

September 12, 2012

COMMITMENTS OF HARPERCOLLINS

CASE COMP/39.847 – EBOOKS

In accordance with Article 9 of Council Regulation (EC) No 1/2003 (“Regulation 1/2003”), HarperCollins Publishers Limited (“HarperCollins”) offers the following commitments (the “Commitments”) to address the preliminary competition concerns identified by the European Commission (the “Commission”) in Case COMP/39.847 *Ebooks*, in its Preliminary Assessment dated August 13, 2012 (the “Preliminary Assessment”), and to enable the Commission to adopt a decision confirming that the Commitments meet its concerns (the “Commitments Decision”).

Nothing in these commitments may be construed as implying that HarperCollins agrees with the concerns expressed in the Preliminary Assessment. Consistent with Article 9 of Regulation 1/2003, the Commitments are given in 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 HarperCollins’ arrangements for the Sale of E-books. For the avoidance of all doubt, HarperCollins strongly contests that it has engaged in unlawful conduct contrary to Article 101 TFEU or Article 53 EEA Agreement or any other aspect of European Union or EEA competition law. These Commitments are thus without prejudice to HarperCollins’ position should the Commission or any other party conduct proceedings or commence other legal action against HarperCollins and are offered without any admission of liability.

I. DEFINITIONS

“Agency Agreement” means an agreement between an E-book Publisher and an E- book Retailer under which the E-book Publisher Sells E-books to consumers through the E- book Retailer, which under the agreement acts as an agent of the E- book Publisher and is paid a commission in connection with the Sale of one or more of the E-book Publisher’s E- books. For the avoidance of doubt, the amount that HarperCollins shall be entitled to receive in respect of each E-book Sold under an Agency Agreement shall be based on the Retail Price set by HarperCollins for that E- book, net of VAT.

“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, and their parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and

employees.

“E-book” means an electronically formatted book designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying E-books. For the purposes of these Commitments, the term E-book 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 e-book store (e.g., through Apple’s “App Store” rather than through its “iBookstore” or “iTunes”) and not designed to be executed or read by or through a dedicated E-book reading device; (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 E-books; (5) electronic versions of children’s picture books; or (6) educational and scholarly titles, as well as E-books sold through educational and/or library channels.

“E-book Publisher” means any Person that, by virtue of a contract or other relationship with an E-book’s author or other rights holder, owns or controls the necessary copyright or other authority (or asserts such ownership or control) over any E-book sufficient to distribute the E-book to E-book Retailers and to permit such E-book Retailers to Sell the E-book to consumers in the EEA. HarperCollins is an E-book Publisher. For the purposes of these Commitments, an E-book Publisher is not an E-book Retailer except when it lawfully Sells (or seeks to lawfully Sell) directly E-books to consumers for another E-book Publisher, or acts as an agent under an Agency Agreement for another E-book Publisher.

“E-book Retailer” means any Person that lawfully Sells (or seeks to lawfully Sell) E-books to consumers in the EEA, or through which an E-book Publisher, under an Agency Agreement, Sells E-books to consumers in the EEA. For the purposes of these Commitments, unless otherwise provided, HarperCollins and all other Persons whose primary business is book publishing are not E-book Retailers. For the purposes of these Commitments, Apple is an E-book Retailer.

“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.

“HarperCollins” means HarperCollins Publishers Limited, its successors and assigns, subsidiaries, divisions and groups, as well as its connected undertakings except where such connected undertaking engages in E-book publishing activity which is merely incidental to its other primary business activity.

“Including” means including, but not limited to.

“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.

“Price MFN” means a term in an agreement between HarperCollins and an E-book Retailer under which:

1. the Retail Price at which an E-book Retailer or, under an Agency Agreement, HarperCollins Sells one or more E-books to consumers depends in any way on the Retail Price, or discounts from the Retail Price, at which any other E-book Retailer or HarperCollins under an Agency Agreement through any other E- book Retailer Sells the same E-book(s) to consumers; or
2. the Wholesale Price at which HarperCollins Sells one or more E-books to or through that E-book Retailer depends in any way on the Wholesale Price at which HarperCollins Sells the same E-book(s) to or through any other E-book Retailer; or
3. the types of business arrangement for the distribution or sale of E-books that the E-book Retailer is entitled to enter into with HarperCollins depend in any way on the types of business arrangement for the distribution or sale of E-books that HarperCollins enters into with another E-book Retailer; or
4. the revenue share or commission that E-book Retailer receives from HarperCollins in connection with the Sale of one or more E-books to consumers depends in any way on the revenue share or commission that (a) any other E-book Retailer receives from HarperCollins in connection with the Sale of the same E-book(s) to consumers, or (b) that E-book Retailer receives from any other E-book Publisher in connection with the Sale of one or more of the other E-book Publisher's E-books.

