can be specifically incorporated with respect to specific risks, such as those created by certain hiring practices, multiple board memberships, or other operations that expose the company to particular or heightened antitrust risks.

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[158] Snyder, *supra* note 133.

[159] U.S. Sentencing Commission, Organizational Compliance Guidelines § 8B2.1(a)(1).

[160] *Id.* § 8B2.1(b)(1).

[161] *Id.* § 8B2.1(b)(7).

[162] Final Judgment § VI.C (emphasis added).

Apple's Antitrust Compliance Program currently lacks a set of procedures aimed specifically at detecting potential violations associated with risky operations. We have had limited discussions with Apple regarding procedures for some high-risk areas, such as the process for legal review of publisher agreement modifications, as discussed in Section IX.D.9. Apple also provided us with a 2009 document entitled, "Guidelines Regarding Director Conflicts of Interest."[163] However, we recommend that Apple adopt formal procedures for addressing those areas identified in its internal risk assessments as posing a moderate or high level of antitrust risk.[164] These procedures, to be undertaken by some combination of the Risk Oversight Committee and the Audit and Finance Committee, will reassure senior management and the Board that areas with the most risk exposure have an extra level of review and attention.[165] Formal procedures will provide consistency in the application of Apple's antitrust standards to day-to-day operations. Finally, procedures aimed at detecting and preventing potential violations in areas of the company with moderate or high antitrust risk will facilitate audits of those high-risk operations.

Apple's Antitrust Compliance Program also currently lacks procedures aimed at investigating and reporting (if necessary) potential and actual antitrust violations. To "respond appropriately" to potential violations, and to comply with the company's reporting obligations under the Final Judgment, Apple should incorporate formal procedures for investigating and reporting potential and actual violations into its Program.

On August 21 we briefly discussed with Ms. Said Apple's plans to adopt procedures for investigating and reporting potential and actual antitrust violations. Ms. Said informed us that she had prepared a draft set of procedures for investigating potential violations that would satisfy Apple's obligations under Section V.G and V.H of the Final Judgment. The document sets out Apple's definition of a violation and sets forth the process for investigating allegations of an antitrust violation. Ms. Said told us that she would share the document with us after it had been reviewed and revised by Mr. Andeer and other members of the legal team. We look forward to further discussions with

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[163] We intend to discuss the content of this document and provide comments to Apple in the weeks following issuance of this Report.

[164] For example, some companies have experimented with computer-based screening for potential red flags regarding cartel activity. Other companies provide "dos and don'ts" lists that apply to certain workflows, such as "The Dos and Don'ts at Trade Association Meetings."

[165] It is possible that the Risk Oversight Committee has already implemented such procedures. The few documents provided to us that relate to the activities of the Committee have been so heavily redacted that we have no way of determining if they incorporate procedures of the type we are recommending, although we have seen no evidence that they do.

Ms. Said about Apple's investigation and reporting procedures, as well as an opportunity to review Ms. Said's proposed procedures for Apple.

6. Incentives and Disciplinary Procedures

Incentives and disciplinary procedures are an integral part of any antitrust compliance program. While training will help to educate employees about legal boundaries, a compliance program must also provide incentives for law-abiding behavior and sanctions for violations. The concept of tying rewards and consequences to conduct is supported by the U.S. Sentencing Guidelines,[166] but also strongly endorsed by the compliance community. In addition to influencing conduct with concrete rewards and consequences, senior management can use incentives and disciplinary procedures to effectively communicate company expectations and compliance standards. There are many ways that a company can incorporate incentives into normal business operations, including through personnel evaluations, promotions, compensation, and communications from senior leaders.[167] Disciplinary procedures should be formal, clear, and consistent.

In the First Report, we discussed the need for more information from Apple regarding the company's plans to develop incentives and disciplinary procedures aimed at encouraging compliance with the antitrust laws and the Antitrust Compliance Program. At that time, we were unaware whether Apple's compliance incentives and disciplinary procedures existed.

On August 26, 2014, Mr. Moyer provided information about Apple's efforts to develop incentives for employees to perform in accordance with its ethics program. Mr. Moyer described the following three ways that Apple has implemented compliance incentives:

- The company takes into account compliance and ethics in its annual employee performance reviews. According to Mr. Moyer, the company reviews honesty, compliance with ethical standards and company policy, and collaboration and teamwork, among

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[166] The Guidelines require "appropriate incentives to perform in accordance with the compliance and ethics program" and "appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct." U.S. Sentencing Commission, Organizational Compliance Guidelines § 8B2.1(b)(6).

[167] "The board of directors and senior officers must set the tone for compliance to ensure that the company's entire managerial workforce not only understands the compliance program but also has the incentive to actively participate in its enforcement." Bill Baer, Assistant Attorney General, Antitrust Division, U.S. Dep't of Justice, Prosecuting Antitrust Crimes, Remarks as Prepared for the Georgetown University Law Center Global Antitrust Enforcement Symposium (Sept. 10, 2014), *available at* http://www.justice.gov/atr/public/speeches/308499.pdf.

other factors. Mr. Moyer said that an important component of this evaluation process is whether an employee has met the highest standards of ethical behavior.

- The company also considers ethics as a significant factor in identifying candidates for promotion. According to Mr. Moyer, the company views ethical conduct as a critical trait of all Apple leaders and therefore evaluates elements including representing Apple with integrity, demonstration of the willingness to voice concerns regardless of title or position, and providing complete information even when it includes bad news or negative data.

- The company rewards and recognizes its Business Conduct & Compliance staff with compensation and promotions, demonstrating that the department is important and a path to advancement within the company. For example, Apple said that it promoted several compliance employees this year alone and allocated additional funds for raises and bonuses. Mr. Moyer represented that these measures have helped contribute to an environment in which compliance is widely respected within Apple. We understand from Apple that the company receives a number of qualified applicants for any open compliance-related positions.

In addition to the items mentioned by Mr. Moyer, Apple's Antitrust Law and Competition Policy lists employee termination, legal liability, fines, and imprisonment as potential consequences of violating the antitrust laws or the Antirust Compliance Program, although only termination is a sanction determined by Apple.

Apple's efforts to incorporate appropriate incentives will strengthen the Antitrust Compliance Program. In addition to the incentives listed above, we believe Apple can do more to encourage awareness and compliance of the Program, and to communicate compliance expectations from senior leaders to lower-level employees. For example, Apple can more openly communicate the policies Mr. Moyer conveyed to us that link acts of positive conduct with rewards (such as promotions) and negative acts with specific and appropriate disciplinary actions.

7. Formal Feedback Procedures

In the First Report, we recommended that Apple implement procedures to obtain formal feedback from employees regarding enhancements to the Antitrust Compliance Program. We concluded that feedback regarding the Helpline,

training sessions, and other components of the Program would help Apple gauge the effectiveness of these elements of its compliance Program and determine how best to communicate with employees about antitrust compliance issues and improve antitrust compliance.

(a) Surveys

On August 21, Apple provided us with the text of survey questions that were used to assess the effectiveness of live antitrust sessions held in September and December 2013. The survey contained a list of questions aimed at determining the audience's assessment of whether the training was effective, the atmosphere was "open" for learning and discussion, there was an opportunity to ask questions, and they could report a violation without fear of reprisal. The survey also polled audience members regarding the appropriate action if they become aware of a violation and requested feedback for improving the training. The survey was distributed in April 2014.

In general, the survey used to evaluate the 2013 live training sessions is a positive step toward gathering feedback that will help improve the Antitrust Compliance Program. However, we believe that surveys and similar tools are most effective when issued immediately, or as soon as possible, after the activity underlying the survey. The online training survey was issued more than four months after the December training and almost seven months after the September training. Although the survey served an additional purpose – tracking attendance that was not previously recorded – the results are less valuable than if they had been collected directly after the training.

We recommend that Apple adopt a procedure to collect feedback immediately after every live and online training session. Feedback should be stored in a way that can be easily accessed and should be used to update and improve training sessions. Similar to training attendance records, as discussed in Section IX.D.4, Apple should consider tracking electronically feedback from the training sessions. Ms. Said should distribute surveys to employees that participated in the live training sessions that took place from May through August as soon as possible.

We recommend that Apple identify other components of the Antitrust Compliance Program that could be enhanced through employee feedback. We look forward to receiving more information from Apple on formal procedures to elicit employee feedback on other Program components.

(b) Employee Interviews

Ms. Said advised us that, in an effort to gather additional feedback, she informally interviewed six employees following the 2013 live training sessions. She told us that she asked the employees questions to gauge their comprehension after they had participated in the live training. We understand that Ms. Said plans to conduct additional interviews as part of the antitrust compliance audit required by the Final Judgment.

We agree that interviews and "spot quizzes" regarding the live training can provide helpful feedback and agree that Ms. Said should include employee interviews as part of the antitrust compliance audit she will be conducting in September and October 2014. However, we also recommend that Ms. Said interview employees immediately or very soon after live training sessions regarding ways to potentially improve the training. Like feedback gathered through employee surveys, capturing employee impressions while they are still fresh will yield valuable input for enhancements to the Program. In addition, we recommend that Ms. Said use employee interviews to collect feedback regarding other elements of the Program components, as opportunities to do so arise.

8. Identification of Critical Employees

(a) Section V Employees

An important element of Apple's Antitrust Compliance Program is the identification, maintenance, and audit of the list of employees covered by Sections V.A – V.C of the Final Judgment ("Section V Employees").

Three important provisions of the Final Judgment apply to Section V Employees.[168] First, Section V.A requires that Apple's Board of Directors, its Chief Executive Officer, each of its Senior Vice-Presidents, and each of its employees who, in whole or in part, engage in activities "relating to Apple's iBook Store" ("V.A Employees") receive a copy of the Final Judgment. Section V.B requires that any officer, director, or other employee who succeeds to any V.A Employee position ("V.B Employees") also receive a copy of the Final Judgment. Section V.C of the Final Judgment requires specific training for all V.A and V.B Employees, as well as "appropriate employees in the Apple iTunes and App Store businesses" ("V.C Employees").

[168] We do not discuss the fourth main requirement that applies to V.A and V.B Employees, which is imposed by Section V.I of the Final Judgment. Section V.I requires the ACO to log certain communications between V.A and V.B Employees and (1) persons employed by other ebook retailers or (2) multiple ebook publishers.

As of the date of our First Report, Apple had provided little transparency regarding the process for identifying Section V Employees or tracking their fulfillment of Final Judgment requirements. Ms. Said's February 19, 2014 Memorandum to the Antitrust File (provided to us on February 26) explained that the iTunes organizations are "fluid[]" and that, for this reason, identifying employees covered by Final Judgment requirements requires a "hands on approach." According to Apple, its corporate structure and business operations do not lend themselves to bright line business unit divisions or job titles. At the time of our First Report, Apple had not yet provided complete employee lists for relevant business units or organization charts, and it had not explained to us how the company identified Section V Employees or validated the accuracy of the process for tracking completion of Final Judgment requirements.

In particular, Apple's process for identifying employees "engaged, in whole or in part, in activities relating to Apple's iBook Store" and "appropriate employees in Apple iTunes and App Store businesses" was vague. Ms. Said explained that Apple business attorneys[169] had "worked with their clients to ensure that Apple captured all relevant employees." Yet, beyond naming the attorneys consulted and providing final lists, Apple provided no further details regarding the identification of these employees. Apple eventually provided us with job titles for identified employees and organization charts displaying a reporting hierarchy. Our review determined that certain employees who appeared to fall within the Section V Employee group were not included on Apple's lists of employees to be trained. We later learned that the discrepancies were due to inaccurate job titles contained in the organization charts Apple had provided. We requested that Apple provide more information regarding the Section V Employee identification process.

Although Apple has provided additional detail regarding the list of identified Section V employees, it needs to supply more information. As part of the August 29 Submission, Apple provided us with a chart ("Live Training List")[170] with the names of employees that received live antitrust training, a corresponding entry for each employee's Executive Team manager, the training session each employee was scheduled to attend, and the actual session he or she attended. This information advances our understanding of which business units include employees that Apple believes would benefit from training. However, to understand and fully evaluate Apple's process for identifying these employees, we need more detailed information regarding the functions of each employee

[169] These attorneys included Mr. Andeer; Mr. Robert Windom, Senior Counsel for iTunes; Ms. Persampieri, Counsel for the iBooks Store; Emily Blumsack, Counsel for the App Store; and others within the iTunes Legal Team.

[170] ECM_000928-936.

and a reason for identifying each employee as a Section V Employee. Specifically, we must be able to understand how Apple identified employees "engaged, in whole or in part, in activities relating to Apple's iBook Store" and "appropriate employees in Apple iTunes and App Store businesses."

