Case Study

Name

Institution Affiliation

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Legal Issue Name of the Case

The legal issue name of the case is United States of America v. Apple Inc., et al., 12 Civ. 2862 (DLC)

Essential Facts

The largest publishers of general readership books comprise Penguin, Simon & Schuster, Macmillan, Hachette, Random House, and HarperCollins. These six are renowned for publishing popular non-fiction and fiction books that incorporate 90% of New York Times bestsellers (Fung, 2013). For ten years, these publishers conducted their activities following a moderately reliable business model. If there were a new book set for public release, they would trade hardcover versions to dealers at a wholesale price and advocate merchandising to consumers at a list price (publisher's recommended retail price). When the hardcover copy had a year on the shelf, the publishers produced a paperback version at reduced wholesale and list prices. Theoretically, passionate book lovers paid the increased hardcover value to get a book at its release, while casual readers awaited the paperback copy.

At the end of the ten years, Amazon was retailing eBooks at a low price of $9.99 a piece, an inexpensive cost, but not for the publishers that charged more (Fung, 2013). Although Amazon was reducing its revenues on eBook sales, it did not view this as a concern to their company. This was because their end objective was to ensure that consumers purchase their Kindle e-readers (Fung, 2013). The six big publishers did not anticipate that Amazon would retail their books at a loss. Still, they could not do anything about that since they had agreements with the corporation.

There was a collaboration between Amazon and the publishers in alignment with a wholesale model which allowed the publishers to sell their merchandise to retailers at a given agreed price but afterward surrender cost control at retail.

Given Amazon's competitive pricing, the publishers rationalized that the firm could become so powerful to the extent that it would have the capacity to reduce prices for every book, including the hardcovers. They were afraid that Amazon could start to bargain with authors and eliminate publishing houses completely.

This is when the tech giant, Apple, launched its initiatives in the industry, realizing the opportunity to exploit the fears that the publishers had concerning Amazon. Before launching the iPad on Jan. 27, 2010, the firm signed agreements with the publishers to include their eBooks in the iPad's iBookstore. The agreement would have the publishers owing Apple 30% of their sales, but publishers would regain price control on the retail of their eBooks, increasing the price of a new eBook by 33% (Seward, 2013).

Moreover, the publishers settled to not sell their books at lower prices at other retail points such as Amazon that chose the $10 price (Seward, 2013). Consequently, the typical value of eBooks retailed in the United States increased as soon as the iPad was launched. The court was confident that Apple's bargaining strategies were equal to a scheme that lowered competition in the eBook industry. Apple argued that it neither affected the eBook sector nor conspire with the publishers.

Issue. The procedural legal issue in the case was whether, considering the Sherman Antitrust Act, a top-down agreement that Apple signed with the publishers should be regarded as automatically illegal or whether it should be evaluated via the more lenient "rule of reason"

assessment that does not usually denounce the tactic at issue but gauges if it had a negative or positive effect on competition in the industry at issue (Denniston, 2016).

Relevant law. Section 1 of the Sherman Act, 15 U.S.C. 1, states that:

"Every agreement, combination in the style of trust or otherwise, or collusion, in restriction of trade between several States, or foreign nations, is acknowledged as illegitimate. Any individual that shall establish any bargain or participate in any collusion or combination hereby pronounced to be unlawful shall be considered culpable of a felony" (Cornell Law School, 2017).

Analysis by the court. The court settled that Apple coordinated a conspiracy between the publishers to increase the prices of eBooks, that the plot arbitrarily limited trade in the infringement of Section 1 of the Sherman Act, 15 U.S.C. 1, and that the ruling was accurately aligned to safeguard the public from future monopolistic evils.

Conclusion by the Court

The court refused to consider Apple's counter to an appellate court ruling that resolved that it schemed with the publishers to raise the eBook prices, implying it must pay $450m as part of a settlement. The court stated that the conspiracy resulted in the rise of eBook prices to $14.99 from the $9.99 that was earlier charged by Amazon (The Guardian, 2016). What is more, the court accused Apple of contriving with the publishers as it was unveiling its iPad on Jan. 27, 2010 and was trying to end Amazon's low-cost dominance in the eBook industry.

