Court File No. CT-2014-002

THE 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:

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 HOLDINGS CO.

Respondents

MEMORANDUM OF FACT AND LAW OF THE COMMISSIONER OF COMPETITION (Motion to Strike Notice of Reference)

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OVERVIEW

1. The Commissioner of Competition's ("**Commissioner's**") reference question (the "**Reference**") is proper. The Reference poses a question of law that falls within s. 124.2(2) of the *Competition Act* (the "**Act**").[2] The determination of the Reference will benefit the parties and the Competition Tribunal ("**Tribunal**"), among others, by resolving in a timely way an overarching legal question relevant to the current application and to future applications under s. 106(2) of the Act.

2. Kobo submits that the Tribunal's jurisdiction to decide its motion flows from Rule 221 of the Federal Courts Rules.[3] However, Rule 221 governs strike motions in the context of a Federal Court action. It does not apply to Kobo's motion to strike the Reference. Despite asserting that the Tribunal's jurisdiction to strike the Reference flows from Rule 221, Kobo does not suggest that the test for striking a pleading under that Rule applies in the current context.

3. To succeed on its motion, Kobo must establish that the Reference is so clearly improper as to be bereft of any possibility of success. Kobo does not address that test, let alone satisfy it.

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[2] *Competition Act*, RSC 1985, c. C-4 (as amended). **(TAB 1)**
[3] Federal Courts Rules, SOR 98/106 ["**FC Rules**"]. **(TAB 2)**

4. Kobo argues that the Reference will delay its application and that the disagreement between it and the Commissioner regarding the Tribunal's jurisdiction should be "resolved *after* the evidence [is] heard, in closing arguments".[4] The Commissioner submits it makes no sense to embark on a protracted proceeding, which includes interventions, documentary and oral discovery, and expert evidence, where the parties have fundamentally divergent views on an overarching jurisdictional issue. The Tribunal's answer to the threshold jurisdictional issue will expedite this proceeding by guiding the parties in the conduct of their cases from the outset.

5. Kobo asserts that the Reference should not proceed on a "fact-less" basis. However, courts routinely interpret legislation without reference to the particular facts of the case. That is the approach followed by the Tribunal in *Burns Lake Native Development Corp. v. Canada (Commissioner of Competition)* [5] in respect of the questions of statutory interpretation that the Commissioner referred to the Tribunal in that case.

6. The Reference raises a question of statutory interpretation, not a question of application (i.e., mixed fact and law). The Tribunal does not require the facts of this specific "case" to answer the Reference question. The proper

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[4] Memorandum of Argument of Kobo Inc. (Motion to Strike Notice of Reference) in *Kobo Inc. v Commissioner of Competition et al.*, CT-2014-002 at para. 2 ["***Kobo Memorandum of Argument***"].

[5] *Burns Lake Native Development Corp. v. Canada (Commissioner of Competition)*, 2005 Comp. Trib. 19 ["***Burns Lake 1***"], affirmed 2006 FCA 97 ["***Burns Lake 2***"], [collectively "***Burns Lake***"]. **(TABS 3, 4)**

way for Kobo to contest the Commissioner's interpretation of s.106(2) is not by way of a motion to strike, but to argue the Reference itself.

7. Kobo's motion should be dismissed, with costs.

PART I - STATEMENT OF FACTS

8. On 7 February 2014 the Commissioner and four major e-book publishers filed a consent agreement with the Tribunal (the "**Consent Agreement**").

9. On 21 February 2014 Kobo filed an application under s. 106(2) of the Act to rescind or vary the Consent Agreement. Kobo also sought a stay of the Consent Agreement pending the Tribunal's determination of its application.

10. On 18 March 2014 the Tribunal granted a stay of the Consent Agreement, and on 27 March 2014 the Tribunal issued its Reasons for Order Granting Kobo's Motion for a Stay.

11. On 15 April 2014 the Commissioner filed the Reference with the Tribunal.

12. On 29 April 2014 Kobo filed its motion to strike the Reference. But for Kobo's motion to strike, Kobo would have been required to file its Responding Reference Record that same day.[6]

13. If Kobo is unsuccessful on its motion, it will file its Reference Record on 10 June 2014 and the Reference will be heard on 25 June 2014.

