

Barnes & Noble says e-books settlement hurts public

Phil Wahba, Reuters

(Reuters) - Barnes & Noble has objected to the U.S. government's proposed settlement of its price-fixing lawsuit against top publishers, saying it would harm book sellers and "millions and millions" of book buyers.

The top U.S. bookstore chain, which has been battling with Amazon.com in the growing e-books market, said in a complaint filed with the U.S. Justice Department on Thursday that the settlement would lead to "higher overall average e-book and hardback prices and less choice, both in how to obtain books and in what books are available."

Barnes & Noble's share price fell 3 percent on Thursday, closing at \$15.42.

In an antitrust lawsuit in April, the Justice Department sued Apple and two publishers, saying they, and three other publishers with which it simultaneously settled, conspired to fix the prices of electronic books to break Amazon's dominance in the market.

Apple had successfully convinced publishers to use the "agency model" that allows publishers to set the price of e-books and in turn, Apple would take a 30 percent cut, the government said at the time.

Apple also allegedly extracted promises from the publishers that they would not allow rival retailers to discount their e-books, a so-called "most-favored nation" deal.

The strategy upended the "wholesale model" in which retailers pay for the product and charge what they like.

Barnes & Noble, which operates nearly 700 bookstores, said that before the adoption of agency pricing, it was "losing substantial money in an effort to compete with Amazon's pricing and was unable to gain significant market share."

Amazon, which got a headstart in the e-book market with its Kindle e-reader, had used the wholesale model to generally charge \$9.99 for its e-books.

The settlement the government reached in April with three of the publishers would allow Amazon to resume discounting books, and terminate their most-favored nation contracts with Apple. Amazon said at the time that it planned to lower prices on books associated with its Kindle e-reader.

AMAZON RISES AGAIN?

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Barnes & Noble said in its comments on Thursday that the adoption of agency pricing had lowered Amazon's share of the e-book market to 60 percent from 90 percent. Barnes & Noble claims to have 27 percent.

Barnes & Noble has had to contend with Amazon's aggressive pricing on its Kindle devices. It has invested heavily, including on advertising for its Nook devices, to compete and that spending has weighed on the bookseller's [earnings](#) [1].

Sales in Barnes & Noble's Nook business, including e-books and the devices, rose 38 percent to \$542 million during the holiday quarter, which ended January 28, easily outpacing the 4.2 percent rise in physical book sales during that period.

Barnes & Noble said the end loser of the proposed settlement would be the American public, saying they would experience higher overall average e-book and hardback prices and less choice in books and how to obtain them.

It also said the proposed settlement "will injure innocent third parties, including Barnes & Noble, independent bookstores, authors and non-defendant publishers."

The three publishers who agreed to settle are News Corp's HarperCollins Publishers Inc, CBS Corp's Simon & Schuster Inc and Lagardere SCA's Hachette Book Group.

Macmillan, a unit of Verlagsgruppe Georg von Holtzbrinck GmbH, and Pearson Plc's Penguin Group, have said they plan to fight the Justice Department charges, along with Apple.

Justice Department spokeswoman Gina Talamona said that the department had no immediate response to the Barnes & Noble comments. "The department will respond to all of the comments in a filing with the court," she said.

HarperCollins could not immediately be reached for comment while Hachette and Simon & Schuster declined comment.

(Reporting By Phil Wahba; Additional reporting by [Diane Bartz](#) [2]; Editing by Maureen Bavdek and [Tim Dobbyn](#) [3])

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