Our comparison of the Live Training List with other information provided by Apple revealed apparent discrepancies. For example, some employees that were listed in the Live Training List as having completed live training do not correspond with the live attendance lists provided by Apple for each live session. In addition, employees who we were advised had received training were not listed on the Live Training List. These discrepancies highlight the need for improved record keeping procedures.[171]

As part of the August 29 Submission, Apple provided us with a set of procedures regarding the process for identifying *newly hired* employees as Section V Employees. The procedures outline a process whereby Ms. Said will receive quarterly updates regarding new hires for specific managers who have been identified to have direct and indirect reports identified as Section V Employees. In addition, the procedures include steps to verify identification of employees through discussions between Ms. Said and specific managers. These procedures are an important step toward establishing a transparent process regarding Section V Employees. The procedures will also ensure that new employees who should receive training and other compliance attention are not overlooked.

(b) Other Critical Employees

We believe other Apple personnel not specifically named in the Final Judgment may require the same level of treatment as Section V Employees in order to comply with the Final Judgment's mandate that Apple implement an antitrust compliance program that is reasonably designed to detect and prevent violations of the antitrust laws. Through our interviews and review of information provided by Apple, we have identified employees that may not be covered by Section V but that engage in activities that could well expose the company to antitrust risk (e.g., marketing and sales employees). Unrelated to our conclusion regarding other critical employees, Apple has also identified a small subset of non-Section V employees that are required to receive live antitrust training. We believe that identifying other critical employees and addressing their needs through live and/or online training, and potentially other steps, are necessary to achieve an effective and comprehensive Antitrust

[171] After reviewing the draft report, Apple checked and attempted to resolve the discrepancies we pointed out. Based on the information Apple provided to us, our conclusion is that the discrepancies resulted from inaccuracies in the Live Training List.

Compliance Program. As discussed in Section IX, identification of other critical employees should be informed by an antitrust risk assessment.

We recommend that Apple incorporate the identification of other critical employees into its antitrust risk assessment and take steps to treat these employees appropriately under the training and other components of the Antitrust Compliance Program. As part of the risk assessment for employees, Apple should analyze and rank the level of risk associated with each category of employee. Ranking of risk among employees is important because the distinction will determine the appropriate level of training. As we noted in the First Report,

> When determining what level and type of training is appropriate for a given employee, Apple should consider the risks associated with that employee's specific functions and responsibilities. . . . This determination should be made as part of the company's antitrust risk assessment. Based on this process, Apple should tailor the type of training to be provided to employees . . .
>
> Live training should be provided to employees at the highest risk levels. Online training may be reserved for those employees that present minimal antitrust risk. At a minimum, Section V Employees should receive live training.[172]

We recommended that all employees who Apple determined could expose the company to moderate to high antitrust risk receive live antitrust training. Live training is likely to be more effective than online training because it is teaching employees face-to-face – where employees have the ability to ask questions in real-time, to test the concepts being communicated, and to become familiar with the trainer and other antitrust experts at the company who can provide future assistance. Employees whom Apple identifies as posing a lower risk of antitrust exposure should be required, at a minimum, to take the antitrust online training course.

9. Review of Agreements

In the First Report, we recommended that a member of the CLPG be involved in the review of any proposed publisher agreement modifications. At the time, we understood from Apple that review of contractual modifications related to the defendant publishers had been a joint effort between Ms. Said and Apple's legal team, although Apple had not described the precise process for contract review. We concluded that the personnel charged with reviewing

[172] First Report 65 & n.162.

contract modifications should have antitrust expertise to identify contractual modifications that might raise antitrust concerns. We agreed that Ms. Said should play an important role in monitoring contractual changes, but we recommended that a member of the CLPG should immediately and directly review contractual modifications Ms. Said identified as potentially problematic.

In our meeting with Ms. Said on August 21, we were advised that Annie Persampieri, a lawyer who supports Internet Software and Services, is substantially involved in the contract review process. Ms. Persampieri or Ms. Said review all contract modifications, and both elevate any questions or potential issues for review by the CLPG. We believe that this approach is an appropriate structure for reviewing publisher agreement modifications.

10. Audits

In this section of the Report, we discuss two kinds of audits. First, we discuss the antitrust audit required by Section V.E of the Final Judgment. Second, we discuss regular compliance audits that we recommend Apple undertake in its effort to develop and maintain an effective and comprehensive compliance program.

(a) Final Judgment–Required Audit

Section V.E of the Final Judgment requires the Antitrust Compliance Officer, in consultation with the Monitor, to conduct an annual antirust compliance audit ("Section V.E Audit") covering each person identified in Sections V.A and V.B of the Final Judgment, and to maintain all records pertaining to such audit. When we issued the First Report, we had agreed with Apple that Ms. Said would propose a plan for the annual antitrust compliance audit to the monitoring team around July 2014.

In a memorandum to the Monitor, dated July 1, 2014, Ms. Said described her proposed plan for conducting the Section V.E Audit. Ms. Said's proposed audit plan included the review of various documents to ensure that the requirements for V.A and V.B Employees are being satisfied. These documents included various employee lists identifying V.A and V.B Employees, Final Judgment certifications in satisfaction of Section V.D of the Final Judgment, communication certifications in satisfaction of Section V.I of the Final Judgment, and training attendance logs. We believe these proposals are a good first step for the Section V.E Audit, but, as we have already communicated to Ms. Said, we believe they should be supplemented with a more substantive review of various components of Apple's Antitrust Compliance Program.

We met with Ms. Said on August 21, 2014 to discuss her proposed audit. We suggested that Ms. Said interview a representative sample of V.A and V.B Employees after they completed live and/or online training. We specifically suggested that the interviews focus on:

- Employees' evaluation of the relevance and value of the training they had received;
- Specific antitrust risks to which the training either introduced or sensitized them;
- Ways in which the training may have affected how they would handle business situations;
- Instances in which they had consulted their business lawyers on antitrust-related issues and whether they were satisfied with those consultations;
- Whether they understand their right to report activity they believe violates the antitrust laws;
- Familiarity with the Helpline;
- Familiarity with Apple's anti-reprisal policy; and
- Familiarity with antitrust resources that Apple has made available (including written antitrust policies and the Antitrust Intraweb Site), as well as whether they believe those materials could be improved.

These interviews of V.A and V.B employees could be conducted simultaneously with the interviews Ms. Said has planned as part of her formal feedback procedures for the live training sessions.

We also suggested that Ms. Said develop a survey to poll a group of V.A and V.B Employees that was broader than the universe of people she would interview. Ms. Said told us she had circulated a survey soon after the training sessions that had taken place before the First Report.[173] We recommended that Ms. Said expand the initial survey to cover V.A. and V.B Employees trained during the sessions that took place after the First Report and that she incorporate the responses into the results of the antitrust compliance audit.

In addition, we suggested that Ms. Said speak with a sample of personnel who had consulted with members of the CLPG to gauge whether those personnel found the group to have been helpful and responsive in addressing antitrust issues. Finally, we suggested that Ms. Said review and make recommendations for enhancing New Employee Orientation training materials that discussed antitrust compliance.

[173] This is the same survey discussed in Section IX.D.7(a).

(b) Antitrust Compliance Program Audits

In addition to the antitrust compliance audit required by Section V.E of the Final Judgment, we recommend that Apple incorporate auditing procedures as a regular component of its Antitrust Compliance Program. In contrast to the monitoring activities that Ms. Said has undertaken since her hire, auditing procedures would involve a more specific review of particular components of the program in order to evaluate the effectiveness of Apple's policies, procedures, and training. The purpose of the audits, which we recommend Ms. Said conduct annually, perhaps in conjunction with Apple's Internal Audit group, would be to identify weaknesses in the Program. The results of the audits would be shared with the Audit and Finance Committee.[174]

E. Apple's Revised Antitrust Compliance Training Program

1. Overview

As described above, Apple is required to provide training to each member of its Board of Directors, its Chief Executive Officer, and its Senior Vice-Presidents; each of its employees engaged, in whole or in part, in activities relating to the iBook Store; and the successors of all of the individuals in these categories.[175] In addition, Apple must extend its training program to cover "appropriate employees in [the] Apple iTunes and App Store businesses."[176] However, as Apple has recognized, employees outside the categories listed above may also expose the company to antitrust risk, and should therefore also receive antitrust training. Section IX.D.8 of this Report discusses the company's identification of employees to receive antitrust training and the appropriate format (live or online) for each employee. This section of the Report considers the substantive aspects of the training.

Training is a fundamental component of any comprehensive and effective antitrust compliance program. As we explained in the First Report, we believe that Apple can achieve two central purposes through its training program, both of which will contribute significantly to the company's improved antitrust compliance: an increased ability of employees to comply with the antitrust laws,

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[174] In responding to the draft report, Apple claimed that this proposal exceeds the scope of Section V.E of the Final Judgment. We never claimed that Section V.E was the basis for this recommendation. The authority is Section VI.B, which authorizes the Monitor to recommend to Apple changes to address any perceived deficiencies in Apple's antitrust compliance policies, procedures, and training.

[175] *See* Final Judgment §§ V.A-V.C.

[176] *Id.*

and an increased willingness of employees to comply with the antitrust laws. In addition, employees must have sufficient information to know when they should report questionable conduct and when to seek guidance.

Recognizing the importance of training as a tool to improve Apple's compliance with the antitrust laws, this Court made specific reference to training in the Final Judgment. The Court noted during the August 27 Hearing that training sessions should be "tailored to each employee's position and the situations that employee is likely to encounter."[177] Consistent with the Court's conclusions, Apple must continue to develop its training schedule, identify employees whose positions require antitrust education, classify employees by the level and type of training that is appropriate for them based on their responsibilities, and tailor training sessions appropriately.

2. Recommendations from the First Report

As of the First Report, Apple had provided four live antitrust trainings to Apple personnel regarding the Final Judgment and the antitrust laws – two on the meaning of the Final Judgment (one to U.S. iBooks Store employees and the other to employees involved in the global iBooks Store), one on fundamental antitrust issues to global iBooks Store personnel, and an antitrust training course on "Deals 101" to New Global Sales Managers. Apple provided us with the PowerPoint presentations that were displayed during each of these sessions, and for some sessions Apple provided speaker's notes. Because we lacked significant information regarding the sessions provided prior to the First Report,[178] we were unable to fully assess or make specific recommendations regarding those sessions.

3. Live Training – Further Assessment and Recommendations

Since the First Report, Apple has provided a series of live antitrust training sessions to various employees in the Internet Software and Services business unit, as well as to the Executive Team and to the Board of Directors. The specific content of these training sessions is described in greater detail in Section VIII.E above. Apple provided us with video recordings of live training

[177] 8/27/13 Tr. 18-19.

[178] Apple provided us with copies of the presentation slides that Mr. Andeer used during his training on the Final Judgment (September and December 2013) and his general training on the antitrust laws (February 2014) (attached as Exhibit A - redacted). We noted in the March 4 Meeting that the slides provided little information with respect to the substantive material covered in the training sessions. The antitrust law overview slides had minimal written material and largely contained pictures and other symbols, which Mr. Andeer used for his presentation of substantive concepts. The slides did not contain enough information for us to assess the comprehensiveness of the training that took place.

sessions that were given to personnel affiliated with iTunes, the App Store, the Productivity Group, and the Executive Team. In addition, members of the monitoring team live-monitored one training session for the App Store and a second session for the Productivity Group. We know substantially less about the live sessions which we did not live-monitor and for which we did not receive a video recording. Accordingly, our assessment of Apple's live antirust trainings is focused on the sessions provided to iTunes, the App Store, the Productivity Group, and the Executive Team.

(a) Content

We expected the live antitrust training sessions after the First Report to be specifically tailored to the business activities of each business audience. Rather than create separate antitrust compliance policies for each of its business units, Apple opted to tailor its antitrust training sessions to particular business unit employees. We agreed that tailoring live sessions to Apple's businesses would be an effective way to train Apple employees regarding antitrust compliance. Accordingly, we expected that the iTunes, App Store, Productivity Group, and Executive Team live sessions would reflect some differences based on the activities of these groups, as well as the potential antitrust issues faced by individuals in each of these groups.

We did not observe meaningful differences between any of the live antitrust sessions that we monitored live or by video-recording, with the exception of the training session provided to the Executive Team. The Executive Team training session focused on antitrust issues at a higher level, and also targeted topics that would apply specifically to senior executives. However, the sessions provided to iTunes, App Store, and Productivity Group employees were almost identical. We shared our impressions with Mr. Andeer, who had led all but one of the non-executive live sessions. He acknowledged that the training sessions for employees in iTunes, the App Store, and the Productivity Group were essentially the same, and he said that he had never intended for there to be distinctions in these sessions because he believed that the antitrust issues faced by iTunes overlapped considerably, if not completely, with the App Store and the other content businesses, because all involve the acquisition of content to be sold through a digital marketplace and negotiations with content suppliers. Mr. Andeer also explained that the Productivity Group, as an "adjunct" to the App Store, also faced similar antitrust issues to those faced by the other content businesses.

