

Reference: *Commissioner of Competition v. Trilogy Retail Enterprises L.P.*, 2001 Comp. Trib. 021
File no.: CT2001003
Registry document no.: 031b

PUBLIC VERSION

IN THE MATTER OF an application by the Commissioner of Competition for a consent order pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the acquisition of a majority share of Chapters Inc. by Trilogy Retail Enterprises L.P. and the proposed Merger of Indigo Books & Music Inc. and Chapters Inc. and their respective affiliates, Indigo Online Inc. and Chapters Online Inc.

B E T W E E N :

The Commissioner of Competition
(applicant)

and

Trilogy Retail Enterprises L.P.
Chapters Inc.
Indigo Books & Music Inc.
(respondents)

and

Anil Amlani
Bruce Barr
(intervenors)

Date of hearing: 20010605 to 20010606
Members: Nadon, J. (presiding), L.P. Schwartz, A.L. Reny
Date of order: 20010606
Order signed by: Nadon, J.

CONSENT ORDER

[1] FURTHER TO the application of the Commissioner of Competition (the “Commissioner”) pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Act”) for a consent order directing the divestiture of certain assets and certain other remedies in respect of the aforementioned Merger;

[2] AND UPON READING the notice of application dated April 18, 2001, the statement of grounds and material facts, the impact statement of the consent order, the affidavit of Glenn McDonald dated April 17, 2001, the draft consent order and the consent of the Commissioner and the respondents, filed herein;

[3] AND UPON READING the comments made by interested persons and the responses thereto by the Commissioner and the respondents, and the responses of the Commissioner, the respondents and the intervenors to the Tribunal’s notice to counsel;

[4] AND ON CONSIDERING THAT the Commissioner and the respondents have reached an agreement which is reflected in the draft consent order;

[5] AND ON CONSIDERING THAT the Commissioner is satisfied that, on the basis of the considerations outlined in the impact statement of the consent order, the remedies provided herein, if ordered, will be sufficient to eliminate any substantial lessening or prevention of competition in respect of both the acquisition of a majority share of Chapters Inc. by Trilogy Retail Enterprises L.P. (“Trilogy”) and the proposed Merger of Indigo Books & Music Inc. and Chapters Inc. and their respective Affiliates, Indigo Online Inc. and Chapters Online Inc.;

[6] AND IT BEING UNDERSTOOD by the parties that the Commissioner has alleged certain material facts, and that, though the respondents do not agree with all the facts alleged and the respondents do not admit the nature or degree of the substantial lessening or substantial prevention of competition in this matter as alleged by the Commissioner, the respondents do not contest the statement of grounds and material facts or the impact statement of the consent order for the purposes of this application or of any proceeding relating to this consent order, including an application to vary or rescind this order under section 106 of the Act;

[7] AND ON HEARING counsel for the Commissioner, the respondents and the intervenors in respect of this application;

THE TRIBUNAL ORDERS THAT:

Definitions

[8] For the purposes of this order, the following definitions shall apply:

- (a) "Act" means the *Competition Act*, R.S.C. 1985, c. C-34;
- (b) "Affiliate" is defined in accordance with subsection 2(2) of the Act;

- (c) "Chapters" means Chapters Inc.;
- (d) "Chapters Online" means Chapters Online Inc.;
- (e) "Commissioner" means the Commissioner of Competition appointed pursuant to section 7 of the Act;
- (f) "Designated Assets" means the retail bookstores and other assets to be divested hereunder, as more particularly described in Schedule A to this order;
- (g) "Divest" means sell, transfer, assign or otherwise dispose of;
- (h) "EBITDA" means earnings before interest, taxes, depreciation and amortization determined in accordance with generally accepted accounting principles based on the Parties' currently available financial information;
- (i) "Indigo" means Indigo Books & Music Inc.;
- (j) "Indigo Online" means Indigo Online Inc.;
- (k) "Initial Sale Period" has the meaning set out in confidential Schedule D;
- (l) "Merger" means the proposed merger of Chapters and Indigo;
- (m) "Monitor" has the meaning ascribed thereto in paragraph 25 of this order;
- (n) "Parties" means Chapters, Indigo and Trilogy;
- (o) "Purchaser" means a person or entity who purchases all or part of the Designated Assets to be Divested in accordance with the procedures specified herein;
- (p) "Trade Book Revenues" means revenues generated from the sale of English-language trade books;
- (q) "Tribunal" means the Competition Tribunal;
- (r) "Trilogy" means Trilogy Retail Enterprises L.P.;
- (s) "Trustee" means the person appointed trustee pursuant to paragraph 16 hereof to effect the sale of Designated Assets, if necessary; and
- (t) "Trustee Sale" has the meaning ascribed thereto in paragraph 16 of this order.

