



Reference: *Kobo Inc. v. The Commissioner of Competition*, 2014 Comp. Trib. 21

File No.: CT-2014-02

Registry Document No.: 113

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)



Date of case management teleconference: 20141222

Before Judicial Member: Rennie J. (Chairperson)

Date of Order: December 22, 2014

**ORDER AND REASONS FOLLOWING A CASE MANAGEMENT  
TELECONFERENCE**

[1] This Order follows a case management teleconference held today with counsel for all parties. It is useful to revisit the history to date.

[2] Kobo Inc. filed an application for an order rescinding or varying a consent agreement entered into by the Respondents and registered with the Tribunal on February 7, 2014 (the “Consent Agreement”). The Commissioner subsequently framed a question to be determined by way of reference to the Tribunal. The Tribunal’s Scheduling Order of May 14, 2014, provided that the hearing of Kobo’s application would commence on May 11, 2015, in Ottawa, and noted that the Tribunal’s decision on the reference filed by the Commissioner of Competition would affect the form and content of the section 106(2) proceedings filed by Kobo Inc. In light of this, the Tribunal issued a direction on August 20, 2014, providing that the “deadlines established in the Scheduling Order of May 14, 2014 are suspended pending the release of the Tribunal’s decision on the reference”.

[3] Kobo Inc. appealed the Tribunal’s decision on the reference dated September 8, 2014. There is no question that the decision of the Federal Court of Appeal with respect to Kobo’s appeal from the Tribunal’s decision on the reference will have a material impact on the form and content of the section 106(2) proceedings before the Tribunal.

[4] In view of the pending appeal, the proceedings before the Tribunal, including the date of the hearing, should continue to be suspended pending the determination of the appeal. This is a pragmatic and cost-effective approach which takes into consideration the factors set out in subsection 9(2) of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.).

[5] The Tribunal notes, parenthetically, that if the Commissioner of Competition seeks to rescind the Consent Agreement without the agreement of all the signatories to the agreement, he must do so within the statutory framework, including subsection 106(1) of the *Competition Act*, R.S.C. 1985, c. C-34.

**NOW THEREFORE THE TRIBUNAL ORDERS THAT:**

[6] The section 106(2) proceedings, including the date of the hearing of Kobo’s application, are suspended pending the determination by the Federal Court of Appeal of the appeal from the Tribunal’s decision dated September 8, 2014 (Court File No. A-401-14).

[7] There shall be no order as to costs.

DATED at Ottawa, this 22<sup>nd</sup> day of December, 2014.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Donald J. Rennie

**APPEARANCES:**

For the applicant:

Kobo Inc.

Nikiforos Iatrou

For the respondents:

Commissioner of Competition

Jonathan Chaplan

John Syme

Hachette Book Group Canada Ltd.,

Hachette Book Group, Inc.,

Hachette Digital, Inc.

Linda Plumpton

James Gotowiec

HarperCollins Canada Limited

Katherine L. Kay

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Holtzbrinck Publishers, LLC

Randal Hughes

Emrys Davis

Simon & Schuster Canada, a division of CBS Canada Holdings Co.

Peter Franklyn

Indigo Books & Music Inc. (potential intervener)

Adam Fanaki

Derek D. Ricci