Although Apple's representations after we issued the First Report led us to believe that each content business would receive a more narrowly tailored training session, we now understand that such customization may not be necessary given the specific activities and responsibilities of employees in those

businesses. Based on our understanding of the operations and structure of Apple's content businesses, we have no basis for disagreeing with Mr. Andeer's conclusion that the antitrust risks faced by iTunes, the App Store, and the Productivity Engineers significantly overlap, although it would have been helpful for that conclusion, which at a minimum was at odds with Apple's initial representations regarding the tailoring of training, to have been shared at some point before the end of August.

We believe that the training sessions for iTunes, the App Store, and the Productivity Group by and large contained adequate coverage of general antitrust concepts[179] but lacked adequate application to the specific activities and risky scenarios that employees in these groups are likely to face. Although we agree that distinctions between the sessions for content business employees are not necessarily appropriate, we do see a need for more specific tailoring of these sessions to the day-to-day experiences of specific groups of employees. In other words, we recommend that the live training sessions for all of the content businesses contain more examples and discussion that relate to the specific activities and antitrust risks of the content businesses, including specific examples that may have arisen within the content businesses, addressed either to the embedded lawyers or to members of the CLPG. We make this recommendation in light of many employees' inability to identify the specific relevance of the training sessions they attended, even if they appreciated the substance of the training as a general matter. Not every aspect of the training will apply equally to every employee in the content businesses, but employees must understand the relevance of the training as it applies to Apple generally, and more specifically to their own work, and to be able to identify potentially risky scenarios within their business units.

As mentioned above, the Executive Team live training session David Boies provided was different than the sessions we observed for the content businesses. The training session adequately covered the antitrust concerns that are most relevant to senior executives, and provided a high-level overview of a broad set of general antitrust issues that appropriately matched the audience. Mr. Boies also provided a summary of the Final Judgment and its requirements.

Like the sessions for iTunes, the App Store, and the Productivity Group, we recommend that future sessions for the Executive Team contain examples that are more specific to Apple and to the businesses for which the members of the Executive Team are responsible. Examples that relate specifically to Apple's businesses will help make more concrete the antitrust concepts as they apply to Apple and its businesses, and also will help executives anticipate and respond

[179] A full description of the content covered in the non-executive live antitrust sessions can be found at Section VIII.E.1(a).

when potential issues arise. We base our recommendation on our own observations of the training session, as well as on a specific request from a member of the Executive Team, who said that providing examples that were "closer to home" would improve the training.

We also recommend that Apple make constructive use of its own past encounters with alleged antitrust violations, using them as "real-life"[180] examples for both executive and non-executive training sessions. Understanding that the company will not always agree with the allegations that formed the basis of settlements or findings of liability, we believe the underlying facts that give rise to the allegations can nonetheless serve as important tools for educating employees and executives. At least one Executive Team member noted that the ebooks Litigation and the recent poaching case involving Apple could be helpful examples from which to draw lessons. In addition to the more generic case studies invoked in the training sessions, we recommend that the trainers acknowledge, dissect, and discuss past cases in which Apple was involved. If necessary, that can be done without making any concessions on fault or liability.

We understand from Apple that additional training sessions have been, or will be, scheduled for other employee groups at the company. For example, Mr. Andeer told us that he conducted a training session for the direct reports to Luca Maestri, Apple's Chief Financial Officer. We understand that Mr. Maestri invited Mr. Andeer to conduct the training at least in part as a result of Mr. Maestri's interview with the Monitor. Mr. Andeer told us that this training session was tailored to the activities of, and the potential antitrust risks faced by, Mr. Maestri's organization and was therefore substantially different than the training sessions given to the content businesses. Apple has offered to provide the materials from this session, but as of the date of this Report, we have not received them. These materials will help us evaluate how the training session was tailored to the antitrust risks faced by Mr. Maestri's organization.

In addition, in the weeks leading up to the issuance of this report, Apple held two makeup sessions for the remaining employees required to receive annual antitrust training under the Final Judgment. Regrettably, we were not provided an opportunity to monitor these sessions, either in-person or through video recording.

[180] Kyle Andeer stated that he uses "real-life" examples to make the training more effective.

(b) Interaction during Training Sessions

With the exception of the Executive Team training session,[181] we observed a low level of interaction between the trainer and audience during the training sessions, despite having been told repeatedly that the sessions that took place before videotaping began were lively and interactive. During some sessions, we observed no interaction at all. We understand Apple's position to be that the presence of the Monitor at the live sessions caused the lack of interaction. Although we cannot discount the possibility that the Monitor's presence could create some apprehension among audience members, we are not persuaded that the Monitor's presence was the sole or even the main cause for the passivity of the personnel attending these training sessions. It is just as likely that the lack of substantial interaction resulted from the relatively low degree of tailoring of the nonexecutive training sessions to the day-to-day activities of trainees. We believe that, if the training were more closely tailored to specific situations that might arise in the employees' daily work, the employees would be more likely to ask questions.

That point aside, for multiple reasons, we are skeptical of Apple's claim that our presence at the training sessions decreased employee participation. First, the presence of members of the monitoring team was not always directly correlated with whether or not the audience engaged with the trainer. For example, although the Monitor attended the June 23 training for the Productivity Group, we observed some engagement between the trainer and audience. However, although no one from the monitoring team attended the July 23 session for iTunes personnel, we observed no interaction between the trainer and the audience when we reviewed the video recording.[182]

Second, we believe that any impact on interactivity from the Monitor's presence at the training sessions could be effectively remedied by providing appropriate guidance to the training session audience. Although Apple did not allow us to be present for the introductory comments regarding the Monitor's presence at the training, or include the introduction as part of the recorded sessions, we subsequently heard from Apple that its representatives advised the audience, out of the presence of the member of the monitoring team, that they disagreed with the decision to allow the monitoring team to attend the session.

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[181] The Executive Team training session was relatively interactive. Several Executive Team members asked questions and commented throughout the training session.

[182] In addition, having cameras present to create a video recording of the training session did not seem to affect the level of interactivity at training sessions. The audience at the June 10 training session for iTunes engaged with the trainer and the Executive Team asked several questions, despite a video camera rolling in both sessions.

That, together with the way the member of the monitoring team was brought in to the classroom separately, after everyone else was seated, contributed to the suggestion of an unwanted alien presence.[183]

Rather than turn the Monitor's presence into a cause of fear and suspicion, which may have had a chilling effect on the session, an appropriate instruction to be given by the trainer at the beginning of the session, in the presence of the monitoring team representative, would have been as follows:

> As you probably know, the Court appointed an External Compliance Monitor in the ebooks case after it found that the company had violated the antitrust laws. The Monitor's responsibility is to assess and evaluate the company's antitrust compliance program, including all aspects of its antitrust training program. That includes this kind of live antitrust training being provided to you today.
>
> The monitor [or a member of his team] is here today and will be sitting in on the training session. He is here to listen, not to participate – and he is certainly not here to grade or evaluate you. His presence should not affect the discussion, and there really is only one way that things should be a little different than if he were not here at all. And that is, if you have a question on a specific issue you are currently facing, we have an understanding with the Monitor that he should not be present to hear that type of question and answer. If you have that type of question, save it until the end of the session, when we will ask him to step out of the room so I can answer any such questions. Other questions that are about general principles of antitrust and competition law, and how they may apply to your business, can and should be covered in the training session with the Monitor present. And we genuinely encourage you to ask questions, both about general principles during the session, and about specific pending issues that you save until the end.

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[183] This treatment of the Monitor's presence at the training session was certainly inconsistent with the spirit of the agreement the Monitor had made with Mr. Sewell. Mr. Sewell told the Monitor in advance of the recorded training sessions that "Apple [would] provide a brief instruction at the beginning of any session attended by a member of [the monitoring] team informing our employees of the presence of an external monitor, and cautioning them regarding questions that would reveal trade secrets or solicit advice of counsel for active matters." He at no time suggested that members of his legal team would say they were opposed to the monitoring team's presence, or that they would handle the presence of its members in such a hostile, adversarial fashion. In response to the draft report, Apple said it disagrees with this assessment and "believes that it in no way demeaned the monitor."

We hope that the presence of monitoring team members at future training sessions will be handled in a way that encourages interaction with the trainer during the session.

(c) Format

The training sessions we monitored were held in auditorium-style rooms. The trainer stood at a podium at the center of the stage, and the training presentation was projected on a large, overhead screen. In our discussions with him in August, Mr. Andeer reflected on the setting of the training sessions as an area for potential improvement. He said that he thought the sessions would encourage more interaction if they were held in a more intimate, ordinary meeting setting—such as a conference room—rather than the auditorium-style setting, which gives the feel of a classroom. We agree with Mr. Andeer that setting matters when it comes to encouraging interaction, and we recommend that Apple find a more informal setting that encourages greater interaction for future live training sessions.

In addition, we understand from Apple that employees located outside of the Santa Clara Valley who were identified to receive live training generally did not attend the session in person. Instead, they were permitted to stream a video of the session. Apple told us that employees that attended the training remotely were required to send Ms. Said screenshots to verify attendance.

While we understand Apple's desire to include geographically distant employees in live training sessions, allowing remote attendance defeats the purpose of the live sessions. First, although screenshots verify that an employee at least began the training session, Ms. Said has no way to confirm that an employee viewed some or all of the session. Employees could easily continue to work, take calls, or leave the room while the session is streaming in the background. This concern does not exist when personnel attend the training in person, in part because Ms. Said and others monitor the session to ensure no audience member is using their smartphone or other devices of any kind during a session. Our live monitoring of two training sessions confirmed that the participants were not using computers or smartphones during the training sessions and appeared to be paying attention. Second, Ms. Said has no way of monitoring whether remote participants commit their full attention to the training session. Third, we know of no way that remote participants are able to ask questions during the session.[184]

[184] In response to the draft report, Apple has stated it is willing to explore the use of technology to make that possible.

We agree that remote participation is better than no training at all, but it is not equivalent to physical attendance. Thirteen people participated remotely in the June 10 and July 23 sessions. We do not have sufficient information about their specific roles to evaluate whether it was appropriate to permit them to do so. If these people hold positions with a moderate or high level of antitrust risk, then Apple should make accommodations to train them in person. However, if Apple determined that these employees present little or no exposure to antitrust risk, remote attendance would pose less of an issue.

(d) Future Sessions

We recommend that Apple develop and provide live antitrust training sessions for other business groups. In the First Report we identified the Marketing and Sales organizations as important groups to target for antitrust training, and we continue to believe, based on the information we have obtained during this reporting period, that both groups merit live antitrust training.[185] In addition, personnel involved in certain procurement functions, at a minimum, should also receive live antitrust training. Depending on the results of Apple's risk assessment efforts, other groups of employees, as discussed in Section IX.D.8(b), may also benefit from live or online training. As we obtain more information from Apple, we may determine that other groups of personnel should receive antitrust training.

We also recommend that Apple provide a specialized antitrust training session for Apple legal personnel. Since the Monitor's appointment in October 2013, Apple has emphasized the important role played by legal personnel embedded into each of the businesses.[186] A significant number of interviewees told us that they consult with their business group's assigned lawyer very frequently and consider that lawyer to be their first resource when they encounter a legal question, including antitrust legal questions. Our interviews with legal personnel that support the businesses also made clear that business lawyers have intimate knowledge of the activities of their respective businesses. Against this background, we believe that the business-embedded legal personnel must be attuned to the first signs of a potential antitrust issue. Although we do not believe that a fundamental antitrust course like the one required for Apple business personnel is necessarily appropriate for Apple's legal team, a specifically tailored program for lawyers who support the Apple businesses

[185] We understand that some employees that ultimately report to Phil Schiller, Senior Vice President for Worldwide Marketing, have received live antitrust training. However, we have no way to confirm that all relevant Marketing employees have been trained. Based on the Marketing employees listed on the Live Training List provided by Apple, we have no reason to believe that the entire Marketing group has received live training.

[186] We discuss the structure for legal support of the business units in Section VII.A.1.

would empower those lawyers in their role as the equivalent of first responders for antitrust compliance.

4. Online Training – Further Assessment and Recommendations

Apple's online antitrust course, introduced as part of the June 30 Rollout, meets the need for broad-based antitrust training that can be offered to large numbers of Apple employees. Apple intended the online antitrust compliance course not only to provide additional education for those identified for live antitrust training, but also to provide a high-level and general introduction to antitrust compliance to employees who present a lower level of antitrust risk exposure. The course adequately addresses antitrust risks at a high level and provides a means to instruct and test user comprehension. Details regarding the course content and navigation are discussed in greater detail in Section VIII.B. We understand that identified employees will be required to undergo online training annually.

As of the date of this Report, 5,331 Apple employees have been assigned the online training course, including employees in the United States and Canada that work in Internet Software and Services, Direct Procurement (within Operations), Sales, and Legal. Apple's identification of these employee groups for online antitrust training is reasonable and appropriate. We understand that the completion rate for the online training course, as of the date of this Report, is 98 percent. We also understand that Apple continues to consider whether other parts of the company, including Marketing, should be required to take the online training

We have received some feedback from five Apple employees that have taken the online training course since the June 30 Rollout. Most of the feedback we have received has been very positive. We look forward to interviewing additional Apple personnel in the coming months and obtaining their reactions to the online training course.

