

Final Report of the Hearing Officer ⁽¹⁾**COMP/39.847 — E-BOOKS**

(2013/C 73/06)

- (1) This proceeding concerns certain allegedly concerted practices in relation to the sale of e-books to consumers.
- (2) The Commission carried out unannounced inspections pursuant to Article 20(4) of Regulation (EC) No 1/2003 ⁽²⁾ at the premises of several book publishers in March 2011 in the EEA.
- (3) On 1 December 2011, the Commission opened proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 and Article 2(1) of Commission Regulation (EC) No 773/2004 ⁽³⁾ against five publishers ⁽⁴⁾ and Apple Inc.
- (4) On 13 August 2012, the Commission adopted a preliminary assessment pursuant to Article 9(1) of Regulation (EC) No 1/2003 pertaining to the conduct by four publishers (Hachette, Harper Collins, Holtzbrinck/Macmillan, Simon & Schuster) as well as Apple in relation to the sale of e-books to consumers. In the preliminary assessment, the Commission took the view that, by jointly switching the sale of e-books from a wholesale model to an agency model with the same key terms on a global basis, the four publishers and Apple engaged in a concerted practice with the object of raising retail prices of e-books in the EEA or preventing the emergence of lower prices in the EEA for e-books, in breach of Article 101 of the TFEU and Article 53 of the EEA Agreement.
- (5) The abovementioned four publishers as well as Apple have offered commitments in order to meet the Commission's concerns ⁽⁵⁾. On 19 September 2012, the Commission published a notice in the *Official Journal of the European Union* in accordance with Article 27(4) of Regulation (EC) No 1/2003, summarising the case, the commitments and inviting third parties to submit comments on the proposal ⁽⁶⁾. The market test confirmed that the commitments are suitable to address the Commission's competition concerns.
- (6) In its decision pursuant to Article 9(1) of Regulation (EC) No 1/2003, the Commission makes the commitments offered by the five undertakings binding upon them and concludes that in light of the commitments offered, there are no longer grounds for action on its part, and thus the proceedings in this case should be brought to an end.
- (7) Since Pearson, the parent company of the Penguin group, has not offered any commitments, the Commission is still investigating Pearson's conduct and its compatibility with Article 101 of the TFEU and Article 53 of the EEA Agreement.

⁽¹⁾ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29).

⁽²⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

⁽³⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 1).

⁽⁴⁾ The five publishers are: Hachette Livre SA, HarperCollins Publishers, L.L.C. and Haper Collins Publishers Limited, Georg von Holtzbrinck GmbH & Co. KG and Verlagsgruppe Georg von Holtzbrinck GmbH, Simon & Schuster, Inc. Simon & Schuster (UK) Ltd and Simon & Schuster Digital Sales, Inc. and Pearson Plc.

⁽⁵⁾ The commitments offered by the four publishers and Apple are available at: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39847

⁽⁶⁾ Communication of the Commission published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case COMP/39.847/E-BOOKS (notified under document C(2012) 6552) (OJ C 283, 19.9.2012, p. 7).

- (8) I did not receive any request or complaint from any party to the proceedings in the present case ⁽¹⁾. In view thereof, I consider that the effective exercise of the procedural rights of all parties in this case has been respected.

Brussels, 27 November 2012.

Michael ALBERS

⁽¹⁾ In accordance to Article 15(1) of Decision 2011/695/EU, parties to the proceedings offering commitments pursuant to Article 9 of Regulation (EC) No 1/2003 may call upon the hearing officer at any stage of the procedure in order to ensure the effective exercise of their procedural rights.