



Reference: *Kobo Inc. v. The Commissioner of Competition*, 2015 Comp. Trib. 19

File No.: CT-2014-02

Registry Document No.: 151

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

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:

Kobo Inc.
(applicant)

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)



Decided on the basis of the written record.

Before Judicial Member: Gascon J. (Chairperson)

Date of Order: November 23, 2015

**ORDER SCHEDULING THE INITIAL STEPS OF THE SECTION 106(2)
APPLICATION**

[1] **FURTHER TO** the application brought in February 2014 by Kobo Inc. (the “Applicant” or “Kobo”) under subsection 106(2) of the *Competition Act*, RSC 1985, c C-34 (the “Act”) to rescind or vary a consent agreement registered February 7, 2014 (the “Consent Agreement”) between the Commissioner of Competition (the “Commissioner”) 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. (collectively, the “Settling Publishers”);

[2] **AND FURTHER TO** the order issued by the Tribunal on November 5, 2015 dismissing Kobo’s motion for a continuation of the suspension of its section 106(2) application;

[3] **AND FURTHER TO** the direction issued by the Tribunal on November 10, 2015 regarding the schedule for the disposition of Kobo’s section 106(2) application;

[4] **AND FURTHER TO** the correspondence received from counsel for Kobo, for the Commissioner and for the Settling Publishers on November 19 and 20, 2015 setting out their respective positions with respect to the schedule for the disposition of Kobo’s section 106(2) application and indicating that they have been unable to agree on a timetable;

[5] **AND FURTHER TO** the request by the Settling Publishers that they be permitted to make submissions after Kobo and the Commissioner have done so;

[6] **AND FURTHER TO** subsection 9(2) of the *Competition Tribunal Act*, RSC 1985, c 19 (2nd Supp), which provides that all proceedings before the Tribunal shall be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit;

[7] **AND WHEREAS** the Commissioner has already indicated on several occasions that he is now ready to consent to the remedy sought by Kobo in its section 106(2) application, namely the rescission of the Consent Agreement, and the Settling Publishers therefore have a good understanding of the Commissioner’s position in the proceedings;

[8] **AND WHEREAS** the Commissioner and the Settling Publishers are both respondents to Kobo’s section 106(2) application and, in the circumstances of this case, the Tribunal sees no reason for the sequencing sought by the Settling Publishers;

[9] **AND WHEREAS**, while the Settling Publishers have indicated that, in their view, the Commissioner cannot unilaterally rescind the Consent Agreement, they have not yet set out their position with respect to Kobo’s section 106(2) application or to the Commissioner’s consent to the rescission of the Consent Agreement;

[10] **AND WHEREAS** it is in the interest of the expeditious and effective administration of justice for each of Kobo, the Commissioner and the Settling Publishers to file their respective pleadings in order to define the issues as they now see them as well as their respective positions, before the next steps of Kobo’s section 106(2) application are considered;

[11] **AND WHEREAS** the nature, scope and next steps of Kobo's section 106(2) application will be informed by the pleadings to be filed by the parties;

NOW THEREFORE THE TRIBUNAL ORDERS THAT:

[12] The schedule with respect to the initial steps of Kobo's section 106(2) application shall be as follows:

November 30, 2015	Applicant to serve and file its amended Notice of Application
December 22, 2015	Respondents to serve and file their respective Responses
January 8, 2016	Applicant to serve and file its Reply
Week of January 11, 2016	Case management conference to discuss next steps.

[13] The schedule with respect to the other steps of Kobo's section 106(2) application, including in relation to motions for leave to intervene, shall be determined further to the case management conference to be held the week of January 11, 2016.

[14] The parties are to inform the Tribunal, by November 27, 2015, of their availability for the case management conference to be held the week of January 11, 2016.

DATED at Ottawa, this 23rd day of November, 2015.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Denis Gascon

COUNSEL:

For the applicant:

Kobo Inc.

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Bronwyn Roe

For the respondents:

Commissioner of Competition

Jonathan Chaplan
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