F. Senior Commitment to Compliance

In our First Report, we emphasized the central role played by senior company personnel in an effective compliance program, and specifically the impact of their demonstrated commitment to compliance on a program's success. We reported on Apple's senior leaders' commitment to compliance in the context of the company's communications regarding the revised Antitrust Compliance

Program.[187] However, we noted that a commitment to compliance from Apple's senior leadership must be demonstrated in ways that extend beyond email communications and video excerpts. We noted that these types of communications were positive signals of the importance attached to compliance but, by themselves, did not support any conclusion about the commitment to antitrust compliance of Apple's senior executives.

We cannot stress enough the importance of a visible and continuing commitment to compliance from Apple's senior leadership. As emphasized in the First Report, we believe that a culture of compliance starts with Apple's senior leadership, and that such a commitment is critical to Apple's efforts to revise and upgrade its Antitrust Compliance Program. This is a widely shared belief in the compliance community,[188] has been endorsed by this Court,[189] and

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[187] As of the First Report, Apple had provided an introductory letter from Mr. Sewell to the Antitrust and Competition Law Policy. Apple cited the letter as an example of the commitment of Apple's senior executives to antitrust compliance. Apple also provided an email from Mr. Sewell, which was sent to all employees in connection with the Business Conduct Policy. The email from Mr. Sewell urged employees to "set aside a little time to review Apple's Business Conduct Policy" and announced a new version of the Policy available to employees in "iBooks format." Apple has also provided a brief (less than a minute) video presentation featuring Mr. Cook that focuses generally on compliance (not specifically on antitrust compliance).

[188] Wayne Brody, a member of LRN's Ethics and Compliance Advisory Services Practice, one of Apple's compliance partners and a contributor to its Antitrust Compliance Program, recently addressed the importance of senior management's commitment to compliance. The following excerpt describes Mr. Brody's reflections on this topic:

> Brody stressed that executive tone-setting should not be limited to occasional memos or scripted speeches. Programs excel when CEOs drive culture . . . 'Not surprisingly, there are only about 20 percent of companies where that is true, but they have hugely more effective compliance programs on average than the 80 percent where that isn't true.' … Important differentiators, Brody says, are when top-level executives address ethics and compliance issues in staff meetings and operational reviews and are visibly among the first to complete training. Sitting front–and-center at workshops is just one way to send the message that 'this matters to me, so it should matter to you.'

Joe Mont, *Identifying Top Indicators of an Effective Ethics and Compliance Program*, Compliance Week (May 2014), *available at* http://www.complianceweek.com/news/news-bulletin/identifying-top-indicators-of-an-effective-ethics-and-compliance-program-0.

In addition, the U.S. Sentencing Guidelines contain a provision requiring that "high-level personnel of the organization … ensure that the organization has an effective compliance and ethics program, as described in this guideline." U.S. Sentencing Commission, Organizational Compliance Guidelines § 8B2.1(b)(2)(B), *available at* http://www.ussc.gov/guidelines-manual/2011/2011-8b21. The Guidelines also require "high-level personnel and substantial authority personnel of the organization [to] be knowledgeable about the content and operation of the compliance and ethics program, [and to] perform their assigned duties consistent with the exercise of due diligence, and [to] promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law." *Id.* cmt. § 8B2.1(b)(2).

has been recently highlighted by the Department of Justice's Antitrust Division. As recently as September 10, 2014, Assistant Attorney General Bill Baer remarked:

> Companies should be fostering a corporate culture that encourages ethical conduct and a commitment to compliance with the law. As Deputy Attorney General Cole has said, corporate compliance starts at the top. The board of directors and senior officers must set the tone for compliance to ensure that the company's entire managerial workforce not only understands the compliance program but also has the incentive to actively participate in its enforcement.[190]

Likewise, Deputy Assistant Attorney General Brent Snyder recently made clear that the commitment made to compliance by a company's senior leaders must be "*real*."[191] If this commitment is lacking, then a company's program is truly just a "paper program," and the other program components, no matter how comprehensive, may be rendered meaningless.[192] We share the view of the Department of Justice and compliance experts regarding the important role that senior executives and board members play in an effective compliance program. What senior leaders say and do – and what they do not say and do – affects the importance employees attach to the Antitrust Compliance Program and ultimately may affect their actions in day-to-day operations.

Against this background, we have attempted to evaluate Apple's compliance culture and the specific contributions made by senior leaders to create and promote a compliance culture. We have attempted to gather information on the commitment to compliance primarily through interviews of personnel of various levels of seniority. We asked Apple employees whether they could recall any specific instances when a member of senior management addressed the importance of compliance generally or did something specific that reflected his or her commitment to compliance. Many people we interviewed strongly endorsed the culture at Apple, as well as the company's emphasis on "doing the right thing," but we were struck by the inability of most employees

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[189] At the August 27 Hearing, the Court explained that the conduct underlying the ebooks Litigation "demonstrated a blatant and aggressive disregard at Apple for the requirements of the law," including among "Apple lawyers and its highest-level executives." 8/27/13 Tr. 17. This Court also found that "Apple executives used their considerable skills to orchestrate a price-fixing scheme." *Id.* The Court stated that Apple needed to make a "sincere commitment to reform its culture . . . to one that includes a commitment to understand and abide by the requirements of the law." *Id.*

[190] Baer, *supra* note 167.

[191] Snyder, *supra* note 133.

[192] *See id.*

we interviewed to point to specific acts or statements that went beyond the general concept of "doing the right thing," specific instances when senior leadership in the company explicitly addressed compliance issues, or specific events that supported the view that senior management is strongly committed to compliance.[193] Undeniably, "doing the right thing" is an important and appropriate starting point for creating a culture of compliance in the company, but we believe Apple's senior management can and should do more to reinforce the importance of a culture of compliance by devoting more time and attention to compliance matters and addressing compliance issues more directly and more specifically.

In addition, we also explored the ability of senior and mid-level managers to foster a culture of antitrust compliance and to enhance awareness of and respect for the Antitrust Compliance Program among their staff members. Needless to say, senior and mid-level managers also can have a powerful impact on maintaining antitrust compliance throughout the company. They have a more intimate knowledge of specific operations and have the ability to make an impact on a day-to-day basis.

We report below on our views regarding the commitment to antitrust compliance among members of Apple's Executive Team and several senior and mid-level managers. We have addressed the need for an equal commitment by Apple's Board of Directors in Section IX.G.3 regarding Board oversight.

1. The Executive Team and Compliance

Through our interviews of various Executive Team members, we have gained insight into the function of the Executive Team and its involvement in compliance. The Executive Team holds regular meetings every Monday, which focus on discussions of products, investment, milestones, and updates from Apple's various business units. Issues to be discussed at the meeting are outlined in a formal agenda that Mr. Cook circulates to the Executive Team on Sunday evenings in advance of the Monday weekly meeting. From time to time,

[193] In response to the draft report, Apple took strong exception to this assessment. Apple requested that we modify this passage to read as follows: "Many people we interviewed strongly endorsed the culture at Apple, as well as the company's emphasis on 'doing the right thing,' and gave specific examples of engagement by members of the Executive Team, including Mr. Cook, on matters of compliance and ethics. For example, videos of Mr. Cook addressing compliance, communications from Mr. Sewell on ethics and compliance during all-hands meetings, and Mr. Cook's direct involvement on issues regarding Chinese workers were all mentioned in interviews we conducted." In the interests of fairness, we think it is appropriate to present Apple's view, but we do not think it is an accurate account of the information we obtained during our interviews. We stand by our assessment.

the Executive Team discusses pending legal issues, but our understanding is that legal issues are presented in the form of status updates on pending litigation.

Based on the information available to us, our view is that the Executive Team, as a unit, traditionally has had little direct involvement in compliance issues or oversight. We are unable to confirm the frequency with which the Executive Team addresses compliance issues, and specifically antitrust compliance issues. We heard a range of views from Executive Team members about the frequency of compliance discussions at weekly Executive Team meetings – some members told us that compliance issues are not the focus of Executive Team meetings, while at least one other estimated that compliance discussions come up once every other meeting. We requested that Apple provide us with agendas created since the start of the ebooks Litigation that referred to or reflected discussion of antitrust compliance, including but not limited to antitrust policies, procedures, and training, or other compliance issues. Apple was unwilling to provide these agendas, even in redacted form.[194]

Our view is that the members of the Executive Team rarely explicitly and specifically discuss the importance of compliance with Apple employees. It seems to be assumed that Apple employees understand the principle that it is important to behave ethically and lawfully, but we saw little evidence of its reinforcement by senior leaders. Apple told us that the Executive Team has sent only two communications regarding antitrust compliance to Apple employees during this reporting period. These are (i) the letter from Bruce Sewell at the beginning of the Antitrust and Competition Law Policy (sent on June 30, 2014), and (ii) an email Eddy Cue sent to employees in his organization who were identified for online training announcing the mandatory course. During the first reporting period, Apple also provided us with a short (less than one minute) video presentation featuring Mr. Cook that was distributed to employees in November 2013, asking them to review the company's Business Conduct Policy. The video focused generally on compliance (not specifically on antitrust compliance). Although these communications were necessary and appropriate, we would have expected more from Apple's Executive Team since the Final Judgment – more communications from other members of the Executive Team, and more communications outside of the Policy and training announcements.

We believe the Executive Team has an important role to play in shaping Apple's Antitrust Compliance Program and facilitating company compliance with the antitrust laws. Based on our work to date, the Executive Team appears to have been relatively detached from compliance issues, and its members, to our

[194] In the weeks leading up to the issuance of this Report, Apple communicated willingness to meet and confer on the Monitor's request for Executive Team agendas. As of the date of this Report, no such meet-and-confer has occurred.

knowledge, have made little effort in the past to specifically emphasize the importance of compliance issues in their communications with Apple personnel. However, we have been encouraged to hear members of the Executive Team, following the June 30 Rollout, talk about ways to heighten awareness of their personnel to issues surrounding antitrust compliance. Although day-to-day oversight and maintenance of the Antitrust Compliance Program has been entrusted to Deena Said, the Antitrust Compliance Officer, the Executive Team has an obligation to actively monitor the program and to use its members' positions to communicate about compliance in general and antitrust compliance in particular. The Executive Team must set an example for employees to follow and must also communicate important compliance messages that convey information about conduct expectations, incentives, accountability, and consequences. We look forward to learning about Apple's plans to strengthen the role played by the Executive Team in antitrust compliance at the company.

We note that members of Apple's Executive Team—and in particular Mr. Sewell—have made strong verbal commitments to support and promote the Antitrust Compliance Program. As early as the first month of the monitorship, Mr. Sewell told us that he looked forward to helping to ensure that Apple's antitrust policies and training programs were comprehensive and effective and that he intended to participate actively in Apple's efforts to comply with the Final Judgment. He has reiterated that intention in all of our subsequent interactions with him. Given Mr. Sewell's eagerness to support Apple's antitrust compliance efforts, we are hopeful that Apple's senior leaders will begin to more effectively demonstrate to their employees that antitrust compliance is important.

2. Managers and Compliance

At the beginning of the Executive Team antitrust live training session provided on June 30, 2014, Mr. Sewell encouraged the Executive Team members to "waterfall" information about the revised Antitrust Compliance Program to their staff and to the rest of the company. We were pleased to hear this support and encouragement for dissemination of the Program coming from senior leadership.

We asked Executive Team members about their plans to satisfy Mr. Sewell's request to waterfall information about the Antitrust Compliance Program throughout their respective organizations. While some Executive Team members told us that they had not yet developed plans to carry out Mr. Sewell's request, other Executive Team members had either already taken action to fulfill the request, or had planned activities in the near future to do so. Mr. Riccio told us that he had scheduled Mr. Moyer to come to his staff meeting in October or November 2014 to educate his direct reports about antitrust. He said that he also

planned to invite the appropriate personnel (including Mr. Andeer or Mr. Moyer) to speak about antitrust at the next quarterly Executive Speakers Series[195] that he holds for his organization. Mr. Federighi told us about his plans to share relevant antitrust concepts at staff meetings and to request that his reports share the message with their respective teams. Other senior managers also told us of their requests that Mr. Andeer provide training to their direct reports and teams.

We heard from a number of Apple personnel regarding the hands-on management style of Apple's senior and mid-level managers. Mr. Riccio explained that Apple's culture requires managers to balance strategic planning with hands-on management, which includes frequent meetings with both direct reports and indirect staff. Mr. Federighi described weekly one-on-one meetings with each of his individual reports, as well as weekly full staff meetings.[196] Many other senior executives and mid-level managers described frequent meetings with direct reports, and even the staff of direct reports.

