



EUROPEAN COMMISSION

PRESS RELEASE

Brussels, 25 July 2013

Antitrust: Commission accepts legally binding commitments from Penguin in e-books market

The European Commission has adopted a decision that renders legally binding the commitments offered by Penguin¹ (United Kingdom), in the context of the Commission's investigation regarding the sale of e-books in the European Economic Area (EEA). The Commission had concerns that Penguin, together with four other publishers - Simon & Schuster (CBS Corp., USA), HarperCollins (News Corp., USA), Hachette Livre (Lagardère Publishing, France), Verlagsgruppe Georg von Holtzbrinck (Germany; owner of inter alia Macmillan) - and Apple may have contrived to limit retail price competition for e-books in the EEA, in breach of EU antitrust rules.

To address these concerns, Penguin offered substantially the same commitments as those proposed by the other four publishers and made legally binding on those companies in December 2012 (see [IP/12/1367](#) and [MEMO/12/983](#)). They include, in particular, the termination of on-going agency agreements and the exclusion of certain most-favoured-nation (MFN) clauses in Penguin's agency agreements during the next five years. Penguin also offered to give retailers freedom to discount e-books, subject to certain conditions, during two years. After a market test (see [IP/13/343](#)), the Commission is satisfied that the commitments offered by Penguin remedy the competition concerns it had identified.

Joaquín Almunia, Commission Vice-President in charge of competition policy, said: "*After our decision of December 2012, the commitments are now legally binding on Apple and all five publishers including Penguin, restoring a competitive environment in the market for e-books*".

¹ On 1 July 2013, Penguin's structure changed in the context of the creation of the joint venture Penguin Random House. As a consequence, the Commission's decision is now addressed to Penguin Group (USA) LLC and Penguin Random House Limited.

The Commission has concluded that, taken together, the commitments offered by Penguin, complementing those made binding by the Commission on the other four publishers and Apple, will contribute to creating a favourable environment for a reset of the competitive conditions in the e-books market during a sufficient period of time. First, Penguin will terminate its relevant agency agreements with retailers (in addition to the agency agreements with Apple which have to be terminated under the commitments made binding on Apple in December 2012). Second, the two year "cooling-off" period during which retailers will be able to discount e-books will now also apply to all Penguin e-book titles. Third, the price MFN ban will apply to agreements renegotiated between Penguin and any other retailer (not only to agreements renegotiated between Penguin and Apple).

Background

After unannounced inspections in March 2011 (see [MEMO/11/126](#)), the Commission opened proceedings against Simon & Schuster, HarperCollins, Hachette, Holtzbrinck/Macmillan, Penguin and Apple (see [IP/11/1509](#)). The Commission had doubts concerning the joint switch by these companies from a wholesale model, where the retail price of e-books is determined by the retailer, to agency contracts that all contained the same key terms for retail prices - including an unusual retail price Most Favoured Nation (MFN) clause, maximum retail price grids and the same 30% commission payable to Apple. In particular, the Commission was concerned that the joint switch to the agency contracts may have been coordinated between the publishers and Apple, as part of a common strategy aimed at raising retail prices for e-books or preventing the introduction of lower retail prices for e-books on a global scale. This would violate Article 101 of the Treaty on the Functioning of the European Union (TFEU) that prohibits cartels and restrictive business practices.

In September 2012, the Commission consulted stakeholders on draft commitments offered by Simon & Schuster, HarperCollins, Hachette, Holtzbrinck and Apple to remedy the Commission's preliminary concerns (see [IP/12/986](#)). In December 2012, the Commission adopted a decision making those commitments legally binding on Apple and the four publishers. Discussions continued with Penguin and in April 2013 Penguin formally offered commitments with a view to seeking an early closure of the proceedings. Between April and May 2013 the Commission market tested the proposed commitments. The market test did not raise any concerns as regards the proposed commitments.

Both, the December 2012 and today's, decisions are based on Article 9 of the EU's [Antitrust Regulation](#) (Regulation 1/2003). Today's decision makes the commitments offered by Penguin legally binding and ends the Commission's proceedings against this company. It does not conclude on whether EU antitrust rules have been infringed. If a company were to break the commitments made binding upon it, the Commission could impose a fine of up to 10% of the company's annual worldwide turnover, without having to find an infringement of the antitrust rules.

In April 2013 the Commission also cleared the proposed creation of Penguin Random House, combining parts of the publishing businesses of the media company Bertelsmann of Germany and the publishing company Pearson of the UK (see [IP/13/305](#)). The transaction closed on 1 July 2013.

A non-confidential version of the decision will be available on the Commission's [competition](#) website, in the [public case register](#) under the case number [39847](#).

Contacts :

[Antoine Colombani](#) (+32 2 297 45 13 - Twitter: [@ECspokesAntoine](#).)

[Marisa Gonzalez Iglesias](#) (+32 2 295 19 25)