Judge Rules Against Apple in E-Books Trial

A federal judge on Wednesday found that Apple violated antitrust law in helping raise the retail price of e-books, saying the company "played a central role in facilitating and executing" a conspiracy with five big publishers.

"Without Apple's orchestration of this conspiracy, it would not have succeeded as it did in the spring of 2010," the judge, Denise L. Cote of United States District Court in Manhattan, said in her ruling. She said a trial for damages would follow.

Government lawyers argued in court last month that Apple had colluded with five big American publishers to raise prices for electronic books across the publishing market.

The Justice Department brought the antitrust case against Apple and the publishers a year ago. The publishers settled their cases, but Apple executives insisted that the company had done nothing wrong, and the company continued to insist that on Wednesday.

"Apple did not conspire to fix e-book pricing and we will continue to fight against these false accusations," Tom Neumayr, an Apple spokesman, said. "When we introduced the iBookstore in 2010, we gave customers more choice, injecting much needed innovation and competition into the market, breaking Amazon's monopolistic grip on the publishing industry. We've done nothing wrong and we will appeal the judge's decision."

The Justice Department said the judge's decision was a victory for people who buy e-books.

"Companies cannot ignore the antitrust laws when they believe it is in their economic self-interest to do so," the Justice Department said in a statement. "This decision by the court is a critical step in undoing the harm caused by Apple's illegal actions."

It appears unlikely that the ruling will have an immediate effect on the book-buying public. The publishers who have already settled with the government are operating under the settlement's terms, which prohibit publishers from restricting a retailer's ability to discount books.

Since those settlements have gone into effect, prices on many newly released and best-selling e-books have gone down. One New York Times best-seller, "And the Mountains Echoed," by Khaled Hosseini, is sold on Amazon.com for $10.99. But other e-books seem to have held closer to pre-settlement prices: "The Ocean at the End of the Lane," by Neil Gaiman, is listed for $12.80 on Amazon.

The antitrust battle underscores the turmoil in the book industry as readers shift from ink and paper to electronic devices like tablets and smartphones, where they can buy content with the push of a button. While the publishers want to embrace new media, they are also trying to protect their profits and retain control of their businesses. Apple's lawyers noted at the trial that the publishers had long complained that Amazon.com's uniform pricing of $9.99 for new e-book titles was too low.

A recent survey of the publishing industry revealed that in the United States, e-books account for 20 percent of publishers' revenue, more than $3 billion, up from 15 percent the year before. E-books have had a slower rate of adoption in Europe and the rest of the world, but analysts expect that major growth will develop in the next several years. A report by Forrester predicted that by 2017, Europe will be the largest e-book market in the world, generating revenue of $19 billion.

In his testimony, Eddy Cue, Apple's senior vice president of Internet software and services, who was in charge of negotiating deals with the publishers, conceded that Apple opened the door for book publishers to raise prices in its own e-book store. But he said that the company was not intending to push Amazon, the dominant player in the e-book market, to raise its prices, too.

“Amazon could have negotiated a better deal,” Mr. Cue said in his testimony. “They had a lot more power.”

But the Justice Department said Apple’s deal with the publishers left Amazon with no choice but to raise prices. When Apple entered the e-book market in 2010, it changed the way publishers sold books by introducing a model called agency pricing, where the publisher — not the retailer — sets the price, and Apple took a cut of each sale. As a result, the publishers were able to set e-book prices higher. Apple proposed price caps of $12.99 and $14.99.

Apple also included a condition in its contracts, called the most-favored nation clause, requiring the publishers to allow Apple to sell e-books at the same price as the books would be sold in any other store. Apple has said the clause was intended to guarantee that its customers got the lowest e-book prices, but the government argued that it defeated price competition.

The Justice Department said that the publishers used their relationship with Apple, combined with the most-favored nation clause, to threaten Amazon to switch to the agency model so they could raise prices. If Amazon did not agree to those terms, the government said, the publishers intended to withhold their e-books from the retailer until the more expensive hardcover books had been on the market for awhile.

In the trial, government lawyers showed e-mails sent between Apple and the publishers in the weeks leading up to the introduction of the iPad and the opening of Apple’s e-book store.

One e-mail, written by Steven P. Jobs when he was chief executive of Apple, was frequently brought up at the trial. In an e-mail conversation with Mr. Cue about the contracts negotiated with the publishers, Mr. Jobs wrote: “I can live with this, as long as they move Amazon to the agent model too for new releases for the first year. If they don’t, I’m not sure we can be competitive.” The Justice Department said this showed Apple’s intent to help the publishers push Amazon to the agency model so they could raise e-book prices.

But Apple's lead counsel, Orin Snyder of Gibson, Dunn & Crutcher, contended that the note written by Mr. Jobs was a draft. He showed a version of the e-mail that did not have language about forcing Amazon to change the way it sold books. At the trial, it was never fully resolved which version of Mr. Jobs's e-mail was actually sent to Mr. Cue. But the version presented by the Justice Department indicated that it was written at a later time and was signed "Steve," suggesting that it might have been the final draft.

Judge Cote said the words of Mr. Jobs were compelling evidence against Apple. They showed that Mr. Jobs, who died in 2011, was aware that the publishers were unhappy with Amazon's pricing of $9.99 for e-books, and that Apple's entry would drive up prices across the industry.

In one famous instance, Mr. Jobs made comments to a reporter after he introduced the iPad and the iBookstore in January 2010. When asked why consumers would purchase an e-book from Apple's store instead of Amazon.com, where e-books were $9.99, Mr. Jobs replied, "The prices will be the same."

"Apple has struggled mightily to reinterpret Jobs's statements in a way that will eliminate their bite," Judge Cote said in the ruling. "Its efforts have proven fruitless."

In his arguments, Mr. Snyder tried to illustrate that the publishers "fought tooth and nail" with Apple before agreeing to the terms, rather than colluding with the company. In support of that argument, he showed e-mails from the publishing executives arguing with Mr. Cue about the contract terms.

On the last day of the trial, Mr. Snyder told Judge Cote that there was much more at stake than the health of the book market. Mr. Snyder said a ruling against Apple could stifle the way retailers do business with media providers, including music labels and movie studios. Retailers negotiating with content providers might feel pressured to "not utter a word" about their discussions with other companies, he said. Businesses negotiating deals with multiple partners often inform each party of what the others have agreed to, he said, so they

know they are being treated fairly.

Apple's fight with the Justice Department is far from over, because antitrust trials are typically two- or three-round fights. The next step of the trial will involve a hearing on damages and relief. Then if Apple goes forward with an appeal of the judge's 160-page decision, the arguments will take place in the United States Court of Appeals for the Second Circuit.

Keith N. Hylton, a professor at Boston University's School of Law, said that Apple should have some good arguments to back its appeal, but it will be a difficult fight. "The new problem Apple faces is that the judge's massive opinion relies so heavily on facts and inferences that an appellate court is unlikely to have room to modify the decision substantially," Mr. Hylton said.