The hands-on management style described by Apple's senior and mid-level managers provides opportunities to foster a culture of antitrust compliance at high-levels in the management chain. Managers can use staff meetings and other forums[197] to convey information about the new Antitrust Compliance Program, Apple's commitment to fostering a culture of compliance, and their own expectations for strict compliance with Apple's policies and procedures within their organization. In the coming months, we hope to learn more about the plans of other senior and mid-level managers to accept Mr. Sewell's challenge and to contribute to an increased sensitivity to antitrust issues, as well as a broader awareness of the Antitrust Compliance Program.

G. Oversight of the Antitrust Compliance Program

As noted in our First Report, oversight of the Antitrust Compliance Program is shared among three levels of authority. First, Ms. Said, with overall compliance support from Mr. Moyer, is responsible for the day-to-day operations of the program and is directly accountable to the Board of Directors, through the

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[195] Mr. Riccio explained that he holds a quarterly Executive Speakers Series for the Hardware Engineering business, during which executives from throughout the company speak about their business lines.

[196] We were pleased to hear that Mr. Federighi also made use of "bad" compliance examples in staff meetings as teaching models.

[197] As discussed above, while we have asked to monitor New Employee Orientation and Apple town hall meetings to observe how senior leaders communicate the compliance message to employees, Apple is unwilling to provide us access to these events because it claims the NEO sessions relate only tangentially to business conduct issues (not antitrust specifically), while it represents that the town hall meetings do not touch on compliance or ethics issues at all.

Audit and Finance Committee. Second, the CLPG is responsible for reviewing and advising on business issues that have antitrust implications, as well as the substantive content of Apple's written antitrust policies and training program. Third, the Audit and Finance Committee is responsible for ultimate oversight of the Antitrust Compliance Program, with the Risk Oversight Committee providing information and analysis in a regular and systematic manner.

1. Role of the Antitrust Compliance Officer

As discussed in greater detail in Section VII.B.2, the Final Judgment requires Ms. Said to fulfill important and specific responsibilities. She is also charged with day-to-day operational responsibility for the Antitrust Compliance Program at Apple. Ms. Said must be able to manage her obligations with independence and authority and must have access to appropriate financial and human resources. In addition, Ms. Said must have full access and a complete understanding of the company's business and the markets in which it operates.

Although we believe Ms. Said has access to the financial and human resources needed to fulfill her duties, her role is different and more limited than provided for in the Final Judgment. Ms. Said's role has become that of an antitrust compliance program manager, rather than the type of Antitrust Compliance Officer described in Section V, responsible for "supervising Apple's antitrust compliance efforts." Ms. Said coordinates with outside vendors regarding training, the ebook, and other technical projects that have been completed; manages training attendance and maintains related records; collects information related to the communications log and antitrust violation reporting requirements under the Final Judgment; and periodically provides status updates to the Audit and Finance Committee. Not insignificantly, she has been introduced to Apple personnel as a key participant in Apple's Antitrust Compliance Program.

However, we have seen no evidence that Ms. Said is "supervising Apple's antitrust compliance efforts" in any meaningful sense of that phrase. She has not been vested with substantial authority or decision-making ability. She is not directing Apple's Antitrust Compliance Program or designing key elements. She has also not been "disclosed" on confidential Apple products and offerings. While we understand that Ms. Said comes with applicable compliance experience from her previous position at Hitachi Data Systems, we have not received any information from Apple to conclude that Ms. Said is called upon to provide substantive antitrust input into the Program. We thus have concerns about the extent to which she is fulfilling her responsibilities under the Final Judgment, beyond fulfilling certain important administrative tasks.

While the role that we have observed does not match our original expectations, or the responsibilities set forth in Section V of the Final Judgment, we will reserve judgment on whether Ms. Said's more limited responsibilities make sense within the context of Apple's overall Antitrust Compliance Program.[198] We plan to monitor the development of Ms. Said's role as it relates to the Antitrust Compliance Program and to recommend enhancements to Apple as appropriate.[199]

2. Role of the CLPG

At the time of the First Report, we had little information regarding the specific role played by the CLPG in Apple's Antitrust Compliance Program. We have learned substantially more since the First Report. This information is discussed in greater detail in Section VII.A.2.

While the CLPG appears to be playing an increasingly significant role within the company, business people still tend to initially direct their antitrust questions and concerns to their primary legal contact. While some questions come directly from the businesses to the CLPG, most are elevated through the legal personnel that support the businesses. The CLPG's most direct contact with the businesses tends to be at higher levels of the company, on significant transactions and issues. We understand that contact between lawyers embedded in business units and the CLPG is frequent, with the CLPG playing the role of expert substantive advisors on antitrust issues. We believe this role for the CPLG is consistent with Apple's business structure and is appropriate. It is unrealistic to expect that the CLPG be a first point of contact for every antitrust question from the businesses.

We view the CLPG as a specialized resource that plays an important role in Apple's Antitrust Compliance Program. Clearly, the group plays a key role with respect to specialized live training sessions. In addition, the group will continue to advise on antitrust questions as they arise within the businesses. The CLPG members are also in the best position to conduct the company's antitrust risk assessments.

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[198] We understand that, in October, Ms. Said will take a course entitled "Antitrust Counseling and Compliance." The course targets in-house lawyers who want a "refresher on antitrust principles, would like to sharpen their skills, and want to learn about important recent developments and trends in antitrust law." We think this course is a good fit for Ms. Said and commend her for taking it.

[199] In response to the draft report, Apple contended that Ms. Said provides substantive antitrust input and performs all the responsibilities called for in the Final Judgment. We note that in his introduction of Ms. Said to the Board at its August 27 antitrust training session, Mr. Sewell described her as the company's "antitrust compliance manager," which we believe is congruent with our description above.

3. Board Oversight

(a) Recommendations from the First Report

In the First Report we stressed the importance of meaningful Board oversight of the Antitrust Compliance Program. Among other factors, our comments were guided by the U.S. Sentencing Guidelines, which require personnel with operational responsibility for the compliance program to report directly to the Board, or an appropriate committee of the Board.[200] In addition, the Guidelines state,

> The organization's governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.[201]

In addition to the valuable oversight role a company's Board plays with respect to compliance risks, the involvement of the Board is especially critical for managing antitrust risks because senior managers are frequently the perpetrators of antitrust violations, and the Board can therefore serve as an additional level of protection for the company.

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[200] "Individual(s) with operational responsibility shall report periodically to high-level personnel and, as appropriate, to the governing authority, or an appropriate subgroup of the governing authority." U.S. Sentencing Commission, Organizational Compliance Guidelines § 8B2.1.(b)(2)(C).

[201] *Id.* § 8B2.1.(b)(2)(A). The importance of board oversight of compliance is well recognized across a range of contexts and among members of the compliance community. *See, e.g.*, Zachary W. Carter & E. Scott Gilbert, *Board of Directors' Oversight of Compliance: The Compliance Committee Option*, Corporate Compliance Practice Guide: The Next Generation of Compliance (MB) ch. 46 (discussing various sources of directors' responsibilities for compliance, such as the Sentencing Guidelines and case law, including that based on the principles of *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959, 970 (Del. Ch. 1996)); Michael D. Greenberg, RAND Corp., Conference Proceedings: Directors as Guardians of Compliance and Ethics Within the Corporate Citadel (2010), *available at* http://www.rand.org/content/dam/rand/pubs/conf_proceedings/2010/RAND_CF277.pdf (describing approaches to Board oversight, as well as potential sources of that responsibility); Joseph E. Murphy & Daniel R. Roach, *Compliance Officer on Board: What Your Audit Committee Is Missing*, Ethikos, Nov./Dec. 2006 (discussing the importance of Board oversight and common issues directors confront in overseeing compliance); Brent Snyder, *supra* note 133 ("For senior management, supporting compliance efforts means being fully knowledgeable about those efforts, providing the necessary resources, and assigning the right people to oversee them. This includes making sure the compliance program is implemented successfully. This means not just receiving regular reports but actively monitoring the program. Executives and board members cannot simply go through the motions and hope that the company's compliance program works.").

In our First Report, we highlighted the need for a strong and direct reporting relationship between the Antitrust Compliance Officer and the Audit and Finance Committee. This is a critical factor in achieving a successful Antitrust Compliance Program. We noted that the reporting relationship between the Antitrust Compliance Officer and the Audit and Finance Committee must be genuine and that Ms. Said's quarterly reports to the Audit and Finance Committee should be more than perfunctory. The First Report emphasized that Ms. Said should include detail and substance in her reports to the AFC, and that the AFC should have an opportunity to question Ms. Said on anything and everything relating to her role as the Antitrust Compliance Officer. Ms. Said's ability to perform her role, and her ability to present candid reports to the Audit and Finance Committee, can be ensured only through support and resources provided by the Committee.

Finally, the First Report underscored our focus on the provision of adequate support and resources to Ms. Said specifically by Dr. Sugar, the Chairman of the Committee,[202] as she works to implement enhancements to Apple's Antitrust Compliance Program. We learned that Ms. Said has been "authorized to contact the [Audit and Finance Committee] directly with any questions or issues."[203] However, we concluded that authorization alone is hardly a guarantee of a direct and meaningful relationship between Ms. Said and Dr. Sugar and his Audit and Finance Committee colleagues. We specifically underscored the importance we attached to the relationship between Dr. Sugar and Ms. Said.

We expected Dr. Sugar and other members of the Audit and Finance Committee to work directly with Ms. Said to fulfill her responsibilities to the Board and under the Final Judgment, including through regular and substantive meetings. We recommended that Ms. Said and Dr. Sugar participate in a regular monthly call or meeting regarding Ms. Said's work, as well as the status of the activities under the Final Judgment and the Antitrust Compliance Program generally.[204] We understood from information provided by Apple that both Mr.

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[202] Dr. Sugar has substantial compliance expertise and experience. In our December 5, 2013 interview of Dr. Sugar, he described to us his extensive compliance background in the highly regulated defense industry. This background makes Dr. Sugar a particularly important resource to Ms. Said. In response to our draft report, Apple noted that Dr. Sugar provided assurances that Ms. Said would have any resources she needed, including the ability to speak with him about antitrust compliance issues on a regular basis.

[203] February 19, 2014 Memorandum to the Antitrust File from Thomas Moyer, Chief Compliance Officer.

[204] We noted our expectation that Dr. Sugar be fully informed of the work being done on the Antitrust Compliance Program and that he contribute his experience and feedback as Chair of the Audit and Finance Committee.

Moyer and Mr. Keller, Vice President for Internal Audit, have regular interaction with Dr. Sugar, and we therefore expected that the Antitrust Compliance Officer would as well, especially because she reports directly to the Audit and Finance Committee and is responsible for supervising Apple's antitrust compliance efforts under the Final Judgment.

(b) Further Assessment and Recommendations

From the beginning of our work in October 2013, we have sought information from Apple in an effort to determine the extent of Board involvement and oversight over the Antitrust Compliance Program. We have interviewed individuals on the compliance and legal teams, Dr. Sugar, and former Director William Campbell about the role of the Audit and Finance Committee generally with respect to compliance and specifically with respect to antitrust compliance and the company's obligations under the Final Judgment, including the revised Antitrust Compliance Program. We have also met on several occasions with Ms. Said to discuss her role as it has evolved since she was hired in November 2013, her relationship with the Audit and Finance Committee (and specifically Dr. Sugar), and her view of the resources she has been provided to fulfill her obligations under the Final Judgment. Finally, we have requested documents, including minutes and agendas, from the Audit and Finance Committee, documents demonstrating communication between Ms. Said and the Audit and Finance Committee or Board, and documentation of transmission of the First Report to the Board, Executive Team, or other Apple personnel.