14. Kobo states as a fact that even if the Tribunal accepts the Commissioner's interpretation of s. 106(2) of the Act, it will proceed with its s. 106(2) application. That proposed factual statement is unsupported in Kobo's record. Kobo should either withdraw the statement or provide evidence to

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[6] *Competition Tribunal Rules*, SOR/2008-141 ("**CT Rules**"). **(TAB 5)**

support it. In any event, as discussed below, the fact that the Reference is not dispositive of the matter as a whole is not a basis for striking it.

PART II - STATEMENT OF POINTS IN ISSUE

15. This motion raises the following issue: whether the Commissioner's Reference under s. 124.2(2) of the Act should be struck.

PART III - SUBMISSIONS

(a) Motion to Strike the Reference

i. The Tribunal's Jurisdiction

16. Kobo submits that the Tribunal has jurisdiction to hear and determine a motion to strike a reference made under s. 124.2(2) of the Act, pursuant to Rule 34(1) of the CT Rules and Rule 221 of the FC Rules. In support of that position, Kobo cites the Tribunal's decision in *RONA*.[7]

17. The Tribunal's jurisdiction to decide Kobo's motion does not flow from Rule 221 of the FC Rules. Rule 221, which applies to striking pleadings in an action, has been described in the following terms:

> Rule 221 provides for striking pleadings in an action. Rule 221 defines "action" as a proceeding referred to in rule 169 and defines "pleading" as a document in which a claim is initiated, defined, defended or answered. Further Rule 221 is found in Part 5 of the Federal Courts Rules governing actions.
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> In *David Bull Laboratories (Can.) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588, 58 C.P.R. (3d) 209, (sub nom. *Pharmacia Inc. v. Canada (Min. of National Health & Welfare)*) 176 N.R. 48 (C.A.), the Federal Court of Appeal stated that parties cannot use a motion to strike out an originating motion [now replaced by notice of application]. However, the Court did hold that in exceptional cases there is jurisdiction to dismiss a notice of application in a summary manner if it is so clearly improper as to be bereft of any possibility of success. The test in the *David*

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[7] Kobo Memorandum of Argument, at para 8 and footnote 5, citing *Commissaire de la concurrence c. RONA INC.* 2005, Trib. Concurr. 7 at paras 27-29 ["***RONA***"].

> *Bull* case is now well established in the jurisprudence: see the cases noted under section 18.4 – Motions to Strike.[8]

18. In *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc. (C.A.)*, the Federal Court of Appeal explained the different treatment for motions to strike an action and motions to strike an originating notice of motion (now applications). The Court noted that actions involve "discovery of documents, examinations for discovery, and then trials with *viva voce* evidence", whereas applications do not. The Court also noted that striking an action is more feasible because there are "numerous rules which require precise pleadings" in the context of actions, whereas there are no comparable rules for originating notices of motion (now applications).[9]

19. The Court concluded its analysis by stating:

> Thus, the direct and proper way to contest an originating notice of motion [application] which the respondent thinks to be without merit is to appear and argue at the hearing of the motion itself. This case well illustrates the waste of resources and time in adding on to what is supposed to be a summary judicial review proceeding the process of an interlocutory motion to strike. This motion to strike has involved a hearing before a trial judge and over one half day before the Court of Appeal, the latter involving the filing of several hundred pages of material, all to no avail. The originating notice of motion itself can and will be dealt with definitively on its merits at a hearing before a judge of the Trial Division now fixed for January 17, 1995.[10]

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[8] Brian J. Saunders, Donald J. Rennie and Graham Garton, *Federal Courts Practice 2014*, (Toronto: Carswell, 2014) at p. 587.

