

On balance the Second Circuit was right to apply the antitrust laws to Apple.

Right now the Supreme Court has before it [a petition for Certiorari](#), brought by Apple, Inc., which asks the Court to reverse the decision of the Second Circuit. That decision found *per se* illegality under the Sherman Act, for Apple's efforts to promote cooperation among a group of six major publishers, who desperately sought to break Amazon's dominant position in the ebook market. At that time, Amazon employed a wholesale model for ebooks under which it bought them for a fixed price, but could sell them for whatever price it wanted, including sales at below cost of popular books treated as loss leaders. These sales particularly frustrated publishers because of the extra pressure they placed on the sale of hard cover and paper back books. That problem disappeared under the agency relationship model that Apple pioneered. Now the publishers would set the prices for the sale of their own volumes, and then pay Apple a fixed commission for its services in selling the ebooks.

[Read the full piece here.](#)