To date, we have not seen evidence that the Audit and Finance Committee has taken an active oversight role in connection with the Antitrust Compliance Program.[205] Nor have we seen evidence that the results of the CLPG's risk assessment efforts have been presented to the Audit and Finance Committee. Board oversight of the Antitrust Compliance Program is absolutely critical and, based on our current knowledge, significantly absent. As the Board's designated committee for overseeing risk oversight, the Audit and Finance Committee should take a more active role with respect to the Antitrust Compliance Program. The Committee should be fully informed regarding high-risk areas, the effectiveness of reporting mechanisms, protocols for detecting violations and investigating complaints, and other important aspects of the Program. In

[205] In response to the draft report, Apple requested that we add the following language as our own: "We understand that Ms. Said and Mr. Moyer have made two detailed presentations to the Committee; that Ms. Said and Dr. Sugar have had multiple substantive conversations regarding the rollout of Apple's revised antitrust training compliance program; and that Apple has produced extensive agendas and minutes of the Committee relating to antitrust issues." We are unable to accommodate Apple's request because we do not have such an understanding based on the evidence that Apple has provided thus far. We look forward to obtaining further information on these points in future discussions with Dr. Sugar, Mr. Moyer, and Ms. Said.

addition, the Audit and Finance Committee should review the effectiveness of the Executive Team's management of antitrust risk and its promotion of Apple's Antitrust Compliance Program.[206] Finally, the Audit and Finance Committee should actively participate in defining the reporting threshold for when the Board should receive updates regarding the Antitrust Compliance Program and potential antitrust risks.[207]

Despite our best efforts, we have learned very little about the Board's knowledge of the Antitrust Compliance Program. We understand that Ms. Said has provided two written reports to the Audit and Finance Committee since the First Report. The report she provided in May 2014 contained bullet points summarizing the status of the Final Judgment communication certification requirement and training, as well as a list of items planned for the revised Antitrust Compliance Program to be released in June. We understand that Ms. Said and Mr. Moyer met with the Audit and Finance Committee on August 26 to provide an update on the June 30 Rollout, and that Ms. Said also met with Dr. Sugar that same day. We have been advised that the Board received live antitrust training on August 27.[208]

Because of our limited access to Board members, we have no information about the Board's view of the Antitrust Compliance Program or whether the Board is aware of the Monitor's assessment and recommendations from the First Report. In response to our request for information about the distribution of our First Report, Apple provided two entries in a privilege log with the description, "Confidential Communication Reflecting Advice of Counsel re: ECM Report." No Board member was listed as a recipient, and the entry included no evidence suggesting that the First Report was sent as an attachment. Our understanding from Apple is that the First Report was never transmitted to the Board of Directors, the Audit and Finance Committee, the Executive Team, or any Apple

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[206] "The Board believes that evaluating how the executive team manages the various risks confronting the Company is one of its most important areas of oversight." Apple's Definitive Proxy Statement (Jan. 10, 2014), *available at* http://investor.apple.com/secfiling.cfm?filingid=1193125-14-8074&cik=320193. "Directors are encouraged to talk directly with any officer or employee of the Corporation. Senior officers are invited to attend Board meetings from time to time to provide additional insight into the items being discussed." Apple Inc., Corporate Governance Guidelines.

[207] If the Board is to be appropriately informed regarding antitrust risk, the Audit and Finance Committee should establish a threshold to determine the level of risks requiring elevation to the full Board.

[208] On September 23, 2014, Apple provided a redacted video recording of the Board live antitrust training session, which took place on August 27. Because these materials were provided late in our drafting of this Report, our evaluation and assessment of the training session based on these materials is not included in this Report. We will provide our assessment of the session based on the materials provided in our next report.

personnel. Given the Board's oversight role, it is surprising and disappointing that Apple did not provide its members with a copy of the Report as something relevant to consider in the discharge of its oversight responsibilities.[209] Although the Audit and Finance Committee is the Board's designated committee for risk oversight, the full Board has a significant stake in the success or failure of Apple's Antitrust Compliance Program.

We do not have enough information to draw definitive conclusions about the Board's oversight of the Antitrust Compliance Program and Ms. Said's reporting relationship with the Board. Because the information made available to us has been limited, as has our access to Board members, we are unable to determine whether Ms. Said's updates to the Audit and Finance Committee have been "more than perfunctory," as we recommended in the First Report. For the same reason, we cannot assess the level of interest and engagement by the Audit and Finance Committee. Whether the Audit and Finance Committee is "knowledgeable about the content and operation" of the Antitrust Compliance Program remains to be seen.

Ms. Said informed us multiple times that she believes she has been provided the resources she needs to succeed in her role, and she has not been able to identify additional resources that could help her to improve the Program. Although we accept Ms. Said's representations regarding Apple's allocation of financial resources and support personnel, we define "resources" broadly to include engagement with senior managers and the Board. We have not yet seen substantial engagement. As a result, we recommend, as we did in our First Report, that Ms. Said and Dr. Sugar have more regular, meaningful discussions regarding the development, implementation, and effectiveness of Apple's Antitrust Compliance Program. It is not enough, in our opinion, for Ms. Said to speak once per quarter with Dr. Sugar. Ms. Said's communications with Dr. Sugar should be at least as frequent as Mr. Moyer's communications with Dr. Sugar, and they should result in a closer connection between the Audit and Finance Committee (representing the full Board) and the Antitrust Compliance Program.

In addition to our recommendation for strong and active Board oversight, we extend our recommendation regarding increased senior commitment to compliance to include the Board of Directors. The Board has an important role to play in overseeing and supporting a strong culture of compliance. We have not yet seen evidence of such oversight.

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[209] In response to our draft report, Apple contended that "it was not required to [circulate a copy of the First Report], and there is no dispute that all relevant members of Apple's in-house and outside legal teams reviewed and substantially incorporated the recommendations contained in that [R]eport." This completely misses the point.

X. Conclusion

As this Report makes clear, Apple has made significant progress during this reporting period in revising its antitrust compliance policies, procedures, and training. Among other things, it developed an improved Antitrust and Competition Law Policy, created a new online training course that has been taken by close to 5,000 Apple employees, and provided live training to groups of personnel engaged in activities that create potential antitrust risk, including personnel in Apple's content businesses, and its senior Executive Team. Just before the end of this reporting period, it also provided live training to its Board of Directors.

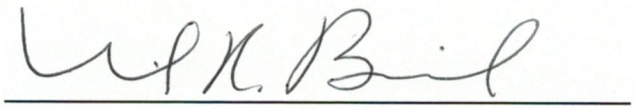
Because Apple's cooperation improved during this period, we were in a better position to assess aspects of the company's program than during the First Reporting period when our progress was impeded. Unfortunately, we continue to encounter needless delays in access to documents and key witnesses, and have had reasonable requests rejected or ignored by Apple. Even so, it is undeniable that our relationship has improved and we have been able to take meaningful steps forward in carrying out our assignment. Our assessment is that the company has made significant substantive progress toward enhancing its Antitrust Compliance Program, especially with respect to its policies and training.

However, our review has also revealed weaknesses and deficiencies that we have described in this Report, especially with respect to the procedures necessary to implement Apple's Program. We have provided numerous recommendations that, if implemented, would help address those weaknesses and deficiencies. In addition, there remain significant gaps in our knowledge: we have little information about Apple's Marketing business, which is a source of potential antitrust risk; we have only just begun to receive information about Apple's antitrust risk assessment process; and we have questions about the extent to which the company's Board is discharging its compliance oversight responsibilities.

In short, our work confirms that Apple has made significant progress towards the goal of developing and implementing an Antitrust Compliance Program that is comprehensive and effective. It is undeniably an improvement on what existed before the Final Judgment and reflects the investment of substantial time, effort, and resources. As suggested in this Report, much progress has been made, but much remains to be done. We look forward to working with Apple as it continues to advance, extend, and improve its Antitrust Compliance Program.

NON-CONFIDENTIAL VERSION

October 14, 2014



Michael R. Bromwich
External Compliance Monitor
The Bromwich Group

Bernard A. Nigro Jr.
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Fried, Frank, Harris, Shriver & Jacobson LLP

Lee Turner Friedman
Sarah W. Carroll
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP

NON-CONFIDENTIAL VERSION

EXHIBIT F

Business Conduct

The way we do business worldwide

Business Conduct

The way we do business worldwide

Apple conducts business ethically, honestly, and in full compliance with all laws and regulations. This applies to every business decision in every area of the company worldwide.

Apple's Principles of Business Conduct

Apple's success is based on creating innovative, high-quality products and services and on demonstrating integrity in every business interaction. Apple's principles of business conduct define the way we do business worldwide. These principles are:

- **Honesty.** Demonstrate honesty and high ethical standards in all business dealings.
- **Respect.** Treat customers, suppliers, employees, and others with respect and courtesy.
- **Confidentiality.** Protect the confidentiality of Apple's information and the information of our customers, suppliers, and employees.
- **Compliance.** Ensure that business decisions comply with all applicable laws and regulations.

Your Responsibilities

Apple's Business Conduct Policy and principles apply to employees, independent contractors, consultants, and others who do business with Apple. You are expected to:

- **Follow the policy.** Comply with Apple's Business Conduct Policy, principles, and all applicable legal requirements.
- **Speak up.** If you have knowledge of a possible violation of Apple's Business Conduct Policy or principles, other Apple policies, or legal or regulatory requirements, you must notify either your manager (provided your manager is not involved in the violation), Human Resources, Legal, Internal Audit, Finance, or the Business Conduct Helpline.
- **Use good judgment.** Apply Apple's principles of business conduct, review our policies, review legal requirements, and then decide what to do.
- **Ask questions.** When in doubt about how to proceed, discuss it with your manager, your Human Resources representative, or the Business Conduct Group. If you need more support, contact the Business Conduct Helpline.

Failure to comply with the Apple's Business Conduct Policy, or failure to report a violation, may result in disciplinary action up to and including termination of employment or the end of your working relationship with Apple.

Retaliation Is Not Tolerated

Apple will not retaliate—and will not tolerate retaliation—against any individual for filing a good-faith complaint with management, HR, Legal, Internal Audit, Finance, or the Business Conduct Helpline, or for participating in the investigation of any such complaint.

NON-CONFIDENTIAL VERSION
EXHIBIT F

Contents

Business Conduct
The way we do business worldwide
August 2014

Can you give an example of conflicts of interest or potential divided loyalty?
Your niece needs a summer internship and you decide to hire her into your organization, or, your brother-in-law owns a business that is being considered as a vendor for Apple, and you are one of the decision makers.

Conflicts of Interest

A conflict of interest is any activity that is inconsistent with or opposed to Apple's best interests, or that gives the appearance of impropriety or divided loyalty. Avoid any situation that creates a real or perceived conflict of interest. Use good judgment, and if you are unsure about a potential conflict, talk to your manager, contact Human Resources, or contact the Business Conduct Helpline.

Do not conduct Apple business with family members or others with whom you have a significant personal relationship. In rare cases where exceptions may be appropriate, written approval from the senior vice president of your organization is required.

You shouldn't use your position at Apple to obtain favored treatment for yourself, family members, or others with whom you have a significant relationship. This applies to product purchases or sales, investment opportunities, hiring, promoting, selecting contractors or suppliers, and any other business matter. This does not apply to special purchase plans offered by Apple like the employee discount. If you believe you have a potential conflict involving a family member or other individual, disclose it to your manager.

Am I allowed to develop outside iPhone or iPad apps on my own time?
No. Employees are not permitted to have any involvement in the development of outside iPhone or iPad apps, either alone or jointly with others.

May I occasionally use my Apple email address for my outside business?
No. Although limited personal use of your Apple email is permitted for personal activities, you may never use your Apple email for an outside business.

Can my outside music, videos or books be offered through iTunes or the iBookstore?
Generally, yes, as long as the content isn't related to Apple's business or products. Do not use your position at Apple to get favored treatment for your content.

May I serve on the board of directors of an outside enterprise or organization?
If you plan to serve on a board, you must obtain approval from your manager and the senior vice president for your organization. In addition, vice presidents and executive team members must obtain the approval of their manager and the CEO before they can accept a position on the board of directors of a private or publicly traded company (other than nonprofit entities).

Outside Employment and Inventions

Full-time Apple employees must notify their manager before taking any other employment. In addition, any employee (full-time or part-time) who obtains additional outside employment, has an outside business, or is working on an invention must comply with the following rules.

Do not:

- Use any time at work or any Apple assets for your other job, outside business, or invention. This includes using Apple workspace, phones, computers, Internet access, copy machines, and any other Apple assets or services.
- Use your position at Apple to solicit work for your outside business or other employer, to obtain favored treatment, or to pressure others to assist you in working on your invention.
- Participate in an outside employment activity that could have an adverse effect on your ability to perform your duties at Apple.
- Use confidential Apple information to benefit your other employer, outside business, or invention.

Before participating in inventions or businesses that are in the same area as your work for Apple or that compete with or relate to Apple's present or reasonably anticipated business, products, or services, you must have written permission from your manager, an Apple product law attorney, and the senior vice president of your organization.

Personal Investments

Many Apple employees have investments in publicly traded stock or privately held businesses. In general, these are fine, but investments may give rise to a conflict of interest if you are involved in or attempt to influence transactions between Apple and a business in which you are invested. If a real or apparent conflict arises, disclose the conflict to your manager. Your manager will help determine whether a conflict exists and, if appropriate, the best approach to eliminate the conflict. If you still need help, contact the Business Conduct Group.

Workplace Relationships

Personal relationships in the workplace may present an actual or perceived conflict of interest when one individual in the relationship is in a position to make or influence employment decisions regarding the other. If you find yourself in such a relationship, you must notify Human Resources so they may assist you in resolving any potential conflicts. Employees should not allow their relationships to disrupt the workplace or interfere with their work or judgment. For additional information, see Apple's policy on Personal Relationships.

Buying and Selling Stock

Never buy or sell stock while you are in possession of information obtained through your employment at Apple that has not been publicly announced and could have a material effect on the value of the stock. This applies to decisions to buy or sell Apple securities and to investments in other companies. It is also against Apple policy and may be illegal to give others, such as friends and family, tips on when to buy or sell stock while you are in possession of material, nonpublic information concerning that stock.

In addition, employees are prohibited from investing in derivatives of Apple securities. This includes, but is not limited to, trading in put or call options related to securities of the company.

