BLOGS
Antitrust

Ruling That Apple Conspired With Book Manufacturers Affirmed

Finding Apple, Inc. per se liable under the Sherman Antitrust Act, the United States Court of Appeals for the Second Circuit has affirmed a district court's important ruling from 2013 in *United States v. Apple*, 2015 WL 3953243 (2d Cir. June 30, 2015). The appellate court agreed that Apple orchestrated what became a "horizontal" agreement among nearly all major book publishing companies to fix (and raise) prices of electronic books. Based on this analysis of the situation as horizontal—including the unique role of Apple, a nonpublisher—the court held Apple's conduct to be a *per se* unreasonable restraint of competition.

What did Apple do? The court affirmed that Apple entered into its separate contracts with each publisher as part of a coordinated effort to wrest control of the e-book industry from Amazon and its early Kindle product. These agreements, which all employed an "agency model" and "most favored nations" clauses benefitting Apple, had the intent and effect of increasing prices.

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