

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: ROBERT PITOFSKY
 MARY L. AZCUENAGA
 JANET D. STEIGER
 ROSCOE B. STAREK, III
 CHRISTINE A. VARNEY

In the Matter of)	
)	
HARPER & ROW, PUBLISHERS, INC.,)	Docket No. 9217
a corporation.)	
)	
)	
In the Matter of)	
)	
MACMILLAN, INC.,)	Docket No. 9218
a corporation.)	
)	
)	
In the Matter of)	
)	
THE HEARST CORPORATION,)	
a corporation, and)	Docket No. 9219
)	
WILLIAM MORROW AND CO., INC.,)	
a corporation.)	
)	
)	
In the Matter of)	
)	
THE PUTNAM BERKLEY GROUP, INC.,)	Docket No. 9220
a corporation.)	
)	
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In the Matter of)	
)	
SIMON & SCHUSTER, INC.,)	Docket No. 9221
a corporation.)	
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In the Matter of)
RANDOM HOUSE, INC.,)
a corporation.)
Docket No. 9222)

**ORDER RETURNING MATTERS TO ADJUDICATION
AND DISMISSING COMPLAINTS**

The complaints in these matters, issued on December 20, 1988, allege that the respondents -- six of the country's largest book publishers -- violated Sections 2(a), 2(d), and 2(e) of the Clayton Act, as amended by the Robinson-Patman Act, 15 U.S.C. §§ 13(a),(d),(e), and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The core of the complaints is that the respondents gave certain national bookstore chains price and promotional concessions that they did not make available to independent bookstores, to the detriment of competition and consumers.

On November 12, 1992, the Secretary issued an order withdrawing these matters from adjudication so that the Commission could evaluate nonpublic proposed consent agreements signed by complaint counsel and each of the respondents. Since that time, the Commission has considered additional information concerning developments in the industry and what, if any, Commission action is appropriate. Having examined the proposed consent agreements, and having considered significant developments that have occurred in the industry since the complaints were issued -- including the initiation of private litigation addressing many of the same issues -- the Commission has concluded that it is in the public interest to reject the proposed consent agreements and dismiss the complaints.

Although the proposed consent agreements prohibit most of the practices that led to the complaints, the industry has changed appreciably since the consent agreements were signed. For example, the dynamics and structure of the book distribution market have evolved in significant ways, reflecting the growth of "superstores" and warehouse or "club" stores. Moreover, it appears that major book publishers generally have modified pricing and promotional practices. Finally, the respondents generally have replaced the principal forms of alleged price discrimination that prompted the complaints -- unjustified quantity discounts on trade books and secret discounts on mass market books -- with other pricing strategies. These developments may limit the potential benefits of the proposed consent agreements.

The Commission could attempt to evaluate the economic and legal significance of changes in industry structure and practices, and respond to the effects of these industry changes, by directing the Commission staff to conduct additional investigation and, if appropriate, to negotiate revised consent agreements. Further investigation would be time-consuming and

resource-intensive, however, and even more resources would be needed in the event that litigation became necessary. In addition, even if the Commission were to issue litigated or consent orders against these respondents, such orders might not effectively prevent the respondents from adopting, pursuant to the "meeting competition" defense, practices used by other publishers that are not subject to a Commission order. Finally, since the time that the proposed consent agreements were signed, the American Booksellers Association has filed several private actions challenging alleged discrimination in this industry, and has already obtained consent decrees against four publishers. In view of these developments, further investigation, and possibly litigation, by the Commission does not appear to be a necessary or prudent use of scarce public resources.

For these reasons, the Commission has determined to reject the proposed consent agreements, return the matters to adjudication, and dismiss the complaints. Therefore,

IT IS ORDERED that these matters be, and they hereby are, returned to adjudication, and

IT IS FURTHER ORDERED that the complaints in these matters be, and they hereby are, dismissed.

By the Commission, Chairman Pitofsky recused and Commissioner Azcuenaga dissenting.

Donald S. Clark
Secretary

Issued: September 10, 1996