Application

[9] The provisions of this order shall apply to the Parties and to:

- (a) each division, subsidiary or other person controlled by them and each officer, director, employee, agent or other person acting for or on behalf of any of them with respect to any of the matters referred to in this order;
- (b) each of their respective successors and assigns, and all other persons acting in concert or participating with any of them with respect to the matters referred to in this order who shall have received actual notice of this order;
- (c) the Trustee;
- (d) the Monitor;
- (e) the Purchaser; and
- (f) the Purchaser's successors and assigns.

Divestiture

[10] The Parties shall use their reasonable best efforts to Divest themselves of all their rights, title and interest of whatever character in the Designated Assets, subject to and in accordance with this order. Inventory included in the Divestiture will either be sold at the acquisition cost of such inventory by Chapters or Indigo, as the case may be, or returned immediately upon closing in the same condition it is in at closing to Chapters or Indigo, as the case may be, at the Purchaser's discretion.

Partial Divestiture During Initial Sale Period

[11] In the event that a prospective Purchaser communicates to the Parties an interest in purchasing less than all the assets listed in Schedule A, the Parties shall notify the Commissioner forthwith. A partial divestiture may take place during the Initial Sale Period with the mutual consent of the Parties and the Commissioner. In the absence of such consent, the Commissioner may instruct a partial divestiture following the receipt and due consideration of any submissions made by the Parties, within 48 hours of the Commissioner's notice of his intention to consider issuing such instructions, provided the Commissioner, acting reasonably, shall take into account the relative proportionality of the EBITDA of all assets to be partially Divested along with the geographic distribution of the assets to be partially Divested in comparison to the Designated Assets as a whole, and any such partial divestiture will be undertaken in accordance with section 5 of confidential Schedule D. In the event of a partial divestiture, those assets listed in Schedule A but not included in the partial divestiture will remain subject to the terms of this order. Inventory included in any partial divestiture will be either sold at the acquisition cost of such inventory by Chapters or Indigo, as the case may be, or returned immediately upon closing

in the same condition it is in at closing to Chapters or Indigo, as the case may be, at the Purchaser's discretion.

Divestiture Procedure

[12] Divestiture of the Designated Assets whether by the Parties or the Trustee shall be completed on the following terms:

