

Antitrust, Books, and Ideas



American Independent Business Alliance

222 South Black Ave.
Bozeman, MT 59715
406-582-1255
info@AMIBA.net
www.AMIBA.net

RESOURCES

American Booksellers Association

A national coalition of independent booksellers with a website to help you find and order through your nearest independent store.

They offer gift certificates good at over 1000 member bookstores across the U.S., so you can treat your book-lover friends to a gift of their choice without using the chains. AMIBA proudly provides the Booksense service on our website for ordering books from our recommended list.

Booksense.com
1-800-637-0037

Abebooks.com

Is an online search engine that taps thousands of independent booksellers for used, rare or out-of-print books.

When a group of 26 independent booksellers accepted a cash settlement of its anti-trust suit against the Borders and Barnes & Noble Corporations in April 2001, it was an ambiguous ending that both sides tried to spin to their favor.

Barnes and Noble Inc. (B&N) chair Leonard Riggio declared "total vindication" for his corporation against the charges of muscling illegal discounts from book wholesalers, in defiance of anti-trust law--a statement made less convincing by his corporation's \$2.35 million settlement payment to the plaintiffs. Borders will pay an equal amount to the independents.

But the independent stores and their trade group, the American Booksellers Association, hardly could claim victory either. Weeks earlier, Judge William Orrick ruled that regardless of the verdict, the two chains would not be forced to pay damages because of the impossibility of precisely defining the independents' losses resulting from illegal discounts the chains allegedly strong-armed from publishers.

The crimes in question were violations of the Robinson-Patman Act, enacted to prevent the use of market power to eliminate competition. Among other provisions, Robinson forbids retailers to "request" and receive terms of sale that they know to be illegal (i.e., discounts not justified by economies of scale). The chains were accused of using their dominance to wrest secret deals with publishers for cheaper books, full refunds on unsold books and other perks unavailable to the independents.

Americans have paid little attention to lax enforcement of anti-trust law, but the concentration of power in publishing is especially concerning. It threatens the existence of independent bookstores that play a crucial role in maintaining freedom of speech and the diver-

sity of published thought. The dominance of a few giants in the book trade not only influences where we buy books, but what books we are able to buy.

The two retailing giants each control over 1000 stores. B&N Inc.'s empire encompasses B. Dalton and other subsidiaries while Borders owns Walden Books and other smaller companies. Any given store in these giants' domain often may stock more titles than a single competing independent, seemingly increasing our choices in individual locations. However, a wealth of independent bookstores, each serving their respective owners' and communities' tastes, create greater overall choices and provide access to more diverse ideas and opinions.

Independent booksellers often personally promote little-known books, creating opportunities for new authors and ideas that the chains carry only after success in independent stores.

In a world of chain stores and internet sales where books are a mere commodity, an important source of opportunity for unknown writers would suffer. As the now best-selling author Barbara Kingsolver said, "Authors like me would not have a career if it were not for independent booksellers."

The growing concentration in publishing, like B&N's merger of its online division with global media giant Bertelsmann A.G., the world's largest wholesaler, seriously threatens the diversity created by a variety of independents. B&N's attempted merger with Ingram Book Group, the largest book wholesaler, was thwarted by conscious opposition, but the concentration of power continues with the recent partnering between Borders and the dominant online book vendor Amazon.com.

Competition is fading quickly; independent bookstores sold just 15% of our books last year, an all-time low. Less obvious than vanishing stores, the number of publishers and book distributors has plummeted, and we

never may have the chance to know many great books and authors as a result. Consider that Dr. Seuss' work was rejected 24 times and Alex Haley reported over 100 rejections before Roots found a willing publisher. Today, these authors likely would run out of options before discovering a publisher that would allow us to enjoy their gifts.

We already have the disturbing precedent of publishers consulting with Borders and B&N prior to printing a book to see if they will buy sufficient quantities to make publication a good bet. In addition, many authors receive suggestions for "improvements" from the chains to make their work marketable, while others simply are not published due to lack of interest by those few buyers. We should weigh the potential consequences carefully. For example, we might wonder if the chain stores were predominant in 1860 whether the hugely controversial and influential anti-slavery book, *Uncle Tom's Cabin*, would have found a publisher.

Of course, some argue that the "free market" will ensure diversity. This sounds appealing until one recognizes how far removed we are from such a mythical market. Consider these examples:

* Though the independents settled their suit against Borders and B&N, the practice already has caused irreparable harm to many booksellers. A few years ago, several publishers paid up to \$25 million in settlements to the American Booksellers Association, but the bookstores driven out by the crimes are gone for good and the two dominant retailers were untouched.

* The growth of sales by Borders.com, Amazon.com, and BN.com largely is due to federal legislation preventing states and municipalities from collecting the same sales tax from the internet giants that they collect from storefront businesses, handicapping community-serving businesses. Public schools dependent on sales tax revenue are

also often the victims of this grossly anti-free market law.

* B&N Inc. and Borders Inc. have received direct subsidies as great as \$4 million from individual municipalities. Though your community may not grant such a subsidy, those collected by these corporations elsewhere pervert the market and place community-based businesses in a grossly unfair situation. Further, traded corporations are able to operate at a loss to eliminate competition so long as public money and stock speculation funds their expansion. For example, Amazon.com rarely has made money (and has lost over \$2 billion), yet has made a billionaire out of its founder.

"Authors like me would not have a career if it were not for independent booksellers."

--Barbara Kingsolver

Independent booksellers are not the final victims. If the book chains continue displacing community-based booksellers, we all will lose out as prices climb higher (B&N and

Amazon long ago eliminated the heavy discounting on which they built market share). More importantly, the diversity of published thought will erode in a market dominated by a few centralized powers.

Book buyers should weigh carefully the words of a Borders Inc. executive which came to light in a trial. A recovered memo recorded his prediction that "in a couple of years there may only be a couple of players left who will dictate the game on their own terms."

Of course we should keep all this in mind when choosing where to purchase books, but we should also speak up for meaningful enforcement of laws designed to protect us from the many harms of monopolies-harms that become more critical when we're dealing with a vital source of ideas and information. This is not just for the sake of independent bookstores, but for the freedom of expression we all cherish and must never take for granted.

By Jeff Milchen, AMIBA co-founder

© 2003



American Independent Business Alliance

222 South Black Ave.
Bozeman, MT 59715
406-582-1255
info@AMIBA.net
www.AMIBA.net

We distribute a free recommended reading list for those wishing to learn more sources of information on independent business issues--just ask.