UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-v-

APPLE, INC., et al.,

Defendants.

12 Civ. 2826 (DLC)

ORDER

DENISE COTE, District Judge:

On August 13, 2012, non-party Bob Kohn ("Kohn") filed a motion for leave to participate in this litigation as amicus curiae (the "August 13 Motion"), and submitted a proposed 25-page response to the U.S. Department of Justice's Tunney Act filings with a 12-page appendix. On August 15, 2012, non-party the Authors Guild, Inc. (the "Authors Guild") submitted a similar motion for limited participation as amicus curiae in the Tunney Act proceedings (the "August 15 Motion"), and submitted a proposed five-page response. For the following reasons, the two motions are granted.

BACKGROUND

The Government filed this action on April 11, 2012 against defendants Apple, Inc. ("Apple"); Hachette Book Group, Inc. ("Hachette"); HarperCollins Publishers L.L.C. ("HarperCollins"); Verlagsgruppe Georg Von Holtzbrinck GMBH and Holtzbrinck

Publishers, LLC d/b/a MacMillan (collectively, "MacMillan"); The Penguin Group, a division of Pearson PLC and Penguin Group (USA), Inc. (collectively, "Penguin"); and Simon & Schuster, Inc. ("Simon & Schuster"). That same day, the Government submitted a proposed Final Judgment as to defendants Hachette, HarperCollins, and Simon & Schuster, as well as a Competitive Impact Statement pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. §§ 16(b)-(h), which invited public comment on the Proposed Final Judgment. Kohn and the Authors Guild filed 55- and ten-page submissions, respectively, during the public comment period.

The Government filed its response to the public comments on July 23 and, pursuant to a Scheduling Order of June 25, submitted a motion for entry of the proposed Final Judgment on August 3. Submissions in response to the motion by parties to the litigation were submitted by August 15 and, pursuant to the June 25 Scheduling Order, did not exceed five pages. The Government filed its reply on August 22. On August 1, non-parties the American Booksellers Association, Inc. and Barnes & Noble, Inc. filed a motion, which was granted on August 6, for leave to file amici curiae responses to the Government's Tunney Act submissions.

DISCUSSION

Under Section 16(e) of the Tunney Act, the district court must determine in advance whether the entry of an antitrust consent decree is "in the public interest." 15 U.S.C. § 16(e). In making this determination, the Court "may . . . authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, . . . or participation in any other manner and extent which serves the public interest as the court may determine appropriate." 15 U.S.C. § 16(f). In exercising its discretion under this provision, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24.

In accordance with these principles, both the August 13 Motion and the August 15 Motion are granted. The Authors Guild's proposed five-page response to the DOJ's Tunney Act filings is accepted.

The proposed response and appendix submitted by Kohn, however, are not accepted for filing because they far exceed five pages. Kohn had a full opportunity to express his opinion on the proposed Final Judgment during the public comment period and took full advantage of this opportunity. Any additional

remarks need only address new arguments presented in the Government's July 23 and August 3 submissions.

CONCLUSION

The August 13, 2012 and August 15, 2012 motions by Kohn and the Authors Guild for leave to file amicus curiae responses to DOJ's Tunney Act filings are granted. The Authors Guild's proposed response is accepted. Any amicus curiae response by Kohn must be submitted by **September 4, 2012** and must not exceed five pages in length.

SO ORDERED:

Dated: New York, New York
August 28, 2012

DENISE COTE
United States District Judge