

NY judge: Apple Colluded to Raise e-Book Prices

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New York (AP) — Apple Inc. milked the popularity of its iTunes store to form an illegal cartel with publishers to raise electronic book prices, a federal judge decided in a case swayed by the words of the late Steve Jobs.

Wednesday's ruling by U.S. District Judge Denise Cote in Manhattan sided with government regulators' contention that Apple joined five major book publishers to gang up Amazon.com in a price-fixing conspiracy that caused consumers to pay more for electronic books.

Determined to protect one of the world's most beloved brands, Apple has steadfastly denied it did anything wrong, even as the book publishers involved in the case settled to avoid a trial. Apple didn't waver from its insistence of innocence after Cote drew an unflattering portrait of the iPhone and iPad maker in her 160-page ruling.

The Cupertino, Calif., company vowed to appeal the decision, extending a legal odyssey that could wind up in the U.S. Supreme Court.

It's unclear whether the initial outcome will have a dramatic impact on the pricing of e-books, which continue to supplant printed copies as more people buy tablets such as the iPad and other devices such as Amazon's Kindle.

"The effect on consumers will be negligible," predicted Ankur Kapoor, an antitrust specialist for Constantine Cannon in New York.

The earlier settlements with book publishers were designed to encourage more discounting. But that hasn't happened, even at Amazon, which had unnerved publishers by selling e-book versions of popular hardcover titles for \$9.99 before the April 2010 release of Apple's iPad.

It's a discounting practice that Apple and the publishers sought to eliminate leading

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up to the iPad's debut, according to the antitrust lawsuit filed last year by the U.S. Justice Department and 33 state attorneys general.

Apple's iTunes store, where hundreds of millions of consumers already were regularly buying music, videos and applications, provided a powerful platform to undermine Amazon's pricing system, the government contended in arguments that ultimately convinced Cote, who presided over the two-and-half-week trial.

"Apple seized the moment and brilliantly played its hand," Cote said. She wrote that Apple's deals with publishers caused some e-book prices to rise 50 percent or more virtually overnight. As part of its standard commission, Apple received a 30 percent cut of each e-book sold.

Cote, who hasn't yet determined the financial scope of the damages, said the evidence was "overwhelming that Apple knew of the unlawful aims of the conspiracy and joined the conspiracy with the specific intent to help it succeed."

Jobs' words played a pivotal role in the trial's outcome, even though the Apple co-founder and longtime CEO died in October 2011 after a long battle with cancer.

Government lawyers cited some of Jobs' email exchanges and thoughts that he shared with his biographer Walter Isaacson as proof of his willingness to collude with publishers. His aim, lawyers argued, was to gain access to more digital content that would help make the iPad a more attractive device.

In her ruling, Cote said "compelling evidence of Apple's participation in the conspiracy" came from Jobs' words.

Isaacson wrote that Jobs said Apple assured publishers, "We'll go to the agency model, where you set the price, and we get our 30 percent and yes, the customer pays a little more, but that's what you want anyway."

Jobs told publishers that they had to allow Apple to sell at a lower price, if rivals also continued to discount. That's when the publishers asked Amazon to sign a contract requiring them to pay the higher "agency" prices. If Amazon refused, it wouldn't get any books to sell, Jobs told Isaacson.

The publishers that previously settled the price-fixing charges are Hachette, HarperCollins, Simon & Schuster, Holtzbrinck Publishers, doing business as Macmillan, and The Penguin Publishing Co. Ltd., doing business as Penguin Group.

Even though those settlements removed the shackles that prevented Amazon from discounting, the \$9.99 price for e-books that publishers dreaded has become increasingly rare.

For instance, a Simon & Schuster e-book published Tuesday, Brad Thor's "Hidden Order," was selling Wednesday for \$12.74. Neil Gaiman's "The Ocean at the End of the Lane," released last month by an imprint of HarperCollins Publishers, cost \$12.80. The same e-books were listed for \$12.99 apiece in Apple's iTunes store.

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Amazon declined to comment Wednesday.

The rising prices for e-books could be part of a nascent market's natural evolution rather than the by-product of a sinister scheme, according to Boston College Law School Professor David Olson.

"With Apple entering the scene, there were the beginnings of multiple platforms for e-books and distribution levels and instead of letting negotiation and pricing in the market shape itself, the court wants to freeze in time the price and the model that Amazon brought forth," Olson said.

In her ruling, Cote said the conspiracy harmed consumers in numerous ways. Some had to pay more for e-books, she said. Others bought a cheaper e-book rather than the one they preferred to purchase and others deferred a purchase altogether rather than pay the higher price.

Although she acknowledged that many of Apple's practices in its dealings with publishers would individually be legal, Cote said they collectively furthered the goal of raising e-book prices across the board.

Apple spokesman Tom Neumayr said the addition of the iBookstore to the iTunes mall "gave customers more choice, injecting much needed innovation and competition into the market, breaking Amazon's monopolistic grip on the publishing industry."

Cote's decision wasn't surprising. She had urged Apple to settle before trial, warning that the company only had a slim chance of winning.

Apple did little to change her mind during the trial. She identified five trial witnesses as "noteworthy for their lack of credibility," including Eddy Cue, a top Apple executive described as Jobs' right-hand man.

Bill Baer, an assistant attorney general for the Justice Department, hailed the ruling as "a victory for millions of consumers who choose to read books electronically."

Kapoor, the antitrust lawyer, believes Apple has a good chance to win in its appeal. He thinks much of the evidence illustrates Jobs' ability to negotiate smart deals and transform markets. Just because Jobs "understood the industry dynamics doesn't mean that Apple and the publishers all agreed to raise prices," Kapoor said.

Cote said a damages trial would follow, though none was immediately scheduled. A conference hearing is scheduled for Aug. 9.

Investors largely shrugged off Apple's legal setback. Apple's stock shed just \$1.62 to close at \$420.73.

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