

# U.S. Department of Justice, State AGs, and European Commission Investigating Apple and Major E-Book Publishers

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On Wednesday, the United States Department of Justice ("DOJ") [announced](#) that it is investigating whether Apple Inc. and major publishing companies agreed to fix prices for e-books, and that state attorneys general continue to investigate the same conduct. This followed one day after an announcement that the European Commission ("EC"), the European Union's antitrust enforcement unit, is investigating the same conduct. Last year attorneys general in Connecticut and Texas commenced their investigations, and soon afterwards several class action lawsuits were filed alleging similar conduct. These developments demonstrate that concerted behavior can raise antitrust concerns in digital media just as they do in print media, particularly when many expect that digital technology promotes decreased distribution costs which should lead to decreased prices.

## Background

Shortly after Apple launched the iPad in April 2010, the Texas and Connecticut attorneys general each began investigating so-called "agency" agreements that Apple entered with the largest e-book publishing houses. The Connecticut AG's inquiry also focused on Amazon's entry of similar deals. Before the advent of the iPad, the norm in the industry was that each retailer determined the ultimate price to be paid by consumers for a particular book. The state attorneys general were concerned that Apple and Amazon entered into a deal allowing the publishers to set the price which customers will ultimately pay for e-books, with Apple getting a 30% share and essentially being the publisher's "agent." By entering these deals with giant retailers Apple and Amazon, the attorneys general were concerned that the publishing companies reduced the incentive of other retailers to offer lower prices. Soon after the investigations were made public, private parties brought numerous class action lawsuits against Apple and several of the publishers based on essentially the same conduct, and requests to consolidate these matters are now pending before the U.S. Judicial Panel on Multidistrict Litigation.

The EC and DOJ investigations are concerned with essentially the same conduct at issue in the state AG investigations and class actions.

## Implications

Digital media have the potential for an enhanced consumer experience, and distribution at lower

cost. Companies that publish or distribute digital media should be cognizant that price increases may be accompanied by antitrust risk, particularly when the companies in an industry begin to employ similar business models around the same time or employ similar prices. With new technologies developing rapidly, antitrust enforcers are actively working to ensure that companies' business practices do not hamper competitors' incentive to innovate or cut costs.

If you have any questions about the investigations, or could benefit from counseling in this area, please contact the authors at the addresses below.

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