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MADIGAN SETTLES WITH TWO E-BOOK PUBLISHERS FOR PRICE-FIXING

Publishers Conspired to Overcharge Consumers for e-Books

Chicago — Attorney General Lisa Madigan today joined 32 other attorneys general in proposed antitrust settlements with Penguin and Macmillan, the remaining two publishers accused of conspiring to raise prices for e-books beginning in 2010.

Penguin Group agreed to pay approximately \$3.1 million to Illinois residents who were overcharged in the scheme, and Macmillan, which has a smaller share of the e-book market, agreed to pay about \$820,000.

The settlements follow a 2012 lawsuit in which the states alleged that five publishers, Hachette, HarperCollins, Macmillan, Penguin Group and Simon & Schuster, colluded with Apple to drive up the price of e-books beginning in 2010, when Apple unveiled its first e-book reader, the iPad.

Prior to Apple entering the e-book market in 2010, most new bestsellers in this format cost \$9.99 – a price set by the leading e-book retailer, Amazon. The lawsuit alleged the publishers colluded to increase e-book costs to \$12.99 and \$14.99 when they struck a deal with Apple to sell their books directly to readers, using its iBookstore as the vehicle for the sales. Historically, publishers have sold their books to retailers who in turn have sold them to readers. The deal with Apple – a so-called agency model of distribution – allowed the publishers to control the retail price and to sell the content to consumers directly. For its part, the lawsuit alleged Apple received a guaranteed 30 percent commission on all e-books that were sold under the deal.

“The publishers’ price-fixing scheme forced customers to pay millions more than they otherwise would have,” Madigan said. “These settlements will restore the money lost as a result of Penguin and Macmillan’s collusion with other e-book publishers.”

Like the three previous publishers to settle, Penguin and Macmillan will compensate customers who purchased e-books from any of the publishers from April 1, 2010, through May 21, 2012.

Penguin will pay a total of \$75 million nationwide. Macmillan will pay \$20 million. Payments or credits to consumers are expected to begin 30 days after the court gives final approval to the settlements.

The attorneys general previously settled with Hachette, HarperCollins and Simon & Schuster. From those settlements, Illinois residents are expected to receive about \$2.7 million in refunds. If the Penguin and Macmillan settlements are approved by the court, Illinois residents’ recovery would increase to a total of \$6.7 million.

As part of the settlements, Penguin and Macmillan also are required to change the way they price e-books going forward. They must terminate the agency agreements with certain retailers, such as Amazon and Barnes & Noble, which prevented the retailers from reducing the prices of their e-book titles. Until December 2014, Penguin and Macmillan will be prohibited from making any new agreements that prevent retailers from offering consumer discounts or other promotions that encourage the sale of e-books. The proposed settlement agreements also prohibit Penguin and Macmillan from further conspiring or sharing competitively sensitive information with their competitors for five years.

Penguin and Macmillan also agreed to pay \$7 million and \$3 million, respectively, to the states for the cost of the investigations and litigation. In addition, the settlements would resolve a private class action against Penguin and Macmillan that was brought by e-book purchasers from other states.

The antitrust case against the remaining defendant, Apple, Inc., is pending in the Southern District of New York.

Bureau Chief Robert Pratt and Assistant Attorney General Chadwick Brooker have handled these cases for Attorney General Madigan's Antitrust Bureau.

-30-

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