Ethical Issues

The moral issue that was in the case was concerning the judge's statement to Apple. Judge Denise Cote remarked that neither Apple nor the publishers showed the littlest compunction in conspiring to raise the prices of eBooks. Furthermore, Cote was disappointed

that Apple had not taken any measures to rectify its business strategies like instituting internal compliance censoring, to stop it from assuming such conduct in the future (Jackson, 2013).

Do the legal and ethical issues conflict? Indeed, there was a conflict in the legal and ethical issues in the case. It is not within the scope of a judge to determine the morals or behaviors others should exhibit as moral assessments are usually at a higher bar than the law. Most observe the principle that judicial consideration is expected to be per the law unless a judge would desire to subject his/her decision to harm due to being annulled for not adhering to law to the minutest details or deviating from the legal procedure. The core issue with every consideration is not with personal discernments but with the actual tenets of law. Most judges at every level, whether elected or appointed are in questionable positions for being re-elected or reappointed, a possibility usually determined by the number of appeals that they lose on their cases.

An article had included this, “A federal judge put Apple on the spot on Friday for expressing no remorse regarding potentially duping its clients” (Jackson, 2013). Taking a chance to reflect on this, the word “potentially” is unusual, as it is hard to show contrition for something that did not happen. Either the author distorted it, or the judge possesses strange perceptions that individuals should show regret for things that could have occurred.

Do you agree with the court’s decision? Why or why not? I do not agree with the court’s decision for several reasons. Maybe the biggest fault in the court’s decision is in failing to put emphasis on the error costs and the restrictions of antitrust as an administrative system.
In censuring Apple’s vertical contracts as automatically illegal, because they were purportedly applied to enable a horizontal price-setting plot among publishers, the courts overlooked the extensive literature regarding the efficiencies related to vertical restrictions. Additionally, the

vertical restrictions utilized by Apple in this scenario, such as MFN (most-favoured-nation) clauses, evidently had significant efficiency potential (Manne, 2013). This is because they were predominantly adapted to accelerate Apple's competition with Amazon's recognized e-book platform and therefore improve competition in the new eBook market.

As a result, the court's inability to evaluate the restrictions in part under the antitrust rule of reason developed a high possibility for erroneously rebuking procompetitive behavior (false positives). On the other hand, the potential for incorrectly lacking to reprimand anticompetitive behavior (false negatives) under a rule of reason consideration in this case (pertaining a new dynamic industry, the application of typically valid vertical agreements by a new entrant, and a substantial record) would have been reasonably small (Manne, 2013). Moreover, the court's per se condemnation of vertical limits in Apple generates significant deterrent costs, by restraining other enterprises from creating original distribution models utilizing vertical restrictions in new markets.

How should Apple ethically respond and fulfill its corporate responsibility? Apple should not ethically respond or fulfill any corporate responsibility. This is because the company joined the eBook industry as a moderately small newcomer competing with a dominant occupant. Apple was able to do this through presenting suppliers or publishers lucrative terms to the agreement with its new iBookstore (Manne, 2013). This is not different from a situation where a new competitor in any market provides new commodities or loss-leader costs to lure clients and increase market sales. When a new entrant now causes a market-wide change towards the new competitor's merchandise, business model or prices, it is referred to as competition and extolled as the goal of correctly functioning industries. The same should apply to Apple.

Conclusion

All in all, the court's method is purely against a welfare-improving, decision theoretic attitude to antitrust. Moreover, it goes against the overall power of the Supreme Court's current antitrust system that subtly embraced an error cost structure with an emphasis on procompetitive behavior. Erroneous conclusions and the consequent wrongful condemnations are particularly costly as they deter the same behavior the antitrust policies are created to defend.

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