[9] *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc. (C.A.)*, [1994] F.C.J. No. 1629 at para. 10 ["***David Bull***"]. **(TAB 6)**

[10] *Ibid.*

20. In *RONA*, the Tribunal had before it the Commissioner's motion to strike RONA's s. 106(1) application in its entirety. Applications under Part VIII of the Act are akin to actions under the FC Rules in that they include a number of the attributes of Federal Court actions, including discovery of documents, examinations for discovery and hearings with *viva voce* evidence. In view of that fact, the Tribunal correctly applied Rule 221 of the FC Rules in considering the Commissioner's strike motion in *RONA*.

21. The Reference in this case, on a pure question of law under s. 124.2(2) of the Act, does not possess any of the attributes of an action as set out above. Moreover, in respect of a reference under s. 124.2(2) of the Act, there are not "numerous rules which require precise pleading". References under s. 124.2(2) are summary proceedings akin to an originating notice of motion or application. Therefore, contrary to Kobo's position, the Tribunal does not have jurisdiction under Rule 221 to strike the Reference, as if the Reference were an action.

ii. The Tribunal's Jurisdiction and Applicable Test

22. The Tribunal has jurisdiction to consider a motion to strike a reference pursuant to Rule 34(1) of the CT Rules and Rule 4 of the FC Rules. In *David Bull*, in respect of a motion to strike an originating notice of motion, the Federal Court of Appeal stated as follows:

> For these reasons we are satisfied that the trial judge properly declined to make an order striking out, under Rule 419 [now 221] or by means of the gap rule, as if this were an action. This is not to say that there is no jurisdiction in this Court either inherent or through Rule 5 [now Rule 4] by analogy to other rules, to dismiss in summary manner a notice of motion which is so clearly improper as to be bereft of any possibility of success [cites omitted]. Such cases must be very exceptional and cannot include cases such as the present where there is simply a debatable issue as to the adequacy of the allegations in the notice of motion.[11]

23. The Commissioner submits that that the Tribunal should apply the test in *David Bull* to Kobo's strike motion. In short, Kobo must demonstrate that the Reference is so clearly improper or manifestly ill-founded that it does not have the slightest chance of success. The test recognizes the policy that motions to strike summary proceedings should only be entertained in exceptional circumstances.

24. In *Canada (Information Commissioner) v. Canada (Attorney General)*,[13] the Federal Court applied the *David Bull* test in deciding whether to strike the Information Commissioner's reference under s. 18.3 of the *Federal Courts Act*.[14] At the outset of her analysis, Prothonotary Tabib set out the test the Attorney General had to meet to prevail in having the Information Commissioner's "application for a reference" struck:

> Such motions should only be brought and granted where the application is so clearly improper as to be bereft of any possibility of success. Otherwise, the appropriate way for a respondent to

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[11] *Ibid.* at para 15.

[13] *Canada (Information Commissioner) v. Canada (Attorney General)*, 2014 FC 133 [**"Information Commissioner"**]. **(TAB 7)**

[14] *Federal Courts Act*, RSC 1985, c. F-7. **(TAB 8)**

> contest an application which it believes to be improperly brought or without merit is to appear and argue the matter at the hearing of the application itself. (*David Bull Laboratories Canada Inc. v Pharmacia Inc.* [cite omitted].[15]

25. Applying the foregoing test, Prothonotary Tabib dismissed the Attorney General's motion to strike the reference stating:

> I cannot conclude that this reference is so manifestly ill-founded that it does not have the slightest chance of success. Accordingly, the Attorney General's preliminary motion to strike must be dismissed.[16]

26. Kobo has failed to demonstrate that the Reference is so manifestly ill-founded or clearly improper as to be bereft of any possibility of success. Indeed, in advancing its motion, Kobo has mischaracterized the Reference question. The Reference raises a question of statutory interpretation, not a question of application (i.e., mixed fact and law). The Tribunal does not require a factual foundation or need to determine in whole or in part the merits of the case to answer the Reference question.

27. The proper way for Kobo to contest the Commissioner's interpretation of s.106(2) is not by way of a motion to strike, but to argue the Reference itself.

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[15] *Information Commissioner, supra* note 13 at para 13.
[16] *Ibid*, at para. 30.

