

A CALL TO INVESTIGATE AMAZON

The recent decision in *United States v. Apple* raises the spectre once again of Amazon's excessive power in the publishing landscape. The federal appellate court in the case agreed with the lower court that Apple had indeed violated antitrust law by cooperating with publishers to establish agency pricing for e-books (which allows publishers to set their own prices and pay the retailer a commission). The irony of this decision is that Apple's actions actually helped to open the e-book market and to reduce Amazon's monopoly from a 90% market share in 2009 to around 67% today.

Without commenting on the outcome of the *Apple* case, or the facts that led the majority to its conclusion, we'd like to point out the long-term dangers of interpreting antitrust law solely to favor low book prices over a thriving, competitive and robust literary marketplace. Despite the decision against Apple, Amazon's tactics seemed troubling to the court. All three opinions, the majority, concurrence and a dissent, referred to the fact Amazon controlled 90% of the e-book market in 2009, and two of the three judges expressed clear concerns regarding Amazon's anticompetitive behavior.

Judge Dennis Jacobs, in dissent, characterized Amazon's behavior as so extreme that Apple had little alternative other than to enter the market on the terms that it did in order to create needed competition. Judge Raymond Lohier, concurring in the majority, found some "appeal to Apple's argument that the e-book market, in light of Amazon's virtually uncontested dominance, needed more competition." Judge Lohier, however, felt that

"more corporate bullying is not an appropriate antidote to corporate bullying."

What, then, is the appropriate antidote?

We once again request the Department of Justice to investigate Amazon for its anti-competitive behavior, a far more dangerous variant than that of Apple.

Below is a letter to the Department of Justice, written by Douglas Preston and Barry Lynn in cooperation with the Authors Guild. Preston is a Council Member of the Authors Guild, which from the beginning has been a partner in this initiative. Last summer he spearheaded a grassroots protest against Amazon's punishment of authors during its dispute with the publisher Hachette. Under the rubric "Authors United," he gathered over 900 authors' signatures and took out a two-page advertisement in The New York Times, in a public challenge to Amazon's actions.

The following letter addresses the larger issue of Amazon's control of the book market and requests an investigation of the company by the Department of Justice. The Authors Guild supports Preston's actions and endorses his request, as do the American Booksellers Association and the Association of Authors' Representatives.

Roxana Robinson
President
The Authors Guild