EXHIBIT D

U.S. Department of Justice

Antitrust Division

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December 24, 2013

Noreen Krall, Esq.
Vice President, Chief Litigation Counsel
Apple Inc.
1 Infinite Loop
Cupertino, CA 95014

Re: United States v. Apple, Inc., et al., No. 12-cv-2826 (DLC)
State of Texas v. Penguin Group (USA), Inc., No. 12-cv-3394 (DLC)

Dear Ms. Krall:

Thank you for your letter of December 17, 2013. As you know, Plaintiffs have thoroughly reviewed all of Apple's filings regarding the External Compliance Monitor, and have spoken at length with both Apple and Mr. Bromwich concerning all issues that Apple has raised. In our December 13 letter to the Court, we expressed generally our conclusions concerning Apple's objections. While we disagree with Apple regarding the legitimacy of the objections it has made, please know that that in no way affects our commitment to ensuring that the terms of the Final Judgment are abided by in all respects by all parties, and that Apple and the External Compliance Monitor work cooperatively going forward. The remainder of this letter responds to the specific issues identified in your December 17 letter.

1. Scope of Monitor's Responsibilities

In your letter, you state that "Mr. Bromwich must refrain from *further* efforts to expand his mandate beyond the sharply delineated tasks set forth in the Final Judgment." (Emphasis added). However, as noted in our December 13 letter to Judge Cote, the United States and Plaintiff States are unaware of *any* instance in which Mr. Bromwich has acted outside the scope of his authority under the Final Judgment—and your December 17 letter does not identify any.

The Final Judgment explicitly provides that Mr. Bromwich may, in connection with the exercise of his responsibilities under Section VI of the Final Judgment, "interview, either informally or on the record, *any* Apple personnel." FJ § VI.G.1 (emphasis added). While we understand that Apple's complaints center on Mr. Bromwich's requests to interview Apple senior executives and Board members, such interviews are standard practice in a monitor

assignment. Here, given that the Court determined that "Apple lawyers and its highest level executives" orchestrated a price-fixing scheme and exhibited "a blatant and aggressive disregard [] for the requirements of the law," Aug. 27, 2013 Tr. at 17:1-6, interviews with Apple's senior executives and Board members are not only appropriate under the Final Judgment, but are critical. That said, our understanding is that to date, Mr. Bromwich has interviewed only one Apple senior executive, General Counsel Bruce Sewell, and one Apple Board member, the Chair of Apple's Audit and Finance Committee, Dr. Ronald Sugar. Neither during those interviews, nor during any other interviews, has Apple objected to any question posed by Mr. Bromwich as veering outside the scope of his responsibilities.[1]

Turning to Apple's proposed schedule and procedures for Mr. Bromwich to adhere to, I think we all agree that Apple and Mr. Bromwich should work together to minimize future disputes. We believe that opening a line of communication on matters such as scheduling and confidentiality could prove beneficial. However, many of Apple's proposals go well beyond creating a dialogue, and in effect would operate to neuter the monitorship. An External Compliance Monitor was appointed by the Court because Apple failed to demonstrate that it was committed to taking steps on its own to ensure that the government need never again expend its resources to bring Apple into court for violations of the country's antitrust laws. *See, e.g.*, Aug. 27, 2013 Tr. at 17:7-16. As such, it is both inappropriate and likely ineffective for Apple to act as a gatekeeper—preventing Mr. Bromwich from seeking interviews or conducting his work unless he receives advance approval from Apple. Mr. Bromwich must have the flexibility to carry out his responsibilities, consistent with the Final Judgment, in the manner that he deems most appropriate. Of course, in the event Mr. Bromwich seeks to engage in specific actions that Apple believes are outside the scope of his permitted activities, we request that, consistent with Section VI.H of the Final Judgment, you notify us at once.

2. Timing of Monitor's Assignment

The appointment of the External Compliance Monitor is for a period of two years, with the possibility of one or more one-year extensions. FJ § VI.A. Nowhere in the Final Judgment does the Court provide that the Monitor must wait 90 days before beginning his work—nor would it make any sense for him to do so. Section VI.C. of the Final Judgment only clarifies that Mr. Bromwich is to review Apple's policies, procedures and training programs as they exist 90

[1] Your letter also states that "Mr. Bromwich must cease his requests for *ex parte* access to Apple Board members and executives." For reasons unknown, Apple continues to argue that this Court's orders permit Mr. Bromwich to speak with Apple executives without counsel present—even though Plaintiffs, Mr. Bromwich and the Court have all been steadfast in making clear that is not what the Final Judgment says. *See* FJ § VI.G.1 (the External Compliance Monitor may "interview, either informally or on the record, any Apple personnel, who may have counsel present."). You were on the December 13 teleconference where the Court specifically stated that it had not authorized, and was not authorizing, Mr. Bromwich to speak to Apple executives without counsel present, and you received the Court's Order that same day that explicitly stated that the Court was not using the term *ex-parte* to mean "uncounseled." Dec. 13, 2013 Order (Dkt. No. 416). And, to our knowledge Mr. Bromwich has never requested or sought to deprive Apple of counsel at any interview.