"Purchase" means a consumer's acquisition of one or more E-books as a result of a Sale.

"Retail Price" means the price at which an E-book Retailer or, under an Agency Agreement, an E-book Publisher Sells an E-book to a consumer.

"Sale" means delivery of access on a permanent basis to a consumer to read one or more E-books (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 E-book to a consumer.

"Wholesale Price" means (1) the net amount, after any discounts or other adjustments, that an E-book Retailer pays to HarperCollins for an E-book that the E-book Retailer Sells to consumers; or (2) the Retail Price at which HarperCollins, under an Agency Agreement, Sells an E-book to consumers through an E-book Retailer minus the commission or other payment that HarperCollins pays to the E-book Retailer in connection with or that is reasonably allocated to that Sale.

II. REQUIRED CONDUCT

- A. At the latest, within seven days after the notification of the Commitments Decision, HarperCollins shall send a letter to Apple confirming that (1) it waives the notice period contained in any agreement with Apple that concerns the

distribution of E-books within the EEA and (2) it agrees to rescind (terminate) such agreements no later than fourteen days from the date of the Commitments Decision. A copy of such letter should be provided to the Commission at the same time.

- B. For each Agency Agreement relating to the Sale of E-books within the EEA between HarperCollins and an E-book Retailer other than Apple that was executed prior to the date of the notification of the Commitments Decision that (1) restricts, limits, or impedes the E-book Retailer's ability to set, alter, or reduce the final price paid by consumers of any E-book or to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books; or (2) contains a Price MFN, HarperCollins commits to notify the E-book Retailer, at the latest within ten days of the notification of the Commitments Decision, that the E-book Retailer may terminate the agreement with thirty-days notice and shall, thirty days after the E-book Retailer provides such notice, release the E-book Retailer from the agreement. For each such agreement that the E-book Retailer has not terminated, at the latest within seventy days after the notification of the Commitments Decision, HarperCollins commits to, as soon as permitted under the agreement, take each step required under the agreement to cause such agreement to be terminated and not renewed or extended.
- C. HarperCollins commits to provide the Commission (1) within seven days after the notification of the Commitments Decision, with one complete copy of any agreement, executed, renewed, or extended on or after January 1, 2012, between HarperCollins and any E-book Retailer relating to the Sale of E-books within the EEA, and, (2) thereafter, on a quarterly basis, with any such agreement executed, renewed, or extended since the HarperCollins' previous submission of agreements to the Commission. Where HarperCollins enters into a non-disclosure agreement with another E-book Publisher or an E-book Retailer, this non-disclosure agreement shall not prevent HarperCollins from providing to the Commission any kind of relevant information.

III. PROHIBITED CONDUCT

- A. With regard to the territories within the EEA covered by any of the agreements terminated in accordance with Sections II.A and II.B above:
1. For two years, HarperCollins commits not to restrict, limit, or impede an E-book Retailer's ability to set, alter, or reduce the final price paid by consumers of any E- book or to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books, such two-year period to run separately for each E-book Retailer, at the option of HarperCollins, from either:
- i. the termination of an agreement relating to the Sale of E-books within the EEA between HarperCollins and the E-book Retailer that restricts, limits, or impedes the E-book Retailer's ability to set, alter, or reduce the final price paid by consumers of any E-book or to offer

price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books; or

- ii. the date on which HarperCollins notifies the E-book Retailer in writing that HarperCollins will not enforce any term(s) in its agreement relating to the Sale of E-books within the EEA with the E-book Retailer that restrict, limit, or impede the E-book Retailer from setting, altering, or reducing the final price paid by consumers of one or more E-books, or from offering price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books.

HarperCollins commits to notify the Commission of the option it selects for each E- book Retailer within seven days of making its selection.

