

APPLE INC

Case COMP/C2/39.847 – eBooks

In accordance with Article 9 of Regulation 1/2003, Apple Inc ("Apple") offers the following voluntary commitments (the "Commitments").

The Commitments enable the Commission to adopt the Commitment Decision.

Nothing in these Commitments may be construed as implying that Apple agrees with the concerns expressed in the Preliminary Assessment.

Apple entered the eBook market two years ago. It brought needed competition to a market occupied by a single reseller. Apple individually negotiated Agency Agreements with the six major book publishers. The negotiations were difficult but in the end Apple reached individual agreements with each of the 5 Publishers that would allow Apple to compete against the prevailing eBook Retailer. Apple has agreed to modify those Agency Agreements to resolve the uncertainty caused by the Commission's investigation.

Consistent with Article 9 of Regulation 1/2003, the Commitments are given on the understanding that the Commission will confirm that there are no grounds for further action and will close the proceedings opened on 1 December 2011 in relation to Apple relative to the distribution of eBooks in the EEA.

For the avoidance of all doubt, Apple strongly contests the concerns expressed by the Commission in its Preliminary Assessment or that it has engaged in conduct contrary to Article 101 Treaty on the Functioning of the European Union ("TFEU") and Article 53 of the EEA Agreement or been party to any agreement for the distribution of eBooks in the EEA contrary to Article 101 TFEU and Article 53 of the EEA Agreement or any other aspect of European Union or EEA competition law. Furthermore, these Commitments are without prejudice to Apple's position should the Commission or any other party conduct proceedings or commence other legal action against Apple.

1. DEFINITIONS

For the purposes of these Commitments:

"Agency Agreement" means an agreement between an eBook Publisher and an eBook Retailer or an agreement between an eBook Publisher and an Online eBook Store Provider under which the eBook Publisher Sells eBooks to consumers through the eBook Retailer or through the Online eBook Store Provider, which under the agreement acts as an agent of the eBook Publisher and is paid a commission in connection with the Sale of one or more of the eBook Publisher's eBooks.

"Apple" means (1) Apple, Inc., a California corporation with its principal place of business in Cupertino, California; and (2) iTunes Sarl, a Luxembourg limited liability company with its principal place of business in Luxembourg, Luxembourg, their successors and assigns, their connected undertakings, subsidiaries, divisions, and groups.

"Commission" means the European Commission.

"Commitment Decision" means the decision adopted by the Commission pursuant to Article 9 of Regulation 1/2003 confirming that the Commitments meet the preliminary competition concerns identified by the Commission in its Preliminary Assessment.

"eBook" means an electronically formatted book designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying eBooks. For the purposes of these Commitments, the term eBook does not include (1) an audio book, even if delivered and stored digitally; (2) a standalone specialized software application or "app" sold through an "app store" rather than through an eBook store (e.g., through Apple's "App Store" rather than through its "iBookstore" or "iTunes"); (3) a media file containing an electronically formatted book for which most of the value to consumers is derived from audio or video content contained in the file that is not included in the print version of the book; (4) self-published eBooks; (5) electronic versions of children's picture books; or (6) educational and scholarly titles, as well as eBooks sold through educational and/or library channels.

"eBook Publisher" means any Person that, by virtue of a contract or other relationship with an eBook's author or other rights holder, owns or controls the necessary copyright or other authority (or asserts such ownership or control) over any eBook sufficient to distribute the eBook within one or more countries in the EEA to eBook Retailers and to permit such eBook Retailers to Sell the eBook to consumers in those countries in the EEA. The 5 Publishers are eBook Publishers. For the purposes of these Commitments, eBook Publishers are not eBook Retailers or Online eBook Store Providers except when an eBook Publisher acts as an agent under an Agency Agreement for another eBook Publisher.

"eBook Retailer" means any Person that lawfully Sells (or seeks to lawfully Sell) eBooks to consumers in one or more countries in the EEA, or through which an eBook Publisher, under an Agency Agreement, Sells eBooks to consumers in one or more countries in the EEA. For the purposes of these Commitments, unless otherwise provided, the 5 Publishers and all other Persons whose primary business is book publishing are neither eBook Retailers nor Online eBook Store Providers. Apple is an Online eBook Store Provider.

"EEA" means those countries participating in the European Economic Area as of the date of the notification of the Commitments Decision and at any time thereafter during the term of these Commitments.

"Hachette" means Hachette Livre SA its successors and assigns, subsidiaries, divisions, and groups, as well as its connected undertakings except where such connected undertaking engages in eBook publishing activity which is merely incidental to its other primary business activity.

"HarperCollins" means HarperCollins LLC and HarperCollins Publishers Limited, its successors and assigns, subsidiaries, divisions and groups, as well as their connected undertakings except where such connected undertaking engages in eBook publishing activity which is merely incidental to their other primary business activity.

"Holtzbrinck" means Verlagsgruppe Georg von Holtzbrinck GmbH and Georg von Holtzbrinck GmbH & Co. KG and their successors and assigns, subsidiaries, divisions and groups as well as their connected undertakings except where such connected undertaking engages in eBook publishing activity which is merely incidental to their other primary business activity.

