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(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION
POLICY

EUROPEAN COMMISSION

**Communication from the Commission published pursuant to Article 27(4) of Council Regulation
(EC) No 1/2003 in Case COMP/39.847/E-BOOKS**

(Text with EEA relevance)

(2013/C 112/05)

1. INTRODUCTION

1. Pursuant to Article 9 of Council Regulation (EC) No 1/2003 ⁽¹⁾, the Commission may — where it intends to adopt a decision requiring that an infringement be brought to an end and the undertakings concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — adopt a decision making those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission.
2. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. SUMMARY OF THE CASE

3. On 1 March 2013, the Commission adopted a preliminary assessment pursuant to Article 9(1) of Regulation (EC) No 1/2003 pertaining to conduct by The Penguin Publishing Company Limited, The Penguin Group (a subsidiary of Pearson plc), Penguin Group (USA) Inc. and Dorling Kindersley Holdings Limited (hereinafter collectively referred to as 'Penguin') in relation to the sale of e-books to consumers in the EEA.
4. In its 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, Penguin, Hachette Livre SA ('Hachette'), HarperCollins Publishers Limited and HarperCollins Publishers, L.L.C. ('Harper Collins'), Georg von Holtzbrinck GmbH & Co. KG and Verlagsgruppe Georg von Holtzbrinck GmbH ('Holtzbrinck/Macmillan'), Simon & Schuster, Inc., Simon & Schuster (UK) Ltd and Simon & Schuster Digital Sales, Inc. ('Simon & Schuster') and Apple, Inc. ('Apple') may have 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. Hachette, Harper Collins, Holtzbrinck/Macmillan and Simon & Schuster are hereinafter collectively referred to as the 'Four Publishers', while Penguin and the Four Publishers are hereinafter collectively referred to as the 'Five Publishers'.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, respectively, 102 of the TFEU. The two sets of provisions are in substance identical. For the purposes of this notice, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82 of the EC Treaty when applicable.

6. To implement their global strategy in the EEA (including, but not limited to, in the United Kingdom, France and Germany), each of the Five Publishers signed with Apple agency agreements containing the same key terms (including a most favoured nation ("MFN") retail price clause, maximum retail price grids and the agent's level of commission) for the sale of e-books to consumers located in the EEA. The same key terms in the agency agreements with Apple, including in particular the retail price MFN clause, meant that, to avoid lower revenues and margins for their e-books on the iBookstore, each of the Five Publishers had to pressure other major e-book retailers offering e-books to consumers in the EEA to adopt the agency model.
7. On 12 December 2012, the Commission adopted, in the same proceedings, a decision pursuant to Article 9 of Regulation (EC) No 1/2003 addressed to the Four Publishers and Apple. The decision made binding the commitments offered by the Four Publishers and Apple, and closed proceedings as far as they were concerned. Penguin was not an addressee of that decision.
8. The preliminary assessment did not seek to examine the compatibility with Article 101 of the TFEU and Article 53 of the EEA Agreement of the agency agreements concluded by Penguin with Apple and with other retailers.

3. THE MAIN CONTENT OF THE OFFERED COMMITMENTS

9. Penguin does not agree with the Commission's preliminary assessment. It has nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003 in order to meet the Commission's competition concerns. These commitments are without prejudice to national laws which allow or oblige Penguin to set the retail price for e-books at its own discretion ('RPM laws').
10. The key elements of the commitments offered by Penguin are as follows:
11. To the extent that they have not yet been terminated, Penguin will terminate the relevant agency agreements for the sale of e-books in the EEA concluded with Apple.
12. In addition, Penguin will offer each retailer other than Apple the opportunity to terminate any agency agreements concluded for the sale of e-books that: (i) restrict, limit or impede the retailer's ability to set, alter or reduce the retail price or to offer price discounts or promotions; or (ii) contain a price MFN clause as defined in Penguin's commitments. In case a retailer decides not to make use of the opportunity to terminate such an agreement, Penguin will terminate it in line with the conditions laid down therein.
13. For a period of two years from notification of the decision to Penguin, Penguin will not restrict, limit or impede the ability of e-book retailers to set, alter or reduce retail prices for e-books and/or to offer price discounts or promotions. However, as regards agency agreements, the aggregate value of the price discounts or promotions offered by any retailer shall not exceed the aggregate amount equal to the total commissions Penguin pays to that retailer over a period of at least one year in connection with the sale of its e-books to consumers.
14. Moreover, for a period of five years from notification of the decision to Penguin, Penguin will not enter into any agreement relating to the sale of e-books within the EEA that contains a price MFN clause as defined in Penguin's commitments.
15. The commitments are published in full in English on the website of the Directorate-General for Competition at:

http://ec.europa.eu/competition/index_en.html

4. INVITATION TO MAKE COMMENTS

16. The Commission intends to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 making binding on Penguin the commitments summarised above and published on the website of the Directorate-General for Competition. If substantial changes to the commitments are subsequently made, the Commission will, pursuant to Article 27(4) of Regulation (EC) No 1/2003, launch a new market test.

17. In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the commitments.
18. The time limit to submit observations expires one month after the date of publication of this notice. Interested third parties are also asked to submit a non-confidential version of their comments, in which any information they claim to be business secrets and other confidential information should be deleted and replaced as required by a non-confidential summary or by the words 'business secrets' or 'confidential'.
19. Answers and comments should preferably be reasoned and should set out the relevant facts. If you identify a problem with any part of the proposed commitments, the Commission would also invite you to suggest a possible solution.
20. Observations can be sent to the Commission under reference number COMP/39.847/E-BOOKS, by e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax (+32 22950128) or by post, to the following address:

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