

PUBLIC

File No. CT-2014-002

COMPETITION TRIBUNAL

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

AND IN THE MATTER OF an inquiry commenced under section 10 of the *Competition Act*, relating to certain alleged anti-competitive conduct in the markets for E-books in Canada;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to section 105 of the *Competition Act*;

AND IN THE MATTER OF an application under section 106(2) of the *Competition Act*, by Kobo Inc. to rescind or vary the Consent Agreement between the Commissioner of Competition and Hachette Book Group Canada Ltd., Hachette Book Group, Inc., Hachette Digital, Inc.; HarperCollins Canada Limited; Holtzbrinck Publishers, LLC; and Simon & Schuster Canada, a division of CBS Canada Holdings Co. filed and registered with the Competition Tribunal on February 7, 2014, under section 105 of the *Competition Act*.

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT	
CT-2014-002	
October 13, 2015	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 140

KOBO INC.

Applicant/Moving Party

- and -

**THE COMMISSIONER OF COMPETITION,
HACHETTE BOOK GROUP CANADA LTD.,
HACHETTE BOOK GROUP, INC.,
HACHETTE DIGITAL INC.,
HARPERCOLLINS CANADA LIMITED,
HOLTZBRINCK PUBLISHERS, LLC, and
SIMON & SCHUSTER CANADA, A DIVISION OF
CBS CANADA HOLDINGS CO.**

Respondents/Responding Parties

SUPPLEMENTARY AFFIDAVIT OF ANNA KUSMIDER

WEIRFOULDS LLP

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Bronwyn Roe

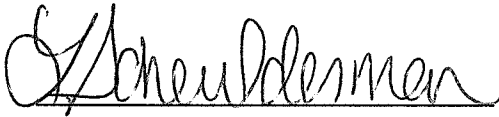
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Lawyers for the Applicant

I, **ANNA KUSMIDER**, of the Town of Oakville in the Province of Ontario, MAKE OATH AND SAY:

1. I am a legal assistant at WeirFoulds LLP, lawyers for the Applicant, Rakuten Kobo Inc. ("**Kobo**"), and as such have knowledge of the matters herein deposed.
2. This affidavit is sworn in support of the motion brought by Kobo to continue the suspension of proceedings in its application pursuant to s. 106(2) of the Competition Act pending the determination of Kobo's application for leave to appeal a decision of the Federal Court of Appeal to the Supreme Court of Canada ("**SCC**").
3. At paragraph 2 of my original affidavit filed on this motion, I referred to the fact that Kobo's application for leave to appeal to the SCC was filed on August 13, 2015. Since having sworn that affidavit, further materials have been filed at the SCC, namely, the Commissioner of Competition's Response, filed on September 14, 2015, and Kobo's Reply, filed on September 24, 2015.
4. Paragraph 50 of the Commissioner of Competition's Response on this motion refers to the fact that Kobo has agency agreements with each of the respondent publishers. Attached hereto as **Confidential Exhibit "A"** is Kobo's agreement with one of the publishers. This agreement (and the agreements with the other publishers) had previously been filed with the Competition Tribunal on a confidential basis on March 10, 2014 in advance of Kobo's March 17, 2014 motion for a stay of the implementation of the Consent Agreement.
5. Exhibit "M" of Ms. Kelly's affidavit is the public version of the affidavit of Michael Tamblyn, which Kobo filed in support of its March 17, 2014 motion for a stay of the implementation of the Consent Agreement. Attached hereto as **Confidential Exhibit "B"** is the confidential version of that affidavit, together with two confidential exhibits to that affidavit (Exhibit's "K" and "L"), which Mr. Tamblyn referred to at paragraph 33.

SWORN before me at the City of Toronto this 13th day of October, 2015.



Commissioner for Taking Affidavits

Lisa Jane Margaret Scheuderman,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires August 10, 2018.



(Signature of Deponent)

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