- (a) by sale, assignment of lease or sublease, assignment of contract, or other disposition (including the sale of shares of a corporation that holds some or all of the Designated Assets) which ensures that, on the completion of the divestiture, the Parties do not retain directly or indirectly any right, title, control, interest, liability or obligations in respect of the Designated Assets, other than obligations in respect of any representation, warranties and covenants included in any agreement between any of the Parties and any Purchaser(s) of such Designated Assets as permitted by this order;
- (b) as a condition to any divestiture of some or all of the Designated Assets, the Purchaser must obtain a full release of the Parties and their respective Affiliates from all liabilities and financial obligations as lessee or related to the lease, relating to any of such Designated Assets, and neither any of the Parties nor any of their Affiliates will have any financial interest in or obligation to or owed by any Purchaser, or any third party in respect of any Designated Assets, other than obligations in respect of any representations, warranties and covenants included in any agreement between any of the Parties and any Purchaser(s). Should the Purchaser not be able to obtain any required release, the Parties, the Purchaser or the Commissioner may apply to the Tribunal for an order releasing the Parties from any such liabilities or obligations;
- (c) by way of disposition of the Designated Assets for use as a going concern. Inventory will be included in the Divestiture on the understanding that the Purchaser will either pay the acquisition cost paid by Chapters or Indigo, as the case may be, for such inventory or return the inventory immediately upon closing in the same condition it is in at closing to Chapters or Indigo, as the case may be, at the Purchaser's discretion;
- (d) to one or more arm's length Purchaser(s) who:
 - (i) will use the Designated Assets for the same purpose as such assets were used prior to the divestiture, unless the Commissioner consents otherwise; and
 - (ii) will have the managerial, operational and financial responsibility for any liabilities associated with the Designated Assets, without any recourse against the Parties;
- (e) by way of a procedure that will allow a fair and effective opportunity for bona fide prospective purchasers to receive notice of the prospective divestiture and to make an offer to acquire the Designated Assets; and

(f) a divestiture by the Parties shall be considered to have been completed when the Purchaser has signed a binding agreement.

Sale by the Parties

[13] Any person making a bona fide inquiry of the Parties or their agent regarding the possible purchase by that person or its principal of any of the Designated Assets shall be notified that the sale is being made pursuant to this order and provided with a copy of this order, with the exception of the provisions hereof which are confidential as set out in confidential Schedule D. Subject to paragraph 14 below, any person who demonstrates that he or she is a bona fide prospective Purchaser shall forthwith:

(a) be furnished with all pertinent information regarding such Designated Assets, copies of such information to be provided to the Commissioner on request; and

(b) be permitted to make such reasonable inspection of such Designated Assets and of all financial, operational or other documents and information as may be relevant to the divestiture, except for any documents which have been or shall be made the subject of an order of confidentiality of the Tribunal.

[14] Access by a prospective Purchaser to the information and assets identified in paragraph 13 above shall be conditional on the execution of a customary confidentiality agreement, containing, among other things, non-solicitation terms relating to personnel, customers and key partners. In the event that the Purchaser purchases some or all of the Designated Assets, the confidentiality terms shall have no force or effect in respect of those assets.

[15] The Parties shall advise the Commissioner in writing every 30 days of the progress of their efforts to accomplish the divestiture of the Designated Assets, including a description of contacts and negotiations and the identity of all parties contacted and prospective purchasers who have come forward, all with reasonable detail. The Commissioner has the right to ask for additional information from the Parties regarding the divestiture and the Parties shall respond forthwith.

Trustee Sale

[16] If the Designated Assets have not been fully Divested within the Initial Sale Period, the Parties and the Commissioner shall agree on the nomination of a trustee. If the Parties and the Commissioner fail to agree, the Tribunal, on the application of the Commissioner, shall appoint a trustee. A trustee sale ("Trustee Sale") will be undertaken in accordance with the following provisions and those relevant provisions set out in confidential Schedule D:

(a) a divestiture shall be considered to have been completed when the Purchaser has signed a binding agreement;

