



# Department of Justice

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## **SECOND CIRCUIT AFFIRMS APPLE'S LIABILITY FOR PER SE UNLAWFUL E-BOOK PRICE-FIXING CONSPIRACY**

WASHINGTON – Assistant Attorney General Bill Baer of the Justice Department's Antitrust Division released the following statement today after the U.S. Court of Appeals for the Second Circuit ruling in *United States v. Apple Inc.*:

“We are gratified by the court's decision. The decision confirms that it is unlawful for a company to knowingly participate in a price-fixing conspiracy, whatever its specific role in the conspiracy or reason for joining it. Because Apple and the defendant publishers sought to eliminate price competition in the sale of e-books, consumers were forced to pay higher prices for many e-book titles.

“I am proud of the outstanding work done by the trial team who initially established Apple's liability and by the lawyers who defended the district court's decision in this appeal. The Antitrust Division will continue to vigorously protect competition and enforce the antitrust laws in this important business, and in other industries that affect the everyday lives of consumers.”

### **Background**

On April 11, 2012, the department filed a civil antitrust lawsuit in the U.S. District Court for the Southern District of New York against Apple, Hachette Book Group (USA), HarperCollins Publishers L.L.C., Holtzbrinck Publishers LLC (which does business as Macmillan), Penguin Group (USA) Inc. and Simon & Schuster Inc. for conspiring to end e-book retailers' freedom to compete on price by taking control of pricing from e-book retailers and substantially increasing the prices that consumers paid for e-books.

At the same time that it filed the lawsuit, which was consolidated with suits brought by 33 states and territories, the department reached settlements with three of the publishers – Hachette, HarperCollins and Simon & Schuster. Those settlements were approved by the court in September 2012. The department settled with Penguin on Dec. 18, 2012, and with Macmillan on Feb. 8, 2013. The Penguin settlement was approved by the court in May 2013 and the Macmillan settlement was approved in August 2013. Under the settlements, each publisher was required (a) to terminate agreements that prevented e-book retailers from lowering the prices at

which they sell e-books to consumers and (b) to allow for retail price competition in renegotiated e-book distribution agreements.

The department's trial against Apple, which was overseen by U.S. District Judge Denise L. Cote of the Southern District of New York, began on June 3, 2013. The trial lasted for three weeks, with closing arguments taking place on June 20, 2013. Judge Cote issued her opinion and order on July 10, 2013, finding Apple liable for knowingly participating in and facilitating a conspiracy with the publishers. On Sept. 5, 2013, Judge Cote entered a final judgment prohibiting Apple from immediately reestablishing e-book distribution agreements with the defendant publishers similar to the agreements that were established through the conspiracy and from entering e-book distribution agreements containing most-favored-nations provisions; requiring Apple to adopt a rigorous antitrust compliance program; and imposing an external compliance monitor to evaluate and recommend improvements to Apple's antitrust compliance and training programs.

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