

An antitrust case: the eBook case

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Overview of Presentation

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Opening of proceedings

At the beginning of 2011, the European Commission and the US Department of Justice carried on dawn raids at the premises of several companies active in the e-book market.

- In December 2011, the European Commission opened formal proceedings against the international publishers *Penguin, Simon & Schuster, Harper Collins, Hachette Livre, Macmillian* and *Apple Inc.*
 - Alleged violation of Article 101 of the TFEU.
- The DoJ filed the civil antitrust case in April 2012.
 - Alleged violation of Section 1 of the Sherman Antitrust Act.

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Allegations

Collusive practices aimed at:

- limiting retail price competition, and
- “rais[ing], fix[ing] and stabiliz[ing] eBook prices.”

6 Major Publishers

- Penguin
- Simon & Schuster
- Harper Collins
- Hachette Livre
- Macmillian
- Random house

2 Major Distributors

- **Amazon**
In November 2007 launched the e-reader Kindle.
- **Apple**
In April 2010 launched the iPad.

The Big Six

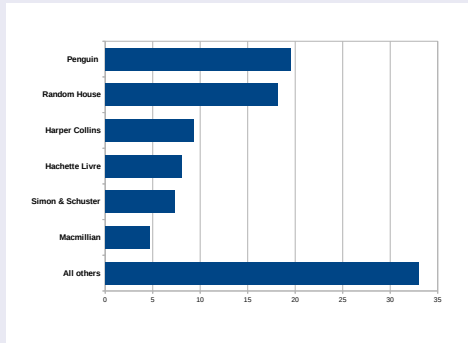


Figure 1: Publishers' revenue shares of U.S. e-book sales, First Quarter, 2010

Source: *US v. Apple et. al*, Trial Exhibit PX/1105 - Direct Testimony R. J. Gilbert

Major Distributors

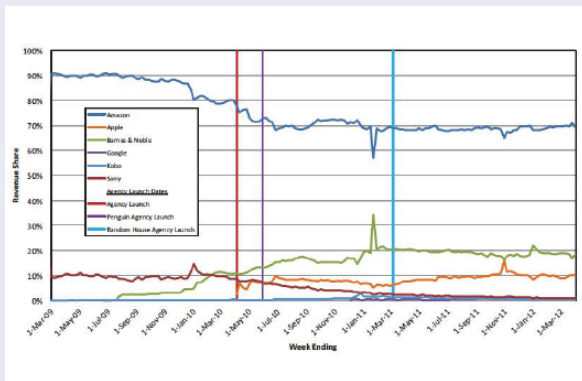


Figure 2: E-book Retailers' Shares of E-book Revenue, March 2009–March 2012

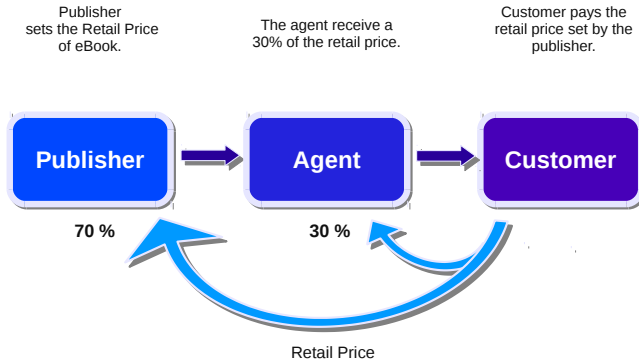
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Wholesale Model

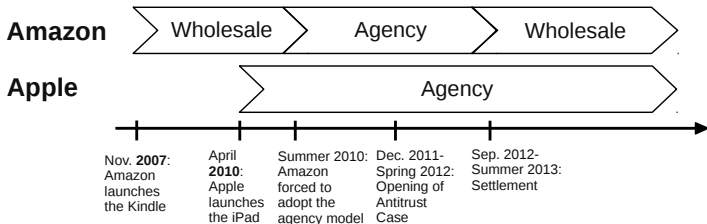


Amazon sold newly released and bestselling e-books to consumers for \$9.99.

Agency Model



Wholesale Model vs Agency Model



- Why did Amazon opt for the wholesale model?
- Why did it sell e-books at a loss?
- Why did Apple adopt the agency model, ceding control over the retail price to publishers?

Apple Agency Agreements

- **Agency model** with Apple receiving a 30% commission.
- **MFN Clause** requiring the publishers to match on Apple's platform—the “iBookstore”—the lowest price listed on any other bookstore.
- **Maximum retail price grid** with price caps of \$12.99 and \$14.99 for bestsellers.

The price jump

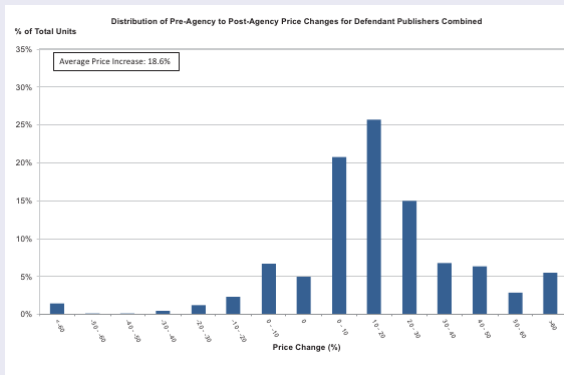


Figure 3: Distribution of price changes (from pre- to post-switch).

Source: *US v. Apple et. al*, Trial Exhibit PX/1105 - Direct Testimony R. J. Gilbert

Antitrust case in the European Union

Timeline

- **September 2012:** Apple and the publishers (except Penguin) offer initial commitments to address EC's concerns.
- **September 2012:** Stakeholders are consulted and the proposed commitments are market tested.
- **December 2012:** The parties sign the Final Commitments and the Commission closes the proceedings, making the commitments legally binding.
- **July 2013:** Penguin submits identical commitments.

Final Commitments

Apple and the five publishers agreed:

- to terminate all on-going agency agreements, and
- not to enter into agreements that contain MFN clauses for five years.

The five publishers further committed to a two-year “cooling-off period”, during which retailers are free to offer retail price discounts for e-books.

Antitrust Lawsuit in the Unites States

Timeline

- **September 2012:** Harper Collins, Simon & Schuster, and Hachette agree to a settlement.
- **December 2012:** Penguin joins settlement.
- **February 2013:** Macmillian settles.
- **July 2013:** Apple is found guilty by the US court.
- **October 2013:** Apple files an appeal against injunction.

Terms of Settlement

Publishers agreed:

- to terminate all agency agreements with Apple,
- non to enter into agreements which contain an MFN clause or restrict the retailer's ability to compete over e-book pricing for two years, and
- to create a \$166 million fund to compensate consumers.

Remedies and Fines

Apple was prohibited:

- from entering into agreements which contain an MFN clause or restrict its ability to compete over e-book pricing, and
- from exchanging competitively sensitive information with publishers.

In addition, Apple has to be subject to an external compliance monitor to evaluate its internal antitrust policies.

Is this competition case straightforward?

- Does the agency model raise prices?
- Could lower prices be expected in the long term under the agency model?
- Could the optimal choice depend on the different competitive pressures at the two levels (upstream and downstream?)
- Could what is seen as a violation by some, be otherwise interpreted as fair competition by others?