(b) <u>The Reference Question is Proper</u>

i. The Commissioner has Referred a Proper Question of Law

28. Subsection 124.2(2) of the Act authorizes the Commissioner to refer to the Tribunal for determination a question of law, jurisdiction, practice or procedure in relation to the interpretation of Part VIII of the Act.

29. Questions of law are "questions about what the correct legal test is".[18] In contrast, questions of fact are "questions about what actually took place between the parties; and questions of mixed fact and law are questions about whether the facts satisfy the legal tests".[19]

30. In *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, the Supreme Court of Canada, using an example from an appellate court decision, explained the difference between a question of law and a question of mixed fact and law as follows:

> But the question was one of law, in part because the words in question were present in a statutory provision and questions of statutory interpretation are generally questions of law, but also because the point in controversy was one that might potentially arise in many cases in the future: the argument was about kinds of information and not merely about the particular information that was at issue in that case.[20]

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[18] *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.* [1997] 1 S.C.R. 748 at para. 35 [***"Southam"***]. **(TAB 9)**
[19] *Ibid* at para. 36.
[20] *Ibid.*

31. In *Burns Lake,* the Commissioner referred to the Tribunal the following three questions of law regarding the interpretation of the words "directly affected" in s. 106(2):

> (a) What is the nature and scope of the interest sufficient to satisfy the "directly affected" requirement for standing in subsection 106(2) of the Act;
>
> (b) In particular, must an applicant under subsection 106(2) be "affected":
>
> i. in relation to competition; and
> ii. in relation to its substantive rights and/or pecuniary interests
>
> (c) In particular, must an applicant under subsection 106(2) be affected "directly" in that the alleged effect must be:
>
> i. Suffered (or threatened to be suffered) by the applicant exclusively as a consequence of the Consent Agreement, and not as a result of other factors, influences or circumstances; and
> ii. Imminent and real; and not hypothetical or speculative? [22]

32. The Applicants in *Burns Lake* moved to strike the Commissioner's reference. In rejecting the Applicants' motion to strike, the Tribunal stated:

> I find that the Tribunal is asked to interpret the words "directly affected" and decide their meaning. The answer to the question will impact the application of section 106 of the Act and, therefore, falls squarely within the provisions of 124.2(2).
>
> I recognize that this question will not, by itself, be dispositive of an issue before the Tribunal in this case. However, as discussed above, there is no requirement that a reference under subsection 124.2(2) relate to a specific case. Given that a

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[22] *Burns Lake 1, supra* note 5 at paras. 27, 30. The Tribunal also considered a question of mixed fact and law, in which it applied the facts as pleaded to its legal interpretation.

> question of law can be a matter of interpretation only, the fact that the question is determinative of an issue is sufficient.[23]

33. In the present case, as in *Burns Lake*, the Commissioner has referred to the Tribunal a question of law that will impact the application of s. 106 of the Act for this and future consent agreements. The question is of general application and does not depend on any specific case or facts for its determination.

34. The Reference question is proper.

ii. The Tribunal does not require the facts of this particular "case" to decide the Reference

35. In *Burns Lake,* the Federal Court of Appeal concluded that s. 124.2(2) does not limit the Commissioner to referring a question of law only if that question has a factual foundation. The Court stated:

> [The Applicants] argue that the Commissioner may refer a question under subsection 124.2(2) only if it has a factual foundation. They allege that parts (a), (b), and (c) of Question 1 [questions regarding the legal meaning of the words "directly affected"] are academic, hypothetical or advisory in nature. They rely on jurisprudence of this Court dealing with questions referred by administrative tribunals under the similarly worded section 18.3 of the *Federal Court Act*, R.S.C. 1985, c. F-7.
>
> I do not accept this argument. An application may be made under subsection 124.2(2) outside the context of a specific proceeding, while a federal tribunal may refer a question to the Federal Court under section 18.3(1) "at any stage of its

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[23] *Burns Lake 1*, *supra* note 5, at paras. 28-29. The Tribunal rejected the Applicants' arguments relating to questions 1(b) and (c) on the same basis (see para 32 of *Burns Lake 1*).

