

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BOOKENDS & BEGINNINGS LLC, on behalf
of itself and all others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC.; HACHETTE BOOK
GROUP, INC; HARPERCOLLINS
PUBLISHERS L.L.C.; MACMILLAN
PUBLISHING GROUP, LLC; PENGUIN
RANDOM HOUSE LLC; SIMON &
SCHUSTER, INC.,

Defendants.

No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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Plaintiff alleges the following upon personal knowledge as to itself and its own acts, and as to all other matters upon information and belief, based upon the investigation made by and through its attorneys.

I. INTRODUCTION

1. Plaintiff is a bookseller that operates online and as a physical store. Plaintiff directly purchases print books¹ published and sold at wholesale by the five largest publishers in the United States: Defendant Hachette Book Group, Inc. (“Hachette”); Defendant HarperCollins Publishers L.L.C. (“HarperCollins”); Defendant Macmillan Publishing Group, LLC (“Macmillan”); Defendant Penguin Random House LLC (“Penguin”); and Defendant Simon & Schuster, Inc. (“Simon & Schuster”), otherwise known collectively as the “Big Five.” The Big Five publish and sell “trade books,” a term of art referring to “general interest fiction and non-fiction books,” as “distinguished from ‘non-trade’ books such as academic textbooks, reference materials, and other texts.”² Collectively, the Big Five account for about 80% of the trade books sold in the United States.³

2. Plaintiff also competes with Defendant Amazon.com, Inc. (“Amazon”), the largest retail bookseller in the United States. Amazon sells over half of all books purchased at

¹ This lawsuit concerns the sale of print books (hardbacks, paperbacks, and mass produced). Defendants’ conduct with respect to the sale of electronic books is the subject of a separate lawsuit. *In Re Amazon.com, Inc. eBook Antitrust Litigation*. Case Number: 1:21-cv-351-GHW-DCF (S.D.N.Y.).

² *United States v. Apple Inc.*, 952 F. Supp. 2d 638, 648 n.4 (S.D.N.Y. 2013).

³ Constance Grady, *Milo Yiannopoulos’s book deal with Simon & Schuster, explained*, Vox (Jan. 3, 2017), <https://www.vox.com/culture/2017/1/3/14119080/milo-yiannopoulos-book-deal-simon-schuster-dangerous-boycott>; Thad McIlroy, *What the Big 5’s Financial Reports Reveal About the State of Traditional Book Publishing*, Book Business (Aug. 5, 2016), <https://www.bookbusinessmag.com/post/big-5-financial-reports-reveal-state-traditional-book-publishing/>.

retail in the United States,⁴ including about 90% of all print books sold online.⁵ Plaintiff alleges that Amazon and the Big Five restrain competition in the sale of print trade books through highly restrictive most favored nation clauses (MFNs) in their distribution agreements. These anticompetitive provisions ensure that no rival bookseller can differentiate itself from, or otherwise compete with, Amazon on price or product availability in the sale of print trade books.

3. In general, MFNs entitle the buyer to the lowest price or best terms that the supplier offers to any other buyer,⁶ but combined with Amazon's market dominance, they serve an anticompetitive purpose that controls the wholesale price of print trade books, destroys Amazon's retail competition, reduces consumer choices, and creates a disincentive among booksellers to compete on price or non-price promotions in the sale of print trade books.

4. It would increase the Big Five's book distribution and therefore be in their economic self-interest to let Amazon's rival booksellers gain market share by offering them lower wholesale prices or exclusive early releases. But Amazon's contracts with publishers cover practically all the potential avenues a competing bookseller may attempt to use in order to differentiate itself against Amazon.⁷ To control wholesale prices, the Big Five agree to

⁴ House Judiciary Committee, Investigation of Competition in Digital Markets, Oct. 5, 2020 at 295, https://judiciary.house.gov/uploadedfiles/investigation_of_competition_in_digital_markets_majority_staff_report_and_recommendations.pdf ("House Report").

⁵ *Id.* at 255 n.1562.

⁶ *See Apple*, 952 F. Supp. 2d at 662.

⁷ European Commission's Directorate General for Competition, Case AT.40153 EBook MFNs and related matters (Amazon), https://ec.europa.eu/competition/antitrust/cases/dec_docs/40153/40153_4392_3.pdf ("5.4.2017 DG Comp. Decision") at 38.

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