Collusion

- Collusion is an explicit agreement between competitors to reduce competition.
  - Increase price, decrease in quantity
  - Bid rigging
  - Agree not to enter each others market
  - Agree not to poach customers (or employees).
- Collusive agreements are easier to maintain if there is a credible punishment mechanism for cheating on the agreement.
  - Price war, flood market with output, etc.
- Collusion is easier with fewer firms, homogenous products, transparent prices.

Collusion

- An (attempted) explicit agreement is a criminal violation.
- Leniency for whistleblowers and penalties multiplicative of gains have been effective in preventing collusion.

- Major cases:
  - Lysine – animal feed additive
  - LCD panels
  - School Milk (Ohio, New York, etc.).

Collusion: Apple and ebooks

- US vs. Apple and five major book publishers
- Apple conspired with publishers to change ebook contracts with Amazon.
  - Old contracts were "Wholesale" – Amazon buys ebook from publisher for $10, but sets final price.
  - New contracts were "Agency" – Publisher sets final price and Amazon gets 30% cut.

- Why didn't Apple or publishers like "wholesale" contracts with Amazon?

Collusion : Apple and ebooks

Steve Jobs Biography: First slide in US opening argument

The iPad 503

linked nature of the web were sacrificed. Apps were not as easily linked or searchable. Because the iPad allowed the use of both apps and web browsing, it was not at war with the web model. But it did offer an alternative, for both the consumers and the creators of content.

Publishing and Journalism

With the iPod, Jobs had transformed the music business. With the iPad and its App Store, he began to transform all media, from publishing to journalism to television and movies.

Books were an obvious target, since Amazon's Kindle had shown there was an appetite for electronic books. So Apple created an iBooks Store, which sold electronic books the way the iTunes Store sold songs. There was, however, a slight difference in the business model. For the iTunes Store, Jobs had insisted that all songs be sold at one inexpensive price, initially 99 cents. Amazon's Jeff Bezos had tried to take a similar approach with ebooks, insisting on selling them for at most $9.99. Jobs came in and offered publishers what he had refused to offer record companies: They could set any price they wanted for their wares in the iBooks Store, and Apple would take 30%. Initially that meant prices were higher than on Amazon. Why would people pay Apple more? "That won't be the case," Jobs answered, when Walt Mossberg asked him that question at the iPad launch event. "The price will be the same." He was right.

The day after the iPad launch, Jobs described to me his thinking on books:

> Amazon screwed it up. It paid the wholesale price for some books, but started selling them below cost at $9.99. The publishers hated that—they thought it would trash their ability to sell hardcover books at $28. So before Apple even got on the scene, some booksellers were starting to withhold books from Amazon. So we told the publishers, "We'll go to the agency model, where you set the price, and we get our 30%, and yes, the customer pays a little more, but that's what you want anyway." But we also asked for a guarantee that if anybody else is selling the books

"Amazon screwed it up. It paid the wholesale price for some books, but started selling them below cost at $9.99. The publishers hated that…."

"So we told the publishers, 'We'll go to the agency model, where you set the price, and we get our 30%, and yes, the customer pays a little more, but that's what you want anyway.'"

Collusion : Apple and ebooks

Competition and collaboration

Competition for the attention of readers will be most intense from digital companies whose objective may be to disintermediate traditional publishers altogether. This is not a new threat but we do appear to be on a collision course with Amazon, and possibly with Google as well. It will not be possible for any individual publisher to mount an effective response, because of both the resources necessary and the risk of retribution, so the industry needs to develop a common strategy. This is the context for the development of the Project Z initiatives in London and New York. We shall be prepared to discuss these, and the London project in particular, when we meet next month but there we will be significant costs and risks.

The supply chain

The growth of e-books, and of other digital formats, will certainly reduce the requirement for physical storage and transportation. We shall need to review our warehousing infrastructure, especially in the US, with the goal of reducing the number of warehouses we operate. Our planning in this area is still at an early stage. [redacted] despite the potential availability of profitable new agency clients, because of the uncertainty surrounding the growth of the physical book market and the possibility that Australia may move towards an open market during the life of this plan.

Global publishing

The present copyright model is under threat from readers, digital channels and, in the case of Australia, from Government. We therefore need to take a more global approach to our publishing in anticipation of the demise of the territorial copyright regime. The trend toward global publishing presents numerous threats, particularly in the area of piracy, but should work to the relative advantage of companies with international networks and recognised brands. We are making a start with a more co-ordinated approach to the publication of classics and business books, with more categories – children's publishing included - likely to follow in time. Our digital strategy, content management programme, international sales and workflow design are already managed on a global basis but we shall probably need to add other functions to the list during the next three years. [redacted] The reorganisation of the UK companies has brought a closer alignment with the US management structure and this should be helpful in realising our global objectives. Finally, we must continue to invest in emerging market opportunities and will introduce changes in management responsibility in October to give additional emphasis to these territories.