> proceedings". Consequently, the case law under section 18.3 does not, in my view, help the appellants.[25]

36. The Tribunal in *Burns Lake* did not require a factual foundation to determine the legal meaning of the words "directly affected" under s. 106(2) of the Act.[29] The Commissioner's Reference in this case similarly raises a pure question of law that can be determined by applying the ordinary rules of statutory interpretation. Thus, as in *Burns Lake,* the Tribunal does not require the facts of the "case" to answer the Reference question.

37. Kobo argues that "consequential analysis" in statutory interpretation requires the Tribunal to have the facts *of this "case"* before it to interpret s. 106(2) of the Act. The Commissioner disagrees. As set out above, the interpretation of s. 106(2) does not depend on the facts *of this "case".* In response to the Reference, Kobo may argue the consequences it claims follow from the Commissioner's interpretation of s. 106(2) of the Act. In that regard, Kobo has already gone some distance in its Strike Memorandum, where it sets out the alleged consequences of the Commissioner's interpretation of s. 106(2) for consent agreements under sections 77, 79 and 90.1 of the Act.[36]

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[25] *Burns Lake* 2, *supra* note 5 at paras. 19-20. See also *Burns Lake 1*, *supra* note 5 at paras. 29-32.

[29] In *Burns Lake*, the Commissioner also referred a question of mixed fact and law to the Tribunal (i.e. whether the Applicants in that case were directly affected within the meaning of s. 106(2)). This question required the Tribunal to rely on the facts the Applicants had pleaded. The Reference in this case does not include a question of mixed fact and law.

[36] Kobo Memorandum of Argument, *supra* note 4 at paras. 30-35.

38. In arguing that the Tribunal requires a factual foundation to interpret s. 106(2), Kobo also relies on two cases.[37] Neither of the cases cited by Kobo stands for the proposition that a factual foundation is needed to determine the question of statutory interpretation.

39. The decisions in *Burns Lake* and Kobo's own Memorandum of Argument are inconsistent with Kobo's claim that the Tribunal must consider the facts in this specific case to answer the Reference.

iii. Conclusion

40. The Reference question is a question of law that falls squarely within s. 124.2(2) of the Act. The question raises an overarching legal issue that applies to this and future s. 106(2) proceedings. The Reference will resolve any uncertainty about the Tribunal's jurisdiction to rescind or vary consent agreements under s. 106(2). The Reference will thus benefit the parties, the Tribunal, future litigants and the public at large.

41. Narrowing the Reference to this specific case would limit the utility of the Tribunal's determination of the Reference under s. 124.2(2) of the Act. Clarity of the sort that flowed from the reference in *Burns Lake*, which it is submitted has been helpful to prospective s. 106(2) applicants, the Commissioner and the Tribunal, would be lost.

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[37] *Ibid.* at para. 23, referring to *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031 and *Wood v. Schaeffer*, 2013 SCC 71, [2013] 3 SCR 1053.

(c) <u>The Use of the Reference Process Is Appropriate</u>

42. Subsection 124.2(2) of the Act provides a broad reference power to the Commissioner. The provision authorizes the Commissioner to refer a question of law, jurisdiction, practice or procedure in relation to the interpretation of Part VIII of the Act. It also authorizes the Commissioner to make a Reference at any time and outside the context of any specific proceeding.[56] As the Federal Court of Appeal held in *Burns Lake*, s.124.2(2) is "not a provision governing the procedure of the Tribunal, but a power exercisable by the Commissioner in the administration of the Act.[57]

43. The use of the reference process is appropriate in this case. The Reference will allow the proceedings to move forward expeditiously, in a manner consistent with the requirements of s. 9(2) of the *Competition Tribunal Act*.[59] The Reference will clarify an overarching legal question in this proceeding and provide the parties with clear direction as to the nature and scope of the matter.[60]

44. Without that clarification, the parties will embark on a proceeding with fundamentally differing views as to the scope of the proceeding and what arguments and evidence may be relevant. The Tribunal's determination of

