NY Judge Orders Apple To Modify eBook Contracts

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NEW YORK (AP) — Looking to force Apple to obey antitrust laws, a judge on Friday ordered the technology giant to modify contracts with publishers to prevent electronic book price fixing and said she will appoint an external compliance monitor to review the company's antitrust policies and training.

U.S. District Judge Denise Cote's 17-page order came nearly two months after she concluded that Apple Inc. used the popularity of its iTunes store to conspire with publishers to raise e-book prices in 2010.

Cote gave the Department of Justice less than it requested but still left it pleased.

"The court's ruling reinforces the victory the department has won for consumers," Assistant Attorney General Bill Baer said in a statement. "Consumers will continue to benefit from lower e-books prices as a result of the department's enforcement action to restore competition in this important industry."

Apple spokesman Tom Neumayr said the Cupertino, Calif., company will appeal the order.

"Apple did not conspire to fix e-book pricing," he said. "The iBookstore gave customers more choice and injected much needed innovation and competition into the market. Apple will pursue an appeal of the injunction."

Cote's order largely followed what she had said she would do at two August hearings, when she expressed dismay with Apple's conduct since her ruling and said she believed the company and the publishers still wanted to collude to raise book prices.

Just last week, she told lawyers that she had hoped that her finding that Apple had "demonstrated a blatant and aggressive disregard" for the law in orchestrating a price-fixing scheme would lead Apple to show it had taken the lessons of the litigation seriously.

"I am disappointed to say that it has not taken advantage of those opportunities," Cote said as she urged the company to "make these reforms and change its culture."

At trial, Apple insisted that its entry into the e-books market widened the number of customers and was a boost for publishers and authors alike, increasing the number of books available and eliminating a monopoly of the market by Amazon.com.

But the government argued that Apple joined with publishers to illegally undermine an Amazon pricing policy that had enabled consumers to buy the most popular books for $9.99.

In her order, Cote told Apple to make changes to its contracts with publishers to ensure price fixing is eliminated. She set rules to prevent the kind of cooperation between Apple and the publishers that she said harmed Apple's retail competitors in the e-book market.

For instance, she said Apple cannot enter an agreement with a publisher it had colluded with that restricts Apple's ability to reduce retail prices or e-book discounts. And she said the company cannot put language in its contracts with publishers that tie e-book prices to those set by other publishers or retailers.

Cote said she will appoint an external compliance monitor for a period of two years to assess Apple's internal antitrust compliance policies, procedures and training and to recommend any necessary changes.

Cote said evaluating training procedures was particularly important after a top Apple executive and his in-house counsel testified that neither could recall any training on antitrust issues. She said adequate training was necessary for those involved in contract negotiations for all of Apple's content-providing businesses, including books, music, , movies, television shows and apps.

"I am hopeful that it will devote its considerable resources and creativity to construct a training program that will be a model for American business," Cote said at an Aug. 27 hearing. "It is my hope that the terms of this injunction will protect consumers, encourage lawful competition and avoid a recurrence so that taxpayers will never have to pay again for a government enforcement action."

The order will remain in place for contracts between Apple and the various publishers until they begin expiring in two years.

The judge also ordered Apple not to share the status of its contract negotiations with one publisher among other publishers.

The outside monitor will not generally assess Apple's compliance with her order, however. At last week's hearing, Cote said she will decide ultimately whether Apple is in compliance.

"I want this injunction to rest as lightly as possible on the way Apple runs its business," she said. "I want Apple to have the flexibility to innovate, but at the same time I want to try to prevent a repetition of illegal conduct like that shown with overwhelming evidence at this trial."

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