2. For two years from the termination of the agreements provided for in Section III.A.1.i or from the notification provided for in Section III.A.1.ii, or from the notification of the Commitments Decision, whichever is the soonest, HarperCollins commits not to enter into any agreement relating to the Sale of E-books within the EEA with any E-book Retailer that restricts, limits, or impedes the E-book Retailer from setting, altering, or reducing the final price paid by consumers of one or more E-books, or from offering price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books.
- B. HarperCollins commits not to enter into any agreement within the EEA with an E-book Retailer relating to the Sale of E-books that contains a Price MFN.

IV. NON-CIRCUMVENTION

- A. HarperCollins shall not in any way circumvent, by actions and/or omissions, any commitments contained in this document. After the expiration of the commitments in Section III.A of these Commitments, this Section IV.A shall not prevent HarperCollins from unilaterally entering into or enforcing any agreement with an E- book Retailer that restricts, limits, or impedes the E-book Retailer from setting, altering, or reducing the final price paid by consumers of any of HarperCollins' E- books or from offering price discounts or any other form of promotions to encourage consumers to Purchase any of HarperCollins' E-books.
- B. In particular and for the avoidance of doubt, the following conduct shall not be prohibited under these Commitments:
- (1) HarperCollins' good faith decision not to pursue a promotional program or arrangement or price grid proposed by an E-book Retailer; or
 - (2) HarperCollins' good faith decision to offer its own promotional program or arrangement with one of more E-book Retailers

V. PERMITTED CONDUCT

- A. Nothing in these Commitments shall prohibit HarperCollins unilaterally from compensating a retailer, including an E-book Retailer, for valuable marketing or

other promotional services rendered.

- B. Notwithstanding Section III.A of these Commitments, HarperCollins may enter into Agency Agreements with E-book Retailers in relation to the EEA under which the aggregate value of the price discounts or any other form of promotions to encourage consumers to Purchase one or more of HarperCollins' E-books (as opposed to advertising or promotions engaged in by the E-book Retailer not specifically tied or directed to HarperCollins' E-books) is restricted; provided that (1) such agreed restriction shall not interfere with the E-book Retailer's ability to reduce the final price paid by consumers to purchase HarperCollins' E-books by an aggregate amount equal to the total commissions HarperCollins pays to the E-book Retailer, over a period of at least one year, in connection with the Sale of HarperCollins' E-books to consumers; (2) HarperCollins commits to not restrict, limit, or impede the E-book Retailer's use of the agreed funds to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books; and (3) the method of accounting for the E-book Retailer's promotional activity does not restrict, limit, or impede the E-book Retailer from engaging in any form of retail activity or promotion.
- C. Details of Section V.B above will be subject to individual bilateral negotiations between HarperCollins and each prospective E-book agent.
- D. For the avoidance of doubt, HarperCollins shall be entitled to require from the E-book Retailer such information as may reasonably be required to enable HarperCollins to assess and verify compliance with Section V.B.

VI. NATIONAL LAW

For the avoidance of doubt, these Commitments are without prejudice to restrictions imposed by national law related to E-books that restricts, limits, or impedes the implementation of Sections III.A and V.B above.

VII. REVIEW

Pursuant to Article 9(2)(a) of Regulation 1/2003, HarperCollins may request the Commission to re-open the proceedings with a view to modifying these Commitments where there has been a material change in any of the facts on which the Commitment Decision was based.

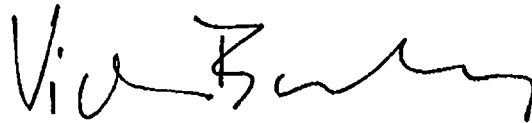
VIII. DURATION

Unless provided otherwise, the term of these Commitments will be five years from the date of the notification of the Commitments Decision.

In addition to the requirements set out in Section II.C, throughout the duration of the Commitments, HarperCollins 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 retailers relating to the

implementation of the Commitments. The report relating to 2012 shall be provided by [], and further reports shall be provided on March 1 of each year up to and including 2017.

12 September 2012

A handwritten signature in black ink, appearing to read "Vicki Bullock". The signature is fluid and cursive, with the first name "Vicki" written in a larger, more prominent script than the last name "Bullock".

Duly authorised for and on behalf of HarperCollins