

Ninth Circuit Affirms Dismissal of Alleged Hub-and-Spoke MAP Conspiracy

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In a decision some may view as creating a Circuit split with the Second Circuit's recent *e-Books* decision, the Ninth Circuit recently affirmed the Southern District of California's decision in *In re: Musical Instruments and Equipment Antitrust Litigation*, dismissing a complaint alleging that guitar manufacturers entered into a hub-and-spoke conspiracy with an instrument retailer to implement minimum-advertised-price ("MAP") policies. Unlike the *e-Books* Court, which credited evidence of the parallel adoption of vertical agreements, a common economic motive, and price effects in support of a per se unlawful hub-and-spoke conspiracy, the Ninth Circuit held that the alleged common adoption of MAP policies that coincided with higher retail prices did not merit per se analysis as a hub-and-spoke conspiracy. The Ninth Circuit drew a distinction between the allegations in this case and those asserted in *in re Text Messaging*, which is likewise applicable to *e-Books*, in noting that plaintiffs did not allege that defendants simultaneously changed to a uniform pricing structure and then raised their prices.

The decision is also significant because it is one of the few published decisions dealing with MAP policies. Although the Ninth Circuit declined to hold that adoption of the MAP policies was sufficient to support an inference of an agreement among the guitar manufacturers, the court left open the possibility that the conduct at issue could violate the antitrust laws. Specifically, the court noted that the retailer's use of "its substantial market power to pressure each manufacturer to adopt similar policies, and each manufacturer[s] adopt[ion] [of] those policies" "may be anticompetitive – and perhaps even violate the antitrust laws." A copy of the decision can be found [here](#).

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