

Exhibit O



November 21, 2013

BY E-MAIL

Michael R. Bromwich
The Bromwich Group LLC
901 New York Avenue, NW 5th Floor
Washington, D.C. 20001

Re: External Antitrust Compliance Monitoring

Dear Michael,

Thank you for meeting with us this week and for the fruitful discussions that we had on a number of issues, and I am glad that we were able to reach agreement in areas such as confidentiality. However, there is one issue left to be resolved: your proposed fees and expenses in this matter.¹ As we have conveyed to you previously, the billing rates that you have proposed, as well as the 15% administrative fee that you intend to charge on top of those rates, are unreasonable, non-customary, and inconsistent with Judge Cote's direction.²

First, the fee structure that you have proposed is unreasonable for a matter of this size, scope, and type. Apple has now conducted an extensive review of past billing practices for comparable matters, law firms, and law firm partners who have done work for Apple. Of the approximately 5000 matters that we reviewed, involving roughly 1750 partners, not a single partner had an effective billing rate as high as or higher than those that you have proposed here, and no firm ever imposed an "administrative fee" similar to the 15% fee that you propose. Whether compared to the most expensive partners who have **ever** worked on Apple matters, or the average of the top 10% of the most expensive partners who have worked on those matters, your fees far exceed customary billing arrangements for engagements of similar size and scope and are certainly not "customary and reasonable."

¹ Your letter dated November 7, 2013 indicates you agree to adhere to some but not all terms of the Apple expense policy and guidelines.

² See September 5, 2013 Final Judgment ("Final Judgment") § VI.I (providing that "[t]he compensation of the External Compliance Monitor and any persons hired to assist the External Compliance Monitor shall be on **reasonable and customary terms** commensurate with the individuals' experience and responsibilities and consistent with reasonable expense guidelines") (emphasis added); see also *id.* § VI.J. (permitting Apple to challenge actions it "determines" not to be "cost-effective").



Second, your proposed fees appear to bear no relation to the fees that you have charged in past monitorships. For example, in a proposal to monitor the New Orleans Police Department, you suggested a fee of \$495 per hour, with no additional administrative fee, which the Department of Justice referred to as “relatively expensive.”³ You also informed us that, in another monitoring engagement relating to a municipality, you billed at a fee of \$750 per hour, while you billed a foreign sovereign state \$1250 per hour. Based on this billing history, it is unclear to us how your billing at \$1100 per hour is consistent with your own “reasonable and customary” practices either.

Third, despite our previous requests, you still have provided no support for adding the 15% administrative fee on top of all time billed in a matter of this type, in which you have been personally appointed to perform the duties of an attorney. Please explain what support, if any, you have for the contention that a 15% administrative fee is “customary and reasonable” for a monitoring engagement involving legal functions.⁴

Fourth, while you have now provided some support for the billing rate of Mr. Nigro, you still have provided no meaningful support for your own rate or the rates of other members of your team such as Ms. Cirincione, Mr. Chowdery, Mr. Bensing, and Ms. Carroll and no evidence to suggest that those rates are reasonable and customary.⁵

Fifth, your proposal to provide only time billed and the total billed amount does not permit us to determine whether your fees and expenses are reasonable and customary. While you expressed concern regarding confidentiality in providing additional detail, you should at minimum provide a general description of each task performed, so that Apple may make a reasonable assessment of your bills. Apple requires detailed time entries—without block billing—from all law firms before paying bills in any comparable matters. We appreciate your stated willingness at the meeting to consider Apple’s request for a description of any work performed, and we look forward to receiving your response.

³ See June 4, 2013 Department of Justice Memorandum at 18.

⁴ A justification that you stated at the meeting for the 15% administrative fee was that your solo practitioner consulting group could not generate a profit by staffing associates to this matter. However, the proposed 15% fee applies to Fried Frank, which already has two associates staffed to the monitoring team, and we request support showing that you will not generate a “profit” without that 15% mark-up.

⁵ Other areas in which we have requested additional detail include the hourly billing rates that the Bromwich Group and Fried Frank traditionally charge their respective clients, including any standard discounts or allowances for matters of this type, size, and scope, and any evidence that applying the 15% fee to the invoices of Fried Frank—a law firm—is reasonable or customary under these circumstances.

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Sixth, we requested a budget in order to process your initial bill, as Apple requires for all law firms. In response, you provided an arbitrary figure of \$5 million, in order for Apple to process your initial invoices. Without some rational explanation for that figure, as well as some support for why it is reasonable, Apple cannot fairly evaluate whether your proposed budget is consistent with the letter and spirit of the Final Judgment.

Seventh, we are now in receipt of your first invoice. The total invoice for October was \$138,432.40. This total includes \$18,056 in administrative fees and billable rates of \$1,100 and \$1,025 for you and Mr. Nigro, respectively. These fees, invoiced *for only two weeks of work*—before any documents were exchanged, interviews scheduled, or meaningful travel conducted—only amplifies Apple’s concern and heightens the need to reach agreement on fees immediately.

Finally, you suggested that Apple’s wealth is a sufficient reason not to address the billing concerns set out above. This contention is irrelevant and nowhere reflected in the Final Judgment. Rather, Judge Cote’s decision expressly requires your fees and expenses to be customary and reasonable.

We look forward to receiving the documentation and support for your proposal requested here as soon as possible, and we intend to continue working with you in good faith to try to resolve all of these issues. However, by sending this letter and meeting and conferring orally with you, Apple does not waive, but rather fully preserves, the right to raise any or all of these issues with the Court, if necessary.

Feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Noreen Krall", is written in black ink.

Noreen Krall