

Competition Tribunal



Tribunal de la concurrence

Reference: *The Commissioner of Competition v HarperCollins Publishers LLC and HarperCollins Canada Limited*, 2017 Comp Trib 17
File No.: CT-2017-002
Registry Document No.: 139

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 90.1 of the *Competition Act*, RSC 1985, c C-34 as amended;

BETWEEN:

The Commissioner of Competition
(applicant)

and

**HarperCollins Publishers LLC and
HarperCollins Canada Limited**
(respondents)

and

Rakuten Kobo Inc
(intervenor)



Decided on the basis of the written record and submissions
Before Judicial Member: Phelan J.
Date of Order: December 4, 2017
Order signed by: Mr. Justice M. Phelan

SCHEDULING ORDER

[1] **FURTHER TO** the notice of application filed by the Commissioner of Competition against the Respondent for orders pursuant to section 90.1 of the *Competition Act*;

[2] **AND WHEREAS** during their discussions concerning a draft scheduling order, the parties disagreed as to the time for and sequencing of their expert reports, particularly as to any efficiencies defence, which disagreement was the subject of a case management conference held on November 3, 2017;

[3] **AND FURTHER TO** the Direction of the Tribunal, dated November 6, 2017, which resolved the issues raised at the November 3, 2017 case management conference and directed that certain dates be incorporated into the parties' draft scheduling order;

[4] **AND FURTHER TO** the draft scheduling order provided by the parties on November 24, 2017;

[5] **AND WHEREAS** the Tribunal has examined the proposed scheduling order and is of the view that it is appropriate and respects the principles found in subsection 9(2) of the *Competition Tribunal Act*, RSC 1985, c 19 (2nd Supp);

THE TRIBUNAL ORDERS THAT:

[6] The schedule for the pre-hearing steps shall be as follows:

December 15, 2017	Deadline for a meet and confer to discuss Document Discovery Plan
January, 2018	Mediation
January 29, 2018	Service of Affidavits of Documents and delivery of documents by all Parties
February 28, 2018	Deadline for filing motions arising from the Affidavits of Documents and/or productions and/or in respect of the scope of examinations for discovery
March 5-9, 2018	Hearing of any motions arising from Affidavits of Documents and/or productions and/or in respect of the scope of examinations for discovery
March 30, 2018	Deadline for delivery of any additional productions resulting from any Affidavits of Documents/production motions

April 16-25, 2018	Examinations for discovery according to a schedule to be settled between counsel
May 18, 2018	Deadline for fulfilling answers to discovery undertakings
May 30, 2018	Deadline for filing of motions arising from answers to undertakings and refusals
Week of June 11, 2018	Hearing of any motions arising from answers to undertakings or refusals
July 6, 2018	Last day for follow-up examinations
August 3, 2018	Applicant to serve and file documents relied upon and witness statements Applicant to serve and file expert reports, if any Applicant to serve list of documents proposed to be admitted without further proof
September 28, 2018	Respondents to serve and file documents relied upon and witness statements Respondents to serve and file responding reports, if any, to the Applicant's expert reports on all matters including efficiencies (s 90.1(4))
October 15, 2018	Deadline for delivering any Requests for Admissions
October 26, 2018	Applicant to serve and file list of reply documents, witness statements Applicant to serve and file any reply expert reports and responding report on efficiencies (s 90.1(4))
October 31, 2018	Deadline to provide documents to the Tribunal for use at the hearing (e.g., Briefs of Authorities, Agreed Books of Documents)
November 9, 2018	Respondent to file reply expert reports on matters related to efficiencies (s 90.1(4))

[7] The hearing of the Application will commence at 10:00 am on November 13, 2018, in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa, for a period of at least 15 days. The schedule shall be as follows:

November 13-16, 2018	First week of hearing
November 19-21, 2018	Second week of hearing
November 27-30, 2018	Third week of hearing
December 4-5, 2018	Fourth week of hearing

[8] The Tribunal will hear oral argument from December 17, 2018 to December 19, 2018.

DATED at Ottawa, this 4th day of December 2017.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Michael L. Phelan

COUNSEL:

For the applicant:

The Commissioner of Competition

John Syme
Katherine Johnson
Amanda McGarry

For the respondents:

HarperCollins Publishers LLC and
HarperCollins Canada Limited

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