Free

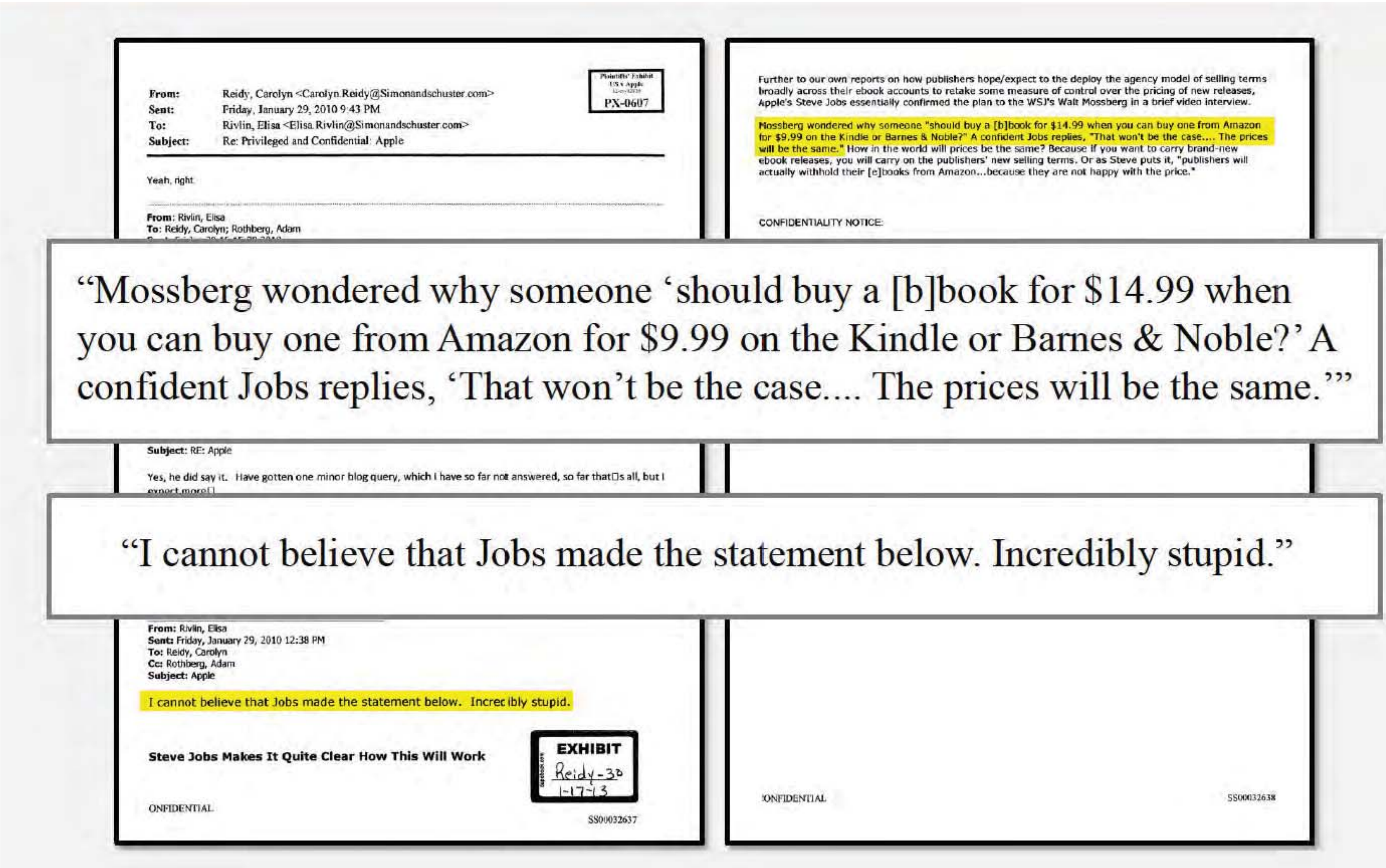
Pricing will be a major preoccupation over the life of this plan. The emergence of a new generation of multi-purpose e-book readers, appealing to a younger audience, will require a more sophisticated approach to mobile technology and more creative pricing. We shall try to resist the momentum towards free content through the development of new pricing models. Bundling, micro-content, subscription and pay-per-view will all pay a role. This will, as we know, necessitate investment in our inadequate rights systems.

"Competition and collaboration"

"…we do appear to be on a collision course with Amazon, and possibly with Google as well."

"It will not be possible for any individual publisher to mount an effective response, because of both the resources necessary and the risk of retribution, so the industry needs to develop a common strategy."

Collusion : Apple and ebooks



Plaintiffs' Exhibit
PX-0607

From: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Sent: Friday, January 29, 2010 9:43 PM
To: Rivlin, Elisa <Elisa.Rivlin@Simonandschuster.com>
Subject: Re: Privileged and Confidential: Apple

Yeah, right

From: Rivlin, Elisa
To: Reidy, Carolyn; Rothberg, Adam

“Mossberg wondered why someone ‘should buy a [b]book for $14.99 when you can buy one from Amazon for $9.99 on the Kindle or Barnes & Noble?’ A confident Jobs replies, ‘That won’t be the case.... The prices will be the same.’”

Subject: RE: Apple

Yes, he did say it. Have gotten one minor blog query, which I have so far not answered, so far that□s all, but I expect more□

“I cannot believe that Jobs made the statement below. Incredibly stupid.”

From: Rivlin, Elisa
Sent: Friday, January 29, 2010 12:38 PM
To: Reidy, Carolyn
Cc: Rothberg, Adam
Subject: Apple

I cannot believe that Jobs made the statement below. Incredibly stupid.

Steve Jobs Makes It Quite Clear How This Will Work

EXHIBIT
Reidy-30
1-17-13

ONFIDENTIAL

SS00032637

Further to our own reports on how publishers hope/expect to the deploy the agency model of selling terms broadly across their ebook accounts to retake some measure of control over the pricing of new releases, Apple's Steve Jobs essentially confirmed the plan to the WSJ's Walt Mossberg in a brief video interview.

Mossberg wondered why someone "should buy a [b]book for $14.99 when you can buy one from Amazon for $9.99 on the Kindle or Barnes & Noble?" A confident Jobs replies, "That won't be the case.... The prices will be the same." How in the world will prices be the same? Because if you want to carry brand-new ebook releases, you will carry on the publishers' new selling terms. Or as Steve puts it, "publishers will actually withhold their [e]books from Amazon...because they are not happy with the price."

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Collusion : Apple and ebooks