- (b) the Trustee may not effect a divestiture of assets to a Purchaser on terms more favourable to the Purchaser than terms offered by the Parties to that Purchaser during the Initial Sale Period in relation to the same assets, and not accepted by the Commissioner;
- (c) after the appointment of the Trustee becomes effective with respect to some or all of the Designated Assets and until the Trustee ceases to have any rights in any Designated Assets, only the Trustee shall have the right to effect the divestiture of such assets and on such terms as are required by this order;
- (d) the Trustee shall dispose of the assets for use on a going concern basis to one or more arm's length purchasers who as a term of sale covenant to use the Designated Assets for the same purpose as such assets were used prior to the divestiture for a reasonable period;
- (e) the Trustee shall have the full power and authority to effect the Trustee Sale and shall use all reasonable best efforts to accomplish it;
- (f) the Parties shall use their reasonable best efforts to assist the Trustee in accomplishing the Trustee Sale. In connection therewith, the Parties will give full access to prospective purchasers to all information set out in paragraph 13 of this order, under the conditions set out in paragraphs 13 and 14 herein; the Trustee shall have full and complete access as is reasonable in the circumstances, subject to a customary confidentiality agreement, to the personnel, books, records and facilities of all or any portion of the Designated Assets and the Parties, who shall take no action to interfere with or impede the Trustee's accomplishment of the Trustee Sale;
- (g) the Trustee shall have the full power and authority to retain, on usual and reasonable commercial terms, financial, legal and other professional advisers, including investment bankers, that may be reasonably necessary or advisable in advising and assisting the Trustee in effecting the Trustee Sale;
- (h) after the appointment, the Trustee shall, every 30 days, file reports with the Commissioner and the Parties, setting forth the Trustee's efforts to accomplish the Trustee Sale, all with reasonable detail. The Commissioner and the Parties have the right to ask for additional information from the Trustee regarding the divestiture, the Parties being subject to customary restrictions regarding the confidentiality of commercially sensitive information, and the Trustee shall respond forthwith;
- (i) the Trustee's remuneration and all expenses reasonably and properly incurred by the Trustee in the course of the Trustee Sale shall be paid by Chapters;
- (j) the Trustee shall execute a customary confidentiality agreement and shall not communicate any competitively sensitive confidential information, except to the extent required by this order;
- (k) the Parties shall hold the Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Trustee's duties,

including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defence of, any claim, whether or not resulting in any liability all so long as the Trustee acts in compliance with the order, except to the extent that such liabilities, losses, damages, claims or expenses result from malfeasance, gross negligence or bad faith by the Trustee and subject to paragraph 16(j);

(l) the proceeds of the Trustee Sale shall be paid to Chapters or Indigo as the case may be or as the Parties may direct; and

(m) the Trustee shall have such other powers in respect of the Designated Assets as the Tribunal may grant to the Trustee upon the request of the Commissioner or the Parties.

Extension of Time

[17] Notwithstanding anything to the contrary herein, if, prior to the expiry of a time period for a sale herein the Parties or the Trustee, as the case may be, and a prospective Purchaser of some or all of the Designated Assets enter into a letter of intent, or the parties receive an offer or similar written communication of intention to purchase such Designated Assets, the Parties and the Trustee, as the case may be, shall have an additional 30 days within which to complete such divestiture.

[18] The Commissioner and the Parties may agree to extend any of the time periods applicable herein.

Commissioner's Approval

[19] The divestiture of the Designated Assets whether by the Parties or the Trustee is subject to the approval of the Commissioner in writing.

Notification

[20] The Parties or the Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the Commissioner of any proposed divestiture or Trustee Sale. The notice to the Commissioner shall be given at the time a binding offer that is acceptable to the Parties or the Trustee is received. The notice to the Commissioner shall include:

- (a) the identity of the proposed Purchaser;
- (b) the details of the proposed transaction;
- (c) an update of the last report provided pursuant to paragraph 15 or 16(h) hereof; and
- (d) the agreement of the proposed Purchaser that it will respond as soon as possible to a request by the Commissioner for additional information regarding the proposed divestiture.

[21] If the Trustee is responsible for the divestiture, the Trustee shall notify the Parties of the details of the proposed transaction and the identity of the prospective Purchaser.

Maintenance of the Designated Assets

[22] Until the earlier of: (i) divestiture by the Parties or the Trustee; and (ii) the Trustee ceasing to have any rights in respect of any Designated Assets, each of the Parties shall, to the extent required or permitted in this order, at its cost:

(a) provide, with respect to its Designated Assets, in accordance with standards similar to those existing for the same time period for the previous year, such sales, managerial, administrative and operational and financial support, including working capital, as may be reasonably necessary in the ordinary course of business to promote the continued effective operation of the Designated Assets;

(b) take all necessary steps to maintain and operate its Designated Assets consistent with commercially reasonable practices so as to preserve their competitive vigour and value for any prospective purchaser;

(c) make necessary capital improvements and maintain its Designated Assets in good condition and repair and to standards at least equal to those existing prior to February 1, 2001;

(d) not accord discriminatory treatment to its Designated Assets; and

(e) not take any action that will materially adversely affect the competitiveness, assets, operations or financial status of its Designated Assets.

