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 April 11, 2012, plaintiff the United States of America (the "Government") filed a civil antitrust complaint alleging that Apple, Inc. ("Apple") and five of the six largest publishers in the United States ("Publisher Defendants") conspired to raise prices of electronic books, or e-books, in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. On September 5, 2012, the Court granted entry of final judgment as to three of the Publisher Defendants -- Hachette, HarperCollins, and Simon & Schuster ("September 5 Opinion" and "Original Final Judgment," respectively). The Government now moves for entry of final judgment as to the Penguin Group, a division of Pearson PLC and Penguin Group (USA), Inc. (collectively, "Penguin").

On December 18, 2013 the Government submitted a proposed final judgment as to Penguin ("Penguin Final Judgment") as well

as a Competitive Impact Statement pursuant to Section 2(b) of the Tunney Act, 15 U.S.C. §§ 16(b)-(h), which invited public comment on the Penguin Final Judgment. The 60-day public comment period ended on March 5, 2013. Three comments from the public were timely submitted.

The Government filed its response to the public comments on April 5 ("Response"), and moved for entry of the proposed Final Judgment on April 18. By Memorandum Opinion & Order of April 30, the Court permitted non-party Bob Kohn ("Kohn") to file a reply to the Government's Response as amicus curiae. Kohn's submission was accepted that same day. The motion for entry of the proposed Penguin Final Judgment was fully submitted on May 10. By letters dated April 30 and May 10, Kohn requested oral argument on the Penguin Final Judgment. Pursuant to a June 25 Scheduling Order, a trial as to non-settling defendants is to begin on June 3, 2013.

The language and relief contained in the proposed Penguin Final Judgment is largely identical to the terms included in the Original Final Judgment. No opposition to the Penguin Final Judgment was filed by any party to this action. While 868 public comments were submitted with respect to the Original Final Judgment, most of which opposed entry thereof, only three comments were submitted by third parties objecting to aspects of the proposed Penguin Final Judgment ("Penguin Comments").

There is no need for a hearing prior to making a determination on the Penguin Final Judgment. The September 5 Opinion comprehensively addresses the arguments raised by the Penguin Comments and Kohn's amicus curiae filing in opposition to the Penguin Final Judgment.[1] The Court thus adopts by reference the reasoning of the September 5 Opinion and its relevant holdings, and finds that entry of final judgment as to Penguin is in the public interest. Accordingly, it is hereby

ORDERED that the Government's April 18, 2013 motion for entry of the proposed Penguin Final Judgment is granted.

SO ORDERED:

Dated: New York, New York
May 17, 2013

DENISE COTE
United States District Judge

[1] The objection raised by Canadian corporation Steerads Inc. in the Penguin Comments -- that the Penguin Final Judgment "provides inadequate relief" by failing to include a provision under which it would have prima facie effect in any subsequent private litigation -- was not directly addressed in the September 5 Opinion. The Court did, however, conclude that a carefully tailored consent decree, "directed narrowly towards undoing the price-fixing conspiracy, ensuring that price-fixing does not immediately reemerge, and ensuring compliance," was reasonable and appropriate in this case. United States v. Apple, Inc., 889 F.Supp.2d 623, 633 (S.D.N.Y. 2012). This conclusion remains unchanged.