



Reference: *Kobo Inc. v. The Commissioner of Competition*, 2014 Comp. Trib. 7

File No.: CT-2014-02

Registry Document No.: 62

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*.

B E T W E E N:

**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: Rennie J. (Chairperson)  
Date of Order and Reasons: May 14, 2014  
Order and Reasons signed by: Mr. Justice Donald J. Rennie

**SCHEDULING ORDER AND REASONS FOR ORDER  
REGARDING THE 106(2) APPLICATION**

[1] On March 18, 2014 the registration of the consent agreement in issue in this matter was stayed pending determination of Kobo's application under subsection 106(2) of the *Competition Act* (RSC, 1985, c C-34). Given the outstanding stay order, at the Case Management Conference of April 16, 2014, the Tribunal suggested a hearing date in the fall of 2014 for the application, and requested the parties provide an agreed upon schedule for the hearing of the application.

[2] The Tribunal has considered the draft consent schedule submitted by the parties on April 30, 2014 and correspondence from counsel for the Commissioner of May 12, 2014, in light of subsection 9(2) of the *Competition Tribunal Act*, RSC 1985, c 19 (2<sup>nd</sup> 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. While the proposed schedule for hearing of the application cannot be characterized as aggressive, the parties are all represented by experienced counsel who have agreed to the timetable.

[3] The Tribunal notes that the nature of 106(2) proceedings will be informed by the outcome of Kobo's Motion to Strike and the outcome of the Reference, if it proceeds. In consequence of those decisions, the deadlines set out below may be altered. The Tribunal agrees with the joint request of the parties that the Motion to Strike be disposed of in writing.

**IN THIS CONTEXT, THE TRIBUNAL ORDERS THAT:**

**The 106(2) Application:**

[4] Given that the decision in the Reference, if it proceeds, would affect the form and content of the section 106(2) proceeding, it would be preferable that the parties have that decision prior to the commencement of proceedings. The schedule for the pre-hearing steps with respect to the main application shall therefore be as follows:

Friday, September 5, 2014	Commissioner to serve and file Response [and Motion to intervene of Indigo Books & Music Inc. deemed to have been filed].
Monday, September 15, 2014	Kobo to serve and file any Reply Deadline for the filing of motions for leave to intervene.
Monday, September 29, 2014	Deadline for the service and filing of response to the motions for leave to intervene filed.
Monday, September 29, 2014	Deadline for the service and filing of any replies of parties seeking leave to intervene [and deadline for cross-examinations on proposed interveners].
Week of October 6, 2014	Hearing of motions for leave to intervene.
Monday, October 27, 2014	Service of Affidavits of Documents and delivery of documents by all Parties.
Monday, November 17, 2014	Deadline for the filing of any motions arising from Affidavits of Documents and/or productions and/or in respect of the scope of examinations for discovery.
Date to be set as needed, during week of December 1, 2014	Hearing of any motions arising from Affidavits of Documents and/or productions and/or in respect of the scope of examinations for discovery.
Monday, December 15, 2014	Deadline for delivery of any additional productions resulting from any Affidavits of Documents/production motions.
January 12-16, 2015	Examinations for discovery according to a schedule to be settled between counsel.

Monday, January 26, 2015	Deadline for fulfilling answers to discovery undertakings.
Monday, February 2, 2015	Deadline for filing motions arising from answers to undertakings and refusals.
Date to be set as needed, during week of February 9, 2015	Hearing of motions arising from answers to undertakings and refusals.
Monday, February 23, 2015	Deadline for compliance with any order from motions.
March 3-4, 2015	Additional discovery, if any, based on answers to undertakings.
Tuesday, March 17, 2015	Kobo to serve documents relied upon, witness statements, and serve and file expert reports.
Friday, April 17, 2015	Commissioner to serve documents relied upon, witness statements, and serve and file expert reports.
Wednesday, April 22, 2015	Deadline for delivering any Requests for Admissions.
Friday, May 1, 2015	Commissioner to serve list of reply documents, witness statements, and serve and file reply expert reports.
Date to be set as needed, during week of May 4, 2015	Hearing of any motions related to the evidence.
Friday, May 8, 2015	Deadline to provide documents to the Tribunal for use at the hearing (e.g., Briefs of Authorities, witness statements, and Agreed Books of Documents).
Monday, May 11, 2015	Hearing of application to commence at 9:30 a.m. in the hearing room of the Competition Tribunal at 90 Sparks Street, Ottawa, Ontario.

DATED at Ottawa, this 14<sup>th</sup> day of May, 2014.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Donald J. Rennie

**COUNSEL:**

For the applicant:

Kobo Inc.

Nikiforos Iatrou  
Mandy L. Seidenberg  
Bronwyn Roe

For the respondents:

Commissioner of Competition

Jonathan Chaplan  
John Syme  
Parul Shah  
Esther Rossman

Hachette Book Group Canada Ltd.,  
Hachette Book Group, Inc.,  
Hachette Digital, Inc.

James Gotowiec

HarperCollins Canada Limited

Katherine L. Kay

Holtzbrinck Publishers, LLC

Emrys Davis

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

Peter Franklyn