

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,      :
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:                               :      12 Civ. 2826 (DLC)
:                               :
:                               :      MEMORANDUM OPINION
:                               :      & ORDER
:                               :
:                               :
APPLE, INC., et al.,          :
:                               :
:                               :      Defendants.
:                               :
:                               :
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DENISE COTE, District Judge:

On August 1, 2012, non-parties the American Booksellers Association (the "ABA") and Barnes & Noble, Inc. (Barnes & Noble") filed a motion for leave to file amici curiae responses to the U.S. Department of Justice's Tunney Act filings. For the following reasons, the motion is granted.

BACKGROUND

The Government filed this action on April 11, 2012 against defendants Apple, Inc. ("Apple"); Hachette Book Group, Inc. ("Hachette"); HarperCollins Publishers L.L.C. ("HarperCollins"); Verlagsgruppe Georg Von Holtzbrinck GMBH and Holtzbrinck Publishers, LLC d/b/a MacMillan (collectively, "MacMillan"); The Penguin Group, a division of Pearson PLC and Penguin Group (USA), Inc. (collectively, "Penguin"); and Simon & Schuster, Inc. ("Simon & Schuster"). That same day, the Government

submitted a proposed Final Judgment as to defendants Hachette, HarperCollins, and Simon & Schuster, as well as a Competitive Impact Statement pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. §§ 16(b)-(h), which invited public comment on the Proposed Final Judgment. Pursuant to a Scheduling Order of June 25, the Government is to submit any motion with respect to the proposed Final Judgment by August 3. Any submissions in response to the motion by a party to the litigation are to be submitted by August 15, not to exceed five pages, and the Government has until August 22 to file any reply.

The ABA and Barnes & Noble filed six- and twenty-seven-page submissions, respectively, during the public comment period. Those submissions have been provided to and will be considered by the Court. The ABA and Barnes & Noble filed their motion for leave to file amici curiae responses to the U.S. Department of Justice's Tunney Act filings on August 1 (the "Amici Curiae Motion"). The brief in support of the Amici Curiae Motion contains five pages of substantive arguments that do not address the question of whether leave to file amici curiae responses is appropriate, but rather oppose approval of the proposed Final Judgment. On August 3, the Court received a letter from the Government opposing the Amici Curiae Motion.

DISCUSSION

Under Section 16(e) of the Tunney Act, the district court must determine in advance whether the entry of an antitrust consent decree is "in the public interest." 15 U.S.C. § 16(e). In making this determination, the Court "may . . . authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, . . . or participation in any other manner and extent which serves the public interest as the court may determine appropriate." 15 U.S.C. § 16(f). In exercising its discretion under this provision, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24.

In accordance with these principles, the August 1 Motion is granted. In light of the existing submissions filed by the ABA and Barnes & Noble during the public comment period and the inclusion of arguments opposing approval of the proposed Final Judgment in their motion papers, however, no further submissions by the ABA and Barnes & Noble will be permitted. The ABA and Barnes & Noble's brief in support of the August 1 Motion will be accepted as these parties' amici curiae response to DOJ's Tunney Act submissions. This restriction is also appropriate given the

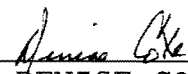
page limit imposed on responses to any Government motion to be submitted by the parties to the litigation.

CONCLUSION

The August 1, 2012 motion submitted by the ABA and Barnes & Noble for leave to file amici curiae responses to DoJ's Tunney Act filings is granted. The submission from the ABA and Barnes & Noble in support of the August 1 motion will be accepted as amici curiae response to the DoJ's Tunney Act filings. No additional filings from the ABA and Barnes & Noble shall be permitted.

SO ORDERED:

Dated: New York, New York
August 6, 2012



DENISE COTE
United States District Judge