



Ministère de la Justice
Canada

Department of Justice
Canada

Cote de sécurité – Security classification

Bureau de la concurrence
Services juridiques

Competition Bureau
Legal Services

Notre référence – Our file

Place du Portage, Tour I
22^e étage
50, rue Victoria
Gatineau QC K1A 0C9

Place du Portage, Phase I
22nd Floor
50 Victoria Street
Gatineau, QC K1A 0C9

Date : 2014-04-03 (AA/YY-MM-JJDD)

Téléphone/Télécopieur
(819) 953-3903

Telephone/Fax
(819) 953-9267

VIA E-MAIL: tribunal@ct-tc.gc.ca

Mr Jos LaRose
Deputy Registrar
Competition Tribunal
Thomas D'Arcy McGee Building
600-90 Sparks Street
Ottawa, ON K1P 5B4

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT	
April 4, 2014 CT-2014-002	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 45

Dear Mr LaRose:

Re: *Kobo Inc. v. Commissioner of Competition*

Further to our letter of March 24, 2014, attached is a proposed schedule for the subsection 106(2) application filed by Kobo Inc. (“Kobo”). The schedule has been agreed upon by the Commissioner of Competition (“Commissioner”) and Kobo. The remaining parties to this proceeding¹ have been provided with a copy of the schedule and have expressed no concerns.

The proposed schedule provides that the Commissioner will refer a question to the Tribunal for determination under subsection 124.2(2) of the *Competition Act* on April 15, 2014 and that on April 29, 2014, Kobo will file either a Motion to Strike the Reference or its Response to the Reference. From that point forward, the proposed schedule sets out milestones for both those procedural paths.

The Commissioner will file his Response to Kobo’s subsection 106(2) application after the Tribunal has rendered its decision in respect of the Commissioner’s Reference. The precise timing for the filing of the Commissioner’s Response is, in our respectful submission, a matter best left for determination after the parties have received the Tribunal’s Reference Decision. Motions for intervention will, in accordance subsection 44(1) with the *Competition Tribunal Rules*, be filed within

¹ 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. (the “Publishers”)

14 days of the Commissioner filing his Response. The proposed schedule contemplates Indigo Books & Music Inc.'s ("Indigo's") intervention being dealt with in that timeframe as well. Indigo has advised that it does not oppose its intervention being considered in that timeframe.

We thank the Tribunal for its indulgence in affording the parties additional time to arrive at an agreed upon schedule.

We are available to answer any questions the Tribunal may have in respect of the schedule.

Respectfully,



John L. Syme
General Counsel

c.c. N. Iatrou
Counsel for Publishers
A. Fanaki
Jonathan Chaplan
Parul Shah

Kobo Inc. v. Commissioner of Competition et al. – Proposed Schedule

1. April 7 – Competition Bureau to provide Kobo with the reference question(s) on without prejudice basis
2. April 10 - Kobo to provide comments re reference question(s) on without prejudice basis
3. April 15 - Commissioner files and serves Reference, with Reference Record¹
4. April 29 - Kobo files either:
 - (1) Motion to Strike Reference, or
 - (2) Response to Reference, with Responding Reference Record²
5. If Kobo files Motion to Strike:
 - April 29 - Kobo file motion materials
 - May 9 - Commissioner files responding motion materials
 - May 9 - 16 - cross-examinations, if any (may be able to collapse this period)
 - June 4 - Kobo file Record
 - June 13 - Commissioner file Responding Record
 - Hearing as set down by Competition Tribunal
6. If Kobo files Response to the Reference:
 - May 5 - 16 - cross-examinations, if any (may be able to collapse this period)
 - May 30 - Commissioner file final Reference Record
 - June 13 - Kobo file final Reference Record
 - Hearing as set down by Competition Tribunal
7. Interventions shall be dealt with in accordance with the *Competition Tribunal Rules*
 - Rule 42³ – Interventions to be filed 10 days after Commissioner's Response to Kobo's s. 106(2) Application
 - Rule 44⁴ – Responses to motions to intervene to be served 14 days after service of motion to intervene.
 - Indigo's motion to intervene deemed to have been served on the day the Commissioner's Response is filed.

¹ *Competition Tribunal Rules* ("CTRs"), s. 108.

² CTRs, s. 109(2).

³ 42. A motion under subsection 9(3) of the *Competition Tribunal Act* for leave to intervene shall be filed within 10 days after the end of the period for filing a response.

⁴ 44.(1) A party served with a motion for leave to intervene may, within 14 days after that service, serve a response to the motion on the person making the motion and on each of the parties and shall file any response to the motion with proof of service.