



Consumer Federation of America

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Consumer Group Supports DOJ Efforts to Restore Competition to the eBook Market

CFA Files Comments Refuting Industry Claims

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(Washington D.C. Monday, June 15, 2012) -- The Consumer Federation of America filed comments in the eBook price fixing case explaining why the settlement reached by the Department of Justice and three major publishers is in the public interest. CFA's analysis challenged the comments filed by Barnes & Nobel and the American Bookseller association. Dr. Mark Cooper, CFA's Director of Research released the following statement:

These comments show that the claims of the brick and mortar retailer and celebrity authors are incorrect. The cartel agency model was not harmless to consumers or benign for the book market.

The arguments against the settlement are wrong. They are based on misrepresentations of the purpose and intent of the antitrust laws and faulty analysis of the economics and nature of competition in the digital era of book publishing.

The competitive structure built on a cartel agency pricing model increased the price to consumers and the profits of colluding publishers and selected brick-and-mortar retailers. There are no indications that the book market performed better in the aggregate under the cartel agency model than it would have if the offending practices had not been present.

In order to defend cartel agency pricing the brick and mortar bookstores and celebrity authors have had to concoct a description of the market in which bookstores are squeezed between two much more efficient distribution models – big box mass marketers on the one side and long-tail e-tailers on the other. With efficiency all around, they impute massive importance to their particular function, even as it is being rapidly eroded. The story told by the brick-and-mortar bookstores and celebrity authors is nothing more or less than a “luddite” rant against change. One astute observer of the music business in the digital age concluded that “it looks like the record business is doomed. The music business, however, has a bright future.” Books are being devalued, literature is not.

The proposed remedy dials back to a moment before collusion distorted the development of nascent digital books distribution. The two-year period in which the consent decree restricts the use of agency agreements by the cartel members in an effort to allow competitive, commercial relations to return to the book publishing market is dangerously short and a break with past antitrust practice. If any modification of the consent decree is needed, based on the record and past practice, it should be to lengthen the period in which behavior of the members of the cartel is restricted, not shorten it.

The self-interested claims of brick and mortar retailers and celebrity authors who profit from price fixing at the expense of consumers must not mislead the court into thinking that:

(1) the public interest lies in anything short of restoring full price competition to the book publishing marketplace or

(2) that the harm to competition inflicted by the agency cartel price-fixing for digital distribution of books at a critical moment in the nascent development of new digital business models can be repaired without a significant period of close oversight and scrutiny.

The comments are available on CFA's website,
consumerfed.org:www.consumerfed.org/pdfs/Comments.CFA.Tunney%20Act.eBook.6.25.12.pdf