
**Antitrust Issues in the Electronic Publishing Industry: A Case Study
on the Apple E-Book Price-fixing Case**

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Abstract

The case of “E-Book Price-fixing” involves three controversial issues: the definition of the relevant product market, the identification of horizontal price cartels and vertical price cartels, and the adoption of *per se* illegal, each of which respectively merits discussion.

Concerning the relevant product market definition, this paper focuses on the aspect of demand resulting from the demand-oriented nature of the market players in the internet market, and thus observes the substitutability of the e-books and printed books in question. This paper proposes examining how the variation in the specific product price in an adjacent market could exert an influence on the demand for the competitive products in the relevant market on the grounds of the principles of industrial economics, notwithstanding the analysis of its price, function, use and nature, to infer the relevant product market at issue. The second issue is about whether or not Apple, as a vertical player, participated in and facilitated a horizontal conspiracy among the Publisher Defendants. By comparing the cases of *Interstate Circuit* (1939) and *Paramount Film Distributing Corp.* (1954) with the case in question, this paper finds that the district court has failed to perform a full analysis of the economic rationality of the parallel conduct among the Publisher Defendants, which could determine the existence of the conspiracy. In addition, it is also controversial whether or not it is necessary to analyze the restrictive purpose and effect on competition when determining whether the consignment agreement is vertical resale price maintenance, and whether or not the rule of reason adopted by the court in the case of *Leegin* can be applied in the case here. The restrictive effect is self-evident if the rule of *per se* illegal is applied, on which I cast doubt. This paper makes a suggestion as to whether there is any positive effect of the defendants’ conduct and whether the conduct is the optimal choice in order to arrive at the result.

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