"Including" means including, but not limited to.

"Online eBook Store Provider" means an electronic store through which an eBook Publisher, under an Agency Agreement, Sells eBooks to consumers in one or more countries in the EEA.

"Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

"Pearson" means Pearson PLC and their successors and assigns, subsidiaries, divisions and groups as well as its connected undertakings except where such connected undertaking engages in eBook publishing activity which is merely incidental to its other primary business activity.

"Preliminary Assessment" means the document adopted by the Competition Commissioner in Case COMP/39.847 *eBooks* on [date].

"Regulation 1/2003" means Council Regulation (EC) No 1/2003.

"Retail Price" means the price at which an eBook Retailer or, under an Agency Agreement, an eBook Publisher sells an eBook to a consumer.

"Retail Price MFN" means a term in an agreement between an eBook Publisher and Apple, under which the Retail Price at which any given eBook Sold by that eBook Publisher through Apple to consumers depends in any way on the Retail Price, or discounts from the Retail Price, at which any other eBook Retailer or the eBook Publisher under an Agency Agreement through any other eBook Retailer Sells the same eBook to consumers.

"Sale" means delivery of access on a permanent basis to a consumer to read one or more eBook (purchased alone, or in combination with other goods or services) in exchange for payment; "Sell" or "Sold" means to make or to have made a Sale of an eBook to a consumer.

"Simon & Schuster" (1) Simon & Schuster Inc., (2) Simon & Schuster Digital Sales Inc. and (3) Simon & Schuster (UK) Limited their successors and assigns, subsidiaries, divisions and groups, as well as their connected undertakings except where such connected undertaking engages in eBook publishing activity which is merely incidental to their other primary business activity.

"The 5 Publishers" means Hachette, HarperCollins, Holtzbrinck, Pearson and Simon & Schuster.

2. CONDUCT

2.1 At the latest within seven (7) days after the date of notification of the Commitment Decision, Apple shall send a letter to the 5 Publishers confirming that (1) it waives the notice period contained in any Agency Agreement/s with the 5 Publishers that concerns the distribution of eBooks within the EEA and (2) it agrees to rescind (terminate) such agreements no later than fourteen (14) days from the date of the Commitment Decision. A copy of such letter should be provided to the Commission at the same time.

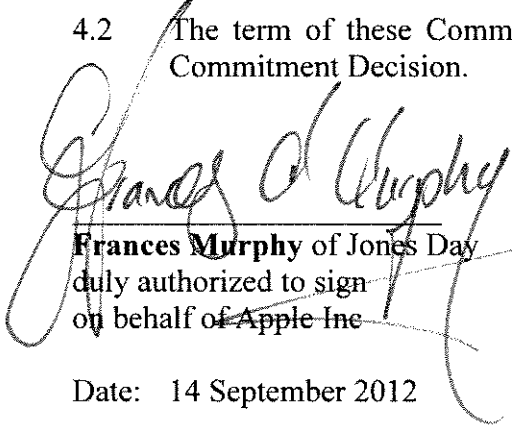
- 2.2 Apple shall indicate in the letter to Pearson referred to in (1) above, that in case Pearson does not agree to terminate on this basis, such termination will take effect with the minimum notice period permitted under the Agency Agreement.
- 2.3 Apple may negotiate new agreements with the 5 Publishers for the sale of their eBooks via an online store owned or controlled by Apple. The Commission will not preclude any of the 5 Publishers from entering into legally enforceable agreements of any kind with Apple.
- 2.4 Apple will not include in its new agreements with the 5 Publishers or in any new agreements with any other publisher a Retail Price MFN. In evidence of this Apple will provide the Commission with copies of the new agreements with each of the 5 Publishers. The same applies to any Agency Agreement which deviates from the standard click through agreement published on Apple's website. In addition Apple will provide the Commission with a copy of any standard click through agreement for publishers together with its date of publication for the purpose of evidencing that the click through agreements do not include a Retail Price MFN.
- 2.5 Apple will inform any eBook Publisher with which it has an eBook Agency Agreement within 7 days after the date of notification of this Commitment Decision that it will not enforce the Retail Price MFN in any such agreement that is in force at the time of the notification of the Commitment Decision.
- 2.6 Throughout this period, Apple shall provide the Commission with an annual written report on the implementation of these Commitments during the relevant year. It will also address any disputes or written complaints made by any publisher relating to the implementation of the Commitments. The report relating to 2012 shall be provided by 1 March 2013, and further reports shall be provided on 1 March of each year for the past year up to and including 2017.

3. NON CIRCUMVENTION

Apple will not in any way circumvent or seek to circumvent these Commitments.

4. SCOPE AND DURATION

- 4.1 These Commitments comprise the entire extent of Apple's commitments to or understandings with the Commission.
- 4.2 The term of these Commitments is five years from the date of notification of the Commitment Decision.


Frances Murphy of Jones Day
duly authorized to sign
on behalf of Apple Inc

Date: 14 September 2012