Members of Apple's board of directors, executive officers, and certain other individuals are subject to blackout periods during which they are prohibited from trading in Apple stock. If you are subject to these restrictions, you will be notified by the legal department. Even if you are not subject to blackout periods, you may never buy or sell stock while you are in possession of material, nonpublic information.

Review Apple's Insider Trading policy. Specific questions on buying and selling stock should be referred to the legal department.

I have stock in companies that do business with Apple. Is this a problem?
Probably not. However, it could be a concern if (1) you're influencing a transaction between Apple and the company, or (2) the transaction is significant enough to potentially affect the value of your investment.

How do I know whether information is material?
Determining what constitutes material information is a matter of judgment. In general, information is material if it would likely be considered important by an investor buying or selling the particular stock.

Does Apple's policy apply to buying or selling stock in other companies?
Yes. For example, say you learn about a customer's nonpublic expansion plans through discussions about hardware purchases. If you purchase stock in the customer's company or advise others to do so, it could be viewed as insider trading.

Harassment and Discrimination

Apple encourages a creative, culturally diverse, and supportive work environment. Apple does not tolerate harassment or discrimination based on factors such as race, color, sex, sexual orientation, gender identity characteristics or expression, religion, national origin, age, marital status, disability, medical condition, veteran status, or pregnancy. Additional restrictions may apply based on regional laws and regulations.

These requirements apply to interactions with employees, customers, suppliers, and applicants for employment and any other interactions where you represent Apple.

If you feel that you have been harassed or discriminated against or have witnessed such behavior, report the situation to a manager or Human Resources. You may also contact the Business Conduct Helpline.

What is harassment?
Harassment can be verbal, visual, or physical in nature. Specific examples of prohibited harassing conduct include, but are not limited to, slurs, jokes, statements, notes, letters, electronic communication, pictures, drawings, posters, cartoons, gestures, and unwelcome physical contact that are based on an individual's protected class.

Need more information?
In the U.S., refer to Apple's Harassment policy. Outside the U.S., contact Human Resources.

Where can I learn more about policies on confidential employee information?
View the Safe Harbor Privacy Policy.

Confidential Employee Information

As part of your job, you may have access to personal information regarding other Apple employees or applicants, including information regarding their employment history, personal contact information, compensation, health information, or performance and disciplinary matters. This information is confidential and should be shared only with those who have a business need to know. It should not be shared outside Apple unless there is a legal or business reason to share the information and you have approval from your manager.

Is personal information on my computer system private?
No. Limited personal use of Apple equipment and systems is allowed. However Apple may monitor equipment and systems. You should not have any expectation about the privacy of content or personal information.

Personal Information

Subject to rules or regulations affecting an employee's rights, Apple may monitor or search its work environments, including equipment, networks, mail, and electronic systems, without notice. Apple monitors facilities and equipment to promote safety, prevent unlawful activity, investigate misconduct, manage information systems, comply with legal guidelines, and for other business purposes.

If I make a presentation on my own time, may I accept a payment?
That depends. If you are representing Apple, you may not accept payment. If you are on your own time and are not representing Apple, you may be allowed to accept payment. Before accepting this type of opportunity, check with your manager, Human Resources, or the Business Conduct Helpline.

Public Speaking and Press Inquiries

All public speaking engagements that relate to Apple's business or products must be pre-approved by your manager and Corporate Communications. If you receive approval to make a public presentation at a business meeting or conference, you may not request or accept any form of personal compensation from the organization that requested the presentation. This does not prohibit accepting reimbursement for expenses, if approved by your manager.

All inquiries from the press or the financial analyst community must be referred to Corporate Communications or Investor Relations.

Publishing Articles

If you author an article or other publication, do not identify yourself in the publication as an Apple employee without prior approval from Corporate Communications. In addition, all publications that relate to your job, or to Apple's present or reasonably anticipated future products, business, or services, must be pre-approved by Corporate Communications.

What if I have a substance abuse issue?
Help yourself and Apple by taking action. Talk to your Human Resources representative or, in the U.S., view information on the Employee Assistance Program.

Substance Abuse

Employees are prohibited from manufacturing, distributing, dispensing, possessing, using, or being under the influence of illegal drugs in the workplace. Use of alcohol or medications on the job or before work can cause safety issues, damage customer relations, and hurt productivity and innovation. Use good judgment and keep in mind that you are expected to perform to your full ability when working for Apple. View Apple's policy on Drugs in the Workplace.

Protecting Apple's Assets and Information

At Apple, we all have an obligation to protect Apple's property and to abide by the following guidelines:

- **Care for the company.** Apple remains an amazing company because of its people. Apple employees care deeply about the company. Protect our physical assets like equipment, supplies, cash, and charge cards. Be on the lookout for any instances you believe could lead to loss, misuse, waste, or theft of Apple property and tell someone about it. Speaking up shows you care.
- **Keep the mystery alive.** Apple is secretive because we know it adds to our customers' delight. Surprise is Apple's hallmark. Help keep it that way. Use extreme care to protect Apple's proprietary information from falling into the wrong hands, especially information about current and future products and services.
- **Be upstanding.** Follow our procurement procedures when acquiring goods or services, and use Apple's assets only for legal and ethical purposes.
- **Keep it clean.** Trash is inevitable. Waste is not. Before disposing of Apple assets, discuss your plans with your manager, get approval, and follow applicable policies.

What are assets?
Assets include Apple's proprietary information (such as intellectual property, confidential business plans, unannounced product plans, sales and marketing strategies, and other trade secrets), as well as physical assets like cash, equipment, supplies, and product inventory.

Can I give an Apple-owned iPhone to my family member for use?
No. You are responsible for protecting Apple's assets at all times. You must follow all security procedures regarding Apple's property.

Confidential Apple Information

One of Apple's greatest assets is information about our products and services, including future product offerings. Never disclose confidential, operational, financial, trade secret, or other business information without verifying with your manager that such disclosure is appropriate. Typically, disclosure of this information is very limited, and the information may be shared with vendors, suppliers, or other third parties only after a nondisclosure agreement is in place. Even within Apple, confidential information should be shared only on a need-to-know basis. The Intellectual Property Agreement you signed when you joined Apple defines your duty to protect information.

If I believe that it is appropriate to disclose confidential proprietary information to a vendor or other third party, what should I do?

First, verify that there is a business need for the disclosure. Second, obtain your manager's approval for the disclosure. Third, be sure that a nondisclosure agreement is in place with the vendor or third party, and that you forward the original copy of the agreement to the legal department. If you are still unsure, check with the legal department before making the disclosure.

How do I identify confidential Apple information in documents?
Mark these documents "Apple Confidential."

The Apple Identity and Trademarks

The Apple name, names of products (such as iPhone), names of services (such as AppleCare), taglines (such as "Don't steal music"), and logos (such as the familiar Apple logo) collectively create the Apple identity. Before publicly using the Apple name, product names, service names, taglines, or the Apple logo, review Apple's corporate identity guidelines on how names and logos can be used and presented (for example, the size of the Apple logo and the amount of white space surrounding it). Before using the product names, service names, taglines, or logos of third parties, check with the legal department.

What if I have a specific question on the use of the Apple name, names of products or services, or the Apple logo?
Please direct questions about the Apple corporate identity to corpID@apple.com.

Apple Inventions, Patents, and Copyrights

Apple's practice is to consider for patenting the inventions of its employees, regardless of whether the inventions are implemented in actual products. If you are involved in product development, you should contact the legal department regarding the patentability of your work. Be alert to possible infringement of Apple's patents and bring any possible infringements directly to the legal department.

How can I find out more about patents?
Visit Apple's Patent Information site.

If you create original material for Apple that requires copyright protection, such as software, place Apple's copyright notice on the work and submit a copyright disclosure form to the legal department. For more information, visit the Apple Copyright Information site.

Activities Related to Technical Standards

There are numerous organizations that develop or promote technical standards (such as W3C, OASIS, INCITS, IEEE, ETSI). Before engaging in activities related to technical standards, including, for example, joining a standards organization or working group, contributing technology to a standard, or using a standard in the development of an Apple product, employees must receive management and Legal approval. For additional information, see Apple's Standards Legal Policy.

Accuracy of Records and Reports

Accurate records are critical to meeting Apple's legal, financial, and management obligations. Ensure that all records and reports, including timecards, customer information, technical and product information, correspondence, and public communications, are full, fair, accurate, timely, and understandable.

Never misstate facts, omit critical information, or modify records or reports in any way to mislead others, and never assist others in doing so.

How can I learn more about procedures for meals and travel?
See Apple's Travel Policy or talk to your manager.

Business Expenses

All employees must observe policies and procedures regarding business expenses, such as meal and travel expenses, and submit accurate expense reimbursement requests. Guidelines on daily meal expenses vary worldwide.

Establishing Bank Accounts

All Apple bank accounts must be approved and established by Apple's Treasury department. All payments must be made by recordable and traceable methods. For more information, contact the treasury department.

Loans, Advances, and Guarantees

Other than through established corporate programs, such as programs for employee relocation and the cashless exercise of stock options, Apple does not provide loans or advances of corporate funds to its employees, officers, board members, or their families and does not guarantee their obligations.

If I suspect money laundering, what should I do?
Advise your manager or contact the Apple legal department.

Money Laundering

Money laundering is the process by which individuals or organizations try to conceal illicit funds or make these funds look legitimate. If you deal directly with customers or vendors, the following examples may be indications of potential money laundering:

- Attempts to make large payments in cash
- Payments by someone who is not a party to the contract
- Requests to pay more than provided for in the contract
- Payments made in currencies other than those specified in the contract
- Payments from an unusual, nonbusiness account

Tell me more about legal holds.
In a litigation case or other legal matter, Apple may be required to produce documents. In these cases the legal department may put a legal hold on certain documents to prevent the documents from being destroyed, altered, or modified. If it is found that Apple has failed to retain or produce required documents, penalties or adverse rulings may result.

Adverse rulings in major litigation cases can cost Apple a significant amount of money. Failure of employees to retain and preserve documents placed on legal hold may result in discipline or discharge.

Document Retention and Legal Hold

As an Apple employee, you have a responsibility to manage documents and make decisions on document retention. The definition of "document" is extremely broad. For example, every email or other electronic file, every customer record, and every transaction involves the creation of a document. Different documents have different retention periods. Check with your manager or contact Records Management to determine the appropriate retention period for documents in your area.

At times, Apple may need to retain documents beyond the period they would normally be retained. The most common reasons are litigation or other legal matters.

In these situations, retention and preservation of documents is critical. If you have documents that may be required for litigation or other legal matters, the legal department will place those documents on a legal hold, meaning the documents cannot be altered, destroyed, deleted, or modified in any manner. Legal will notify the individuals most closely identified with the documents about the legal hold and will provide instructions for retaining the documents. Recipients of a legal hold must ensure that these instructions are followed. A legal hold remains in effect until you are notified by the legal department in writing.

Customer Focus

Every product we make and every service we provide is for our customers. Focus on providing innovative, high-quality products and services and demonstrating integrity in every business interaction. Always apply Apple's principles of business conduct.

Customer and Third-Party Information

To what extent may I use an existing customer list to market other Apple products or services?
Before using a customer list for marketing, sales, or other activities, talk to your manager or the legal department. Using an existing customer list may or may not be appropriate.

Customers, suppliers, and others disclose confidential information to Apple for business purposes. It is the responsibility of every Apple employee to protect and maintain the confidentiality of this information. Failure to protect customer and third-party information may damage relations with customers, suppliers, or others and may result in legal liability. See the Apple Customer Privacy Policy.

Nondisclosure Agreements

Where can I learn more about information protection and nondisclosure agreements?
See frequently asked questions about nondisclosures and confidentiality agreements at Apple.

Where can I get a nondisclosure agreement?
Apple provides nondisclosure agreements for the U.S. and other locations outside the US.

When dealing with a supplier, vendor, or other third party, never share confidential information without your manager's approval. Also, never share confidential information outside Apple (for example, with vendors, suppliers, or others) unless a nondisclosure agreement is in place. These agreements document the need to maintain the confidentiality of the information. Original copies of nondisclosure agreements must be forwarded to the legal department. Always limit the amount of confidential information shared to the minimum necessary to address the business need.

Obtaining and Using Business Intelligence

As long as the information helps Apple, why is the source of business intelligence an issue?
Obtaining information illegally or unethically could damage Apple's reputation and in some cases could subject you and Apple to legal liability. For example, using illegally or unethically obtained information in a bid to the government could result in disqualification from future bidding and in criminal charges.

Apple legitimately collects information on customers and markets in which we operate. Apple does not seek business intelligence by illegal or unethical means, and competitors may not be contacted for the purpose of obtaining business intelligence. Sometimes information is obtained accidentally or is provided to Apple by unknown sources. In such cases, it may be unethical to use the information, and you should immediately contact your manager, the legal department, or the Business Conduct Helpline to determine how to proceed.

