

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, RSC 1985, c C-34, as amended;

AND IN THE MATTER OF an arrangement between HarperCollins Publishers L.L.C., Hachette Book Group Inc., Verlagsgruppe Georg von Holtzbrinck GMBH, Holtzbrink Publishers, LLC d/b/a Macmillan, Simon & Schuster Inc. and Apple Inc.;

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 90.1 of the *Competition Act*.

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT Date: April 6, 2017 CT-2017-002 Andrée Bemier for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	# 51

THE COMMISSIONER OF COMPETITION

Applicant

- and -

HARPERCOLLINS PUBLISHERS L.L.C., and HARPERCOLLINS CANADA LIMITED

Respondents

REPLY OF RAKUTEN KOBO INC.

**(Request for Leave to Intervene Pursuant to Section 9(3) of the
Competition Tribunal Act)**

1. The Commissioner has correctly stated at paragraph 24 of his Response that Kobo accepts the modifications advanced by the Commissioner to proposed topics 2 and 3. Kobo also accepts the Commissioner's proposals as to scope and costs.
2. As to topic 1, which the Commissioner has addressed under two separate subheadings, Kobo maintains that it should be permitted to intervene on the topic as originally proposed.

3. On the issue that the Commissioner has framed under subheading (i), Kobo should not be limited to discussing how its own agency contracts were negotiated and entered into.
4. At the time of agency's adoption in Canada, Kobo was the market leader for the retail sale of e-Books, and as such should be permitted to present its views as to how it perceived agency to have come to the Canadian market, including its perspective and observations of other market participants' activities at the time. Inevitably, these observations informed Kobo's motivations in pushing for agency terms. Reframing the proposed topic as the Commissioner suggests would hinder Kobo from providing a full and accurate description of its perspective as to why agency did not arise in Canada as a result of the US Conspiracy. Kobo can obviously not speak to the motivations of any other retailers, but can offer its perspective of what it saw occurring in the retail market during the 23 months over which agency contracts came to be used here.
5. On the issue that the Commissioner has framed under subheading (ii), the fact that HarperCollins will be making legal submissions on the scope of s. 90.1 should not preclude Kobo from making non-repetitive legal submissions on the section's reach.
6. Kobo's unique perspective is offered not only because of its status as an E-book retailer in Canada, but also as the applicant in the related Federal Court proceeding (*Rakuten Kobo Inc. v. Commissioner of Competition et al.*, T-219-17).

The Tribunal already noted in a case management conference in this matter the related nature of the proceedings.

7. Given that HarperCollins is not participating in the judicial review proceeding, there would be no reason for it to address the interplay between the Tribunal's jurisdiction under s. 90.1 (at issue in this proceeding) and the Commissioner's jurisdiction under that section (at issue in the Federal Court proceeding).
8. So long as Kobo restricts its submissions to non-repetitive points, there is no reason to think that its participation will unnecessarily lengthen the proceedings.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at Toronto, Ontario, this 6th day of April, 2017.



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CT-2017/02

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