



Written by [Joe Wolverton, II, J.D.](#) on December 7, 2011

Apple Computers Being Investigated by EU — Again

Such an inquiry is authorized by Article 11(6) of the EU's [Anti-trust Regulation](#). That measure reads in relevant part:

In order to ensure that the Community competition rules are applied effectively, the competition authorities of the Member States should be associated more closely with their application. To this end, they should be empowered to apply Community law.



The purpose of the investigation will be to determine whether Apple and several major publishing companies — including Hachette Livre, Harper Collins, Simon & Schuster, and Penguin, among others — unlawfully colluded in order to inflate the prices charged for electronic versions of books published by these firms.

In a [story by Bloomberg](#), the competitive climate in the EU with regard to sales of ebooks was discussed:

PricewaterhouseCoopers said in a January report that European e-book sales have been sluggish, partly due to the small range of non-English titles and fixed price agreements between publishers and stores in 13 countries.

EU Competition Commissioner Joaquin Almunia said last month that he wanted to fight “artificial restrictions imposed by some companies to cross-border trade” and was examining the way e-books are distributed.

In a statement, the Commission for Competition announced that the specific purpose of its investigation is to determine “whether these publishing groups and Apple have engaged in illegal agreements or practices that would have the object or the effect of restricting competition in the EU or in the EEA.” The statement continued,

The Commission is also examining the character and terms of the agency agreements entered into by the above named five publishers and retailers for the sale of e-books. The Commission has concerns, that these practices may breach EU antitrust rules that prohibit cartels and restrictive business practices (Article 101 of the Treaty on the Functioning of the European Union).

[Article 101](#) of that treaty reads:

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:



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- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
- any agreement or category of agreements between undertakings,
 - any decision or category of decisions by associations of undertakings,
 - any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Apple, Paris-based Lagardere, and Macmillan all refused to comment on the EU's decision to investigate their relationship. According to [published reports](#), "Harper Collins is 'cooperating fully with the investigation,' according to an e-mailed statement from spokeswoman Siobhan Kenny. Simon and Schuster is also cooperating with the probe, spokesman Adam Rothberg said in an e-mail."

[Cnet reports](#) that recent actions on the part of the government of the EU demonstrates that the continental authority is serious about cracking down on collusion and price fixing. The Cnet piece explains:

For its part, the European Commission has been quite active already in investigating the e-book business. The organization in March "carried out unannounced inspections" at several e-book publisher sites, but did not reveal any details on the information it collected. The Commission has also worked with the U.K. Office of Fair Trading on the matter and will continue to do so in the coming weeks and months.

Europe isn't the only jurisdiction where Apple is being forced to defend the legality of its business practices. In California, a class action lawsuit was filed where the the same corporate practices were at issue.

In the class action lawsuit the plaintiffs complain that in the setting of prices for ebooks, Apple has violated federal and state antitrust laws, including the Sherman Act, the Cartwright Act, and the Unfair Competition Act.

The defendants, including Apple and several book publishers, were accused by complainants of engaging in an "agency model" pricing system "whereby publishers set the prices customers must pay. It stands in contrast to the traditional model, in which publishers set a retail price and retailers offer a



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sales price. The plaintiffs argued that the move is designed to hurt Amazon, and thus, limit competition in the marketplace.”

Observers commented that Apple engaged in such behavior in order to prevent Amazon’s Kindle e-reader from seriously challenging Apple’s iPad in the growing e-reader market.

Earlier this year, Apple successfully challenged device maker HTC. The U.S. International Trade Commission ruled that the Taiwan-based telecommunications company infringed on patents owned by Apple in the manufacture of several cellphones using the Android operating system.

Just prior to the filing of the complaint against HTC, Apple sued Samsung for similar appropriations of its intellectual property. In the suit, Apple asked the court to prevent the importation of certain phones and tablets made by Samsung.

Specifically, Apple alleged that the “Galaxy” line of smartphones and tablet computers were built upon unlawful duplications of patents owned by Apple related to its iPhone and iPad products.

Currently, Apple is a litigant in two other suits against Samsung regarding patent infringement. One of these suits was filed in the United States and the other in the United Kingdom.

Apple has found itself on the other side of the patent pilfering issues, however. In June, Nokia settled a case with Apple the terms of which required Apple to pay royalties to Nokia for a definite period of time as set forth in the agreement.

According to published figures, Apple has sold more than 25 million iPads. Firm numbers of Kindles sold by Amazon have not been released, though estimates put the total at between three and four million.



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