Third-Party Intellectual Property

It is Apple's policy not to knowingly use the intellectual property of any third party without permission or legal right. If you are told or suspect that Apple may be infringing an intellectual property right, including patents, copyrights, trademarks, or trade secrets owned by a third party, you should contact the legal department.

Copyright-Protected Content

May I keep my personal music on my computer at work?
If you are authorized to make copies of the music for personal use (for example, you purchased the music on iTunes), you may keep the music on your computer.

Never use or copy software, music, videos, publications, or other copyright-protected content at work or for business purposes unless you or Apple are legally permitted to use or make copies of the protected content. Never use Apple facilities or equipment to make or store unauthorized copies.

NON-CONFIDENTIAL VERSION
EXHIBIT F

Are business meals, travel, and entertainment considered gifts?
Yes. Anything of value is considered a gift.

Can I avoid these rules if I pay for gifts to customers or business associates myself?
No. If the gift is given for business reasons and you are representing Apple, the gift rules apply.

Giving and Receiving Business Gifts

Employees may not give or receive gifts or entertainment to or from current or potential vendors, suppliers, customers, or other business associates unless all of the following conditions are met:

- **Nominal value.** The value of the gift is less than US$150. Exceptions must be approved by your vice president (for vice president–level employees, exceptions must be approved by your manager).
- **Customary.** The item is a customary business gift and would not embarrass Apple if publicly disclosed. Cash is never an acceptable gift. Giving or receiving cash is viewed as a bribe or kickback and is always against Apple policy.
- **No favored treatment.** The purpose of the gift is not to obtain special or favored treatment.
- **Legal.** Giving or accepting the gift is legal in the location and under the circumstances where given.
- **Recipient is not a government official.** Never provide a gift, including meals, entertainment, or other items of value, to a U.S. or foreign government official without checking with Government Affairs in advance. See page 13 for more information on gifts to government officials.

This policy does not preclude Apple as an organization from receiving and evaluating complimentary products or services. It is not intended to preclude Apple from giving equipment to a company or organization, provided the gift is openly given, consistent with legal requirements, and in Apple's business interests. The policy also does not preclude the attendance of Apple employees at business-related social functions, if attendance is approved by management and does not create a conflict of interest.

Zero Gift Rule: Certain departments, including Operations, Retail, AppleCare, Hardware, Industrial Design, Finance, Facilities, FileMaker, IS&T, and the Business Conduct Group have more restrictive gift policies that prohibit giving or receiving gifts altogether. Employees in these departments must adhere to the stricter policies. For additional information, see the Operations, Hardware Engineering and Industrial Design Code of Conduct Policy and the Facilities, Filemaker, Finance, and IS&T No Gift Policy.

What is an example of a side deal?
In a sales environment, a side deal may involve a guarantee to accept back unsold products or other special agreements to encourage certain customers to place larger orders. Such a side deal, whether written or oral, can have an impact on Apple's potential liability with respect to that transaction and may make it inappropriate for Apple to recognize revenue on the products sold, affecting the accuracy of Apple's books and records. Side deals or side letters made outside of Apple's formal contracting and approvals process are strictly prohibited.

Side Deals or Side Letters

All the terms and conditions of agreements entered into by Apple must be formally documented. Contract terms and conditions define the key attributes of Apple's rights, obligations, and liabilities and can also dictate the accounting treatment given to a transaction. Making business commitments outside of the formal contracting process, through side deals, side letters, or otherwise, is unacceptable. You should not make any oral or written commitments that create a new agreement or modify an existing agreement without approval through the formal contracting process.

What can I do if a reseller complains to me about low prices at another reseller?
Advise the reseller that you can't discuss or attempt to influence pricing of other parties, since this could violate antitrust laws.

Competition and Trade Practices

Agreements with competitors are subject to rigorous scrutiny in all countries. Competitors are expected to compete, and compete aggressively on all terms. Agreements with our resellers, distributors and suppliers can also give rise to scrutiny, particularly if Apple has a leading position in the market.

You should not:

- Agree with competitors or exchange information with competitors on price, policies, contract terms, costs, inventories, marketing plans, capacity plans or other competitively significant terms.
- Agree with competitors to divide sales territories, products or assign customers.
- Agree with resellers on the resale pricing of Apple products without legal approval. Resellers must be free to determine their own resale prices.
- Violate fair bidding practices, including bidding quiet periods, or provide information to benefit one vendor over other vendors.
- Engage in any pricing or other practices that could defraud a supplier or others.
- Violate fair bidding practices, including bidding quiet periods, or provide information to benefit one vendor over other vendors.

Remember: Always consult the Competition Law Team whenever you have a question. For more detail, please see the Antitrust and Competition Law Policy.

What is an example of an endorsement?
A friend writes a great book on software design and asks you to endorse the book by making a statement on the back cover. If you make such an endorsement, don't include your job title or affiliation with Apple.

Endorsements

When representing Apple, never endorse a product or service of another business or an individual unless the endorsement has been approved by your manager and Corporate Communications. This does not apply to statements you may make in the normal course of business about third-party products that are sold by Apple.

Open Source Software

Open source software is software for which the source code is available without charge under a free software or open source license. Before using, modifying, or distributing any open source software for Apple infrastructure or as part of an Apple product or service development effort, you must review Apple's Open Source Software policy and contact the legal department for approval using the forms referenced in that policy.

Tell me more about pricing products that are sold to governments.
Governments shouldn't be charged more for our products or services than Apple charges other customers for the same products or services. There are laws that make it a crime to overcharge the U.S. government. Some other countries have similar laws.

Can I avoid a gift limitation by paying for a gift, such as lunch or golf, myself?
No. If you are representing Apple, any gift to a government employee would be viewed as coming from Apple.

What is considered a gift to a U.S. or foreign official?
In most cases, anything of value that is given is considered a gift. This includes items such as meals, golf, entertainment, and product samples. Cash is never an acceptable gift. Typically, giving cash is viewed as a bribe or kickback and is against Apple policy.

Who is a "foreign official"?
A foreign official is any official or employee of a foreign government or public international organization (including departments or agencies of those governments or organizations), or any person acting in an official capacity. Also included are employees of a state-run or state-owned business, such as a public utility, and employees of a public/government-run school or university.

Governments as Customers

Governments are unique customers for Apple. Governments often place special bidding, pricing, disclosure, and certification requirements on firms with which they do business. Discuss these requirements with Government Affairs or your local Apple Legal representative before bidding for government business.

Gifts to U.S. Officials

It may be illegal to give a gift, even an inexpensive meal or a T-shirt, to a government employee. The rules vary depending on the location and job position of the government employee (for example, rules may vary by state, school district, and city, and there may be different rules for various elected and non-elected officials).

To prevent violations, review all gifts to government officials with Government Affairs before giving a gift.

Gifts to Non-U.S. Officials

In many countries it is considered common courtesy to provide token/ceremonial gifts to government officials on certain occasions to help build relationships. Check local requirements and review any such gifts exceeding US$25 in advance with the legal department. For meals, the US$25 limit does not necessarily apply. Check here for value limits by country on meals to public officials and employees. Meals of any value should be avoided with officials from government agencies where Apple has a pending application, proposal, or other business.

No Bribery or Corruption

At Apple, we do not offer or accept bribes or kickbacks in any form, and we do not tolerate corruption in connection with any of our business dealings. You may not offer or receive bribes or kickbacks to or from any individual, whether that individual is a government official or a private party. For additional information, see Apple's Anti-Corruption Policy.

Political Contributions

Apple does not make political contributions to individual candidates. All corporate political contributions, whether monetary or in-kind (such as the donation/lending of equipment or technical services to a campaign), must be approved in advance by Apple Government Affairs. Employees may not use Apple assets (including employee work time, or use Apple premises, equipment, or funds) to personally support candidates and campaigns. It is illegal for Apple to reimburse an employee for a contribution. For more information, see the Apple Corporate Political Compliance Policy and the Political Contributions and Expenditures Policy.

What should I do if I'm interested in hiring a current or recent government employee?
Contact Government Affairs before beginning any negotiations to hire a current or recent government, military, or other public sector employee as an Apple employee or consultant.

Hiring Government Employees

Laws often limit the duties and types of services that former government, military, or other public sector employees may perform as employees or consultants of Apple. Employment negotiations with government employees are prohibited while the employees are participating in a matter involving Apple's interests.

Trade Restrictions and Export Controls

Many countries periodically impose restrictions on exports and other dealings with certain other countries, persons, or groups. Export laws may control trading of commodities or technologies that are considered to be strategically important because they have the potential to be used for military purposes. Laws may cover travel to or from a sanctioned country, imports or exports, new investments, and other related topics. Certain laws also prohibit support of boycott activities. See Apple's Export Control policy for more information.

If your work involves the sale or shipment of products, technologies, or services across international borders, check with the export department to ensure compliance with any laws or restrictions that apply.

How do I get more information regarding Apple's environmental, health, and safety programs?
Visit the Environment+Safety site.

Environment, Health, and Safety (EHS)

Apple operates in a manner that conserves the environment and protects the safety and health of our employees. Conduct your job safely and consistently with applicable EHS requirements. Use good judgment and always put the environment, health, and safety first. Be proactive in anticipating and dealing with EHS risks.

In keeping with our commitment to the safety of our people, Apple will not tolerate workplace violence. For additional information, review Apple's Workplace Violence policy.

Charitable Donations

Employees are encouraged to support charitable causes of their choice, as long as that support is provided without the use or furnishing of Apple assets (including employee work time, or use of Apple premises, equipment, or funds). Any charitable donations involving Apple assets require the approval of the Chief Executive Officer or Chief Financial Officer. For additional information, see Finance Policy 1.10.

This policy does not preclude Apple employees from using the Apple Matching Gifts Program to contribute to the nonprofit organization of their choice.

What if I want to get more involved in community activities?
Contact Community Affairs. This group promotes, supports, and facilitates employee involvement in community volunteer activities. Outside the U.S., check with your local Public Relations team or Human Resources.

Community Activities and Public Positions

At Apple, we comply with all laws and regulations and operate in ways that benefit the communities in which we conduct business. Apple encourages you to uphold this commitment to the community in all your activities.

If you hold an elected or appointed public office while employed at Apple, advise Government Affairs. Excuse yourself from involvement in any decisions that might create or appear to create a conflict of interest.

Your Obligation to Take Action

Always apply Apple's principles of business conduct, follow Apple policies, and comply with laws and regulations. When you are unsure, take the initiative to investigate the right course of action. Check with your manager, Human Resources, Legal, Internal Audit, or Finance, and review our policies on AppleWeb. If you would like to talk with someone outside your immediate area, consider contacting the Business Conduct Helpline.

If you know of a possible violation of Apple's Business Conduct Policy or legal or regulatory requirements, you are required to notify your manager (provided your manager is not involved in the violation), Human Resources, Legal, Internal Audit, Finance, or the Business Conduct Helpline. Failure to do so may result in disciplinary action.

Employees must cooperate fully in any Apple investigation and keep their knowledge and participation confidential to help safeguard the integrity of the investigation.

Business Conduct Helpline

The Business Conduct Helpline is available 24/7 to all employees worldwide to help answer your questions on business conduct issues, policies, regulations, and compliance with legal requirements. It also allows you to advise Apple of situations that may require investigation or management attention.

The Business Conduct Helpline is committed to keeping your issues and identity confidential. If you would be more comfortable doing so, you may contact the Helpline anonymously. Your information will be shared only with those who have a need to know, such as those involved in answering your questions or investigating and correcting issues you raise. Note that if your information involves accounting, finance, or auditing, the law may require that necessary information be shared with the Audit and Finance Committee of the Apple Board of Directors.

Due to legal restrictions, anonymous use of the Business Conduct Helpline is not encouraged in certain countries (for example, France).

Apple will not retaliate—and will not tolerate retaliation—against any individual for good-faith use of the Business Conduct Helpline.

Information on contacting the Business Conduct Helpline—including via email, toll-free telephone, and web access—is available on the Business Conduct website.

Policies and References

Alcohol in the Workplace

Anti-Corruption Policy

Business Conduct Helpline

Buying and Selling Stock: Blackout Periods

Buying and Selling Stock: Insider Trading

Community Affairs

Copyright Information

Copyright Policy

Corporate Identity Guidelines

Customer Privacy Policy

Diversity

Drugs in the Workplace

Employee Assistance Program (U.S. only)

Environment+Safety

Equal Employment Opportunity

Export Control

Finance Policy 1.10

Government Affairs

Policies and References (continued)

Harassment

Information Security

Intellectual Property

Legal Department Contacts

Mail and Electronic Communications

Matching Gifts Program

Name and Logo Use Questions: corpID@apple.com

Nondisclosure and Confidentiality Agreements

Open Communication

Open Source Software

Patent Information

Patent Policy

Personal Relationships

Political Compliance

Political Contributions and Expenditures

Procurement

Reasonable Accommodation

Records Management

Safe Harbor Privacy Policy

Standards Legal Policy

Trademarks

Travel Policy

Workplace Violence