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VIA ELECTRONIC MAIL

Honorable Denise L. Cote
United States District Judge
Daniel P. Moynihan U.S. Courthouse
New York, NY 10007-1312

Re: *United States v. Apple Inc., et al.*, No. 12-cv-2826 (DLC)
also file in 12-cv-3394 (DLC)

Dear Judge Cote: also file in 11-md-2293 (DLC

Apple respectfully submits this letter to oppose the DOJ's request for an extension of the trial date from early June to September 2013. Under the statutory mandate of 15 U.S.C. § 4, and in light of the important public interests implicated by this litigation, every effort should be made to keep the current trial date.[1] Apple has worked diligently to resolve multiple disputed issues, review and produce documents on a rolling basis, and expects to substantially complete a multi-million page production by the end of month. Apple has faced delays with Amazon's discovery, but, with the Court's active assistance, believes it can obtain the necessary documents and testimony to prepare its case. Apple remains steadfast in its demand for a speedy trial in this matter. Neither Apple nor the public should be penalized by a later trial date to accommodate the DOJ's needlessly overbroad requests for discovery from other parties.

First, the "voluminous" public comments in the Tunney Act proceedings reflected deep and consistent concerns throughout the market about how the changes brought about by the settlement, and sought in the litigation, would affect the very future of the eBook (and broader book) business. Under the governing standards, the DOJ was not required to prove (or even factually support) its case in order to secure substantial changes in the marketplace. But the DOJ's theories and allegations *are* disputed, and Apple categorically denies that it conspired or engaged in any form of anticompetitive conduct. At trial the DOJ must meet its burden of proof, and the Court will determine the critical questions of conspiracy and whether the relevant market has been made more or less competitive by Apple's entry as an agent. The longer the road to trial, the greater the risk that the market changes brought about by litigation will be irreversible, thus making a fair evaluation of the merits largely irrelevant. These serious concerns overwhelmingly support maintaining the June trial date.

[1] This objective would be served by deferring all alleged damages and class certification issues to a time after the resolution of the States' settlements and the conclusion of the DOJ liability trial.

Second, Apple respects the Court's need to balance competing considerations to provide a fair trial for all parties. But the DOJ has failed to explain its need for the massive discovery it seeks, apparently constituting several million more documents from multiple parties, beyond those already obtained through its self-described broad 18-month pre-trial investigation, which included sizeable document productions, interrogatories, and depositions. The DOJ's principal complaint is that taking depositions is "unfeasible" given the status of the document production, ignoring that tens of thousands of pages of the most relevant documents (perhaps all of the most relevant documents) were obtained by the DOJ before the complaint was filed.

At best, the DOJ's request is premature. Indeed, the DOJ has never attempted to craft a tailored discovery plan that would focus on truly relevant discovery, including a reasonable number and plan of depositions to allow the case to proceed to trial on the current schedule. Apple believes such a discovery schedule is possible and, as evidenced by its efforts to date, is committed to working cooperatively in mapping out and completing discovery. For example, to address the DOJ's concerns, document production can be prioritized to target potential deponents. But simply extending case dates out three months to allow for more extensive and burdensome discovery without cause and without a plan will not serve the interests of justice.

Third, Apple has worked cooperatively to resolve numerous challenging issues (not all of which were merely "technical," as the DOJ seems to suggest) and has committed extraordinary resources to substantially completing its expeditious review and production of more than 1.3 million documents demanded by the DOJ from 28 custodians (most of marginal relevance), on or before October 31. This effort follows Apple's review of 450,000 documents for production in the investigative phase. The DOJ understood the volume of documents it was seeking through its requests, but has largely resisted even modest limitations in scope. As a result, Apple invested a significant amount of money and effort with the understanding that this case would be going to trial in June. Accordingly, there is no basis for the DOJ's assertion that an extension is required to overcome "damage caused by months of inertia."

Apple has pursued its discovery in a targeted and focused manner, bringing disputes to the Court for prompt resolution. Apple believes that the discovery trade-offs necessary to meet a June trial date are reasonable and achievable, but will require a more realistic and focused approach. Apple respectfully suggests that before any consideration is given to adjusting the schedule, the parties should first attempt to work out a reasonable discovery plan consistent the June trial date with the Court's oversight.

Sincerely,

Daniel Floyd by cer

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