days after his appointment. FJ § VI.C. Mr. Bromwich's work to date has been undertaken in order to allow him to properly make his assessments, and is wholly appropriate.[2]

Notwithstanding, Mr. Bromwich has proposed to Apple that the next round of interviews with its personnel not take place until after Apple's revised policies, procedures and training are in place. While that offer moots the bulk of Apple's current objection, we expect that, consistent with Section VI.G, Apple will assist Mr. Bromwich in the performance of his duties by timely responding to all of his scheduling requests and requests for information and documents.

3. Financial Issues

Mr. Bromwich is permitted to hire any persons reasonably necessary to fulfill his responsibilities. FJ § VI.I. Those individuals and Mr. Bromwich serve "at the cost and expense of Apple, on such terms and conditions as the United States, after consultation with the Representative Plaintiff States, approves." *Id.* Those compensation terms are required to be reasonable and customary and commensurate with the individuals' experience and responsibilities. *Id.* Nowhere does the Final Judgment provide that Apple shall have any role in setting the compensation terms of Mr. Bromwich and his team, or in approving his expenses.

Nonetheless, we understand that Apple has objected to the financial terms of Mr. Bromwich's engagement, and has proposed significantly reduced terms based on "a detailed analysis of billing rates for law firms doing work for Apple and the nature of the tasks to be performed by Mr. Bromwich and his team."[3] Respectfully, we do not believe that the rates Apple is able to negotiate with outside counsel it chooses to hire is the appropriate metric to use here. As noted above, Mr. Bromwich does not work for Apple—he is serving as a Court-appointed monitor to ensure that Apple's compliance policies and training are sufficient to prevent Apple from orchestrating another massive and costly price-fixing scheme. Mr. Bromwich is one of the most highly regarded and experienced monitors in the country, and the terms of the Final Judgment require that his compensation reflect both his experience and the critical responsibility he has been entrusted with.

We firmly believe that a compromise acceptable to both Apple and Mr. Bromwich can be reached on the fee issue. Mr. Bromwich has informed Apple that he is willing to engage in those discussions, and we reached out to Apple's counsel last week to inquire whether Apple similarly was inclined. Once we receive Apple's response, we will proceed accordingly.

Regardless of the outcome of the fee dispute, we do not believe it is productive or logical to set a cap on total fees for the External Monitor's 2014 and 2015 work. As you know, a sizeable portion of the fees billed so far have been incurred because Mr. Bromwich has had to devote significant time to engaging in dialogues unreasonably extended by Apple over basic

[2] At no point prior to its letter did Apple assert that Mr. Bromwich needed to wait 90 days before commencing any work. Indeed, during the meet-and-confer-process Apple specifically stated that it believed Mr. Bromwich should be performing various monitor functions in his first 90 days.

[3] We have not been provided any analysis by Apple of the rates its counsel charge, or any of the data underlying that analysis.

scheduling issues and responding to baseless objections by the company. Neither Mr. Bromwich nor Plaintiffs expected that Apple would seek to impede his ability to perform his tasks, and certainly no one could properly budget for such obstructions. Apple can minimize the bills of the External Compliance Monitor by working with Mr. Bromwich, rather than continuing in the adversarial posture it has operated under so far.[4]

* * *

While we recognize that Apple would prefer that there be no External Compliance Monitor, the reality is that Mr. Bromwich has been appointed to perform that function, and that his appointment provides Apple with a genuine opportunity to "change its culture to one that includes a commitment to understand and abide by the requirements of the law." Aug. 27, 2013 Tr. at 20:1-4. We hope that, moving forward, Apple will conduct itself as a model for antitrust compliance, and are confident that Mr. Bromwich and his team can assist in those efforts. We remain dedicated to assisting in resolving any and all disagreements Apple may have with the process as it is carried out, and gladly accept your request to meet in Washington, D.C., the week of January 14 to discuss these matters in person. In the interim, we hope you and your colleagues have happy holidays.

Sincerely,

/s/ Lawrence E. Buterman
Lawrence E. Buterman

[4] For the same reasons, we believe that requiring Mr. Bromwich to submit workplans and budgets is of limited utility. As noted above, however, we do believe that increased communication between Mr. Bromwich and Apple is important, and welcome those types of discussions when possible. We also believe that there is benefit in the External Compliance Monitor providing Apple with billing that contains some reasonable level of detail, and are hopeful that Apple and Mr. Bromwich can come to an agreement on that matter.