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[56] *Burns Lake 1, supra* note 5 at paras. 19-21. See also *Burns Lake 2, supra* note 5 at paras. 19-20.
[57] *Burns Lake 2, supra* note 5 at para. 16.
[59] *Competition Tribunal Act*, RSC 1985, c. 19 (2nd Supp). **(TAB 10)**
[60] *Burns Lake 1, supra* note 5 at para. 44.

the Reference will therefore be beneficial. In fact, Kobo itself concedes this point when it states that "it may be possible that some steps in the litigation will be marginally shortened depending on the outcome of the Reference".[61]

45. In addition, the Commissioner notes that the schedule the Tribunal has established for the Reference is consistent with s. 124.2(4) of the Act and makes clear that the Tribunal intends that the Reference be dealt with expeditiously.[62]

46. Kobo's allegation that the Reference will delay this proceeding is ill-founded.

47. The Commissioner submits that if the Tribunal agrees with the Commissioner that the scope of a s. 106(2) proceeding is limited to considering whether the "terms" are terms that the Tribunal could not order, and does not include consideration of the facts of the "case", then there will be no need for the proceeding to continue. Kobo asserts that even if the Tribunal agrees with the Commissioner's interpretation, there will remain scope for the Tribunal to consider the Commissioner's allegations to determine whether the terms of the consent agreement are directly tied to the alleged agreement or arrangement.[63] Although the Commissioner does

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[61] Kobo Memorandum of Argument, *supra* note 4, at para. 48.
[62] Subsection 124.2(4) of the Act states: "The Tribunal shall decide the questions referred to it informally and expeditiously, in accordance with any rules on references made under section 16 of the *Competition Tribunal Act*."
[63] Kobo Memorandum of Argument, *supra* note 4 at para 47.

not agree with Kobo's assertion, the matter raised by Kobo is best left for determination in the Reference, not in the context of Kobo's motion to strike.

48. Even if the Tribunal does not agree with the Commissioner's interpretation of s. 106(2), the Reference, for the reasons set out in paragraphs 45-47 above, will expedite Kobo's s. 106(2) application.

49. In arguing that the Commissioner's use of his reference power is inappropriate in this case, Kobo cites, among other authorities, the Federal Court of Appeal's decision in *Perera v. Canada*.[64]

50. The Federal Court's decision in *Perera* is irrelevant to Kobo's strike motion. *Perera* is a decision in relation to a motion under Rule 220 of the FC Rules. Rule 220 allows a party to an *action* to bring a motion before *trial* requesting that the Court determine certain types of questions, including questions of law. Rule 220 casts the burden on the party seeking to have the Court decide a preliminary question. Under s. 124.2(2) of the Act, the Commissioner may refer a question of law to the Tribunal at any time.

51. Kobo is not prejudiced by the Reference. The Tribunal has issued a stay of the consent agreement. Kobo's evidence in this proceeding demonstrates that pending the Tribunal's determination of Kobo's application, Kobo can

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[64] Kobo Memorandum of Argument, *supra* note 4 at para. 57, citing *Perera v. Canada*, 158 DLR (4th) 341, 1998 CarswellNat 584 (WL Can) ["***Perera***"].

continue to charge Canadian consumers higher prices for its e-books than would have been the case if the consent agreement was in force.

52. As set out above, the Commissioner submits that the Reference will expedite the Kobo's s. 106(2) application by resolving an overarching issue.

(d) Conclusion

53. The test on a motion to strike a notice of reference under s. 124.2(2) of the Act is stringent. Such motions should only be granted where the notice of reference is so "clearly improper" or "manifestly ill-founded" to be bereft of any possibility of success.

54. Kobo has failed to address, let alone meet, the foregoing test.

55. Kobo's arguments in favour of striking the Reference are without legal foundation and are contrary to the relevant jurisprudence.

PART IV - ORDER SOUGHT

57. The Commissioner requests that the motion be dismissed, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

At Gatineau, Quebec on 23 May 2014.

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File No. CT-2014-002

COMPETITION TRIBUNAL

BETWEEN:

KOBO INC.

Applicant

- and –

**THE COMMISSIONER OF COMPETITION,
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