In the event that any assets remain in the Designated Assets pool following a partial sale, this paragraph applies to any such Designated Assets.

[23] The Parties shall direct managers of the Designated Assets and any servants or agents of the Parties operating and managing the Designated Assets to do so in accordance with the terms of this order.

[24] In the event of a breach of paragraph 22 or 23 of this order, the Commissioner may apply to the Tribunal to vary the Designated Assets appended hereto as Schedule A.

Monitor

[25] The Commissioner will forthwith appoint an independent third person to act as a Monitor for the Designated Assets (the "Monitor"). The Monitor will be responsible for monitoring the management of the Designated Assets as necessary to ensure the Parties are in compliance with the terms of this order.

[26] In the event that the Monitor is unable to perform monitoring duties under the terms of this order because of death, disability, termination for cause or any other reason, the Commissioner shall appoint a new monitor within 15 days.

[27] The Parties shall give the Monitor unlimited access to any information relating to the management, operations and maintenance of the Designated Assets as required by the Monitor to fulfil the Monitor's obligations as set forth in this order.

[28] At the Commissioner's request, the Monitor will provide to the Commissioner written reports relating to the management, operations and maintenance of the Designated Assets and the Parties' compliance with terms of this order.

[29] The Monitor shall execute a customary confidentiality agreement and shall not communicate any competitively sensitive confidential information, except to the extent required by this order.

[30] The Parties shall hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, all so long as the Monitor acts in compliance with the order, except to the extent that such liabilities, losses, damages, claims, or expenses result from malfeasance, gross negligence or bad faith by the Monitor and subject to paragraph 29.

[31] The Monitor's remuneration and all expenses reasonably and properly incurred shall be paid by the Commissioner.

Further Provisions

[32] Upon issuance of this order, Chapters shall forthwith adopt the terms attached hereto as Schedule C and shall advise its trade book suppliers of the terms thereof by mailing a copy of Schedule C to them. Compliance with this paragraph 32 for purposes of this order shall be deemed to occur upon Chapters mailing a copy of Schedule C to its trade book suppliers and confirming its adoption of the terms thereof. Any and all disputes arising out of or relating to Schedule C shall be exclusively and finally settled by arbitration pursuant to Schedule C.

[33] The Parties will not acquire (by ownership or operating arrangements) a retail bookstore outlet in any shopping centre or mall in which it already has an outlet. If the Parties have more than one outlet in a shopping centre or mall as a result of this merger, then the Parties will reduce, by closure or sale, to one outlet with reasonable expedition (expected to approximate 30 months), subject to commercial feasibility including no cost of termination of the shorter of the two leases in question. Where the Parties have an outlet in a shopping centre or mall but wish to open another outlet in the same shopping centre or mall, they shall be permitted to do so but only if they close the pre-existing outlet.

[34] Where the Parties have a retail book outlet in a shopping centre or a mall and are protected by a restrictive covenant precluding any further retail book outlets, the Parties will not

enforce or rely on the covenant insofar as it relates to outlets with less than 3,000 square feet of space. Further, the Parties shall not renew or enter into new restrictive covenants that take effect during the term of this order of the type described herein in respect of any outlets with less than 8,000 square feet of space. The Parties must provide written notice of this provision to all landlords with which they have negotiated, or enter into negotiations regarding, leases.

[35] Except as otherwise permitted by this order or with the Commissioner's consent, the Parties will open no new retail outlets in any location in Canada for a period of two years from the date of the Consent Order, provided this will not restrict the Parties from the opening of a store where, before February 1, 2001, they committed to open the store.

[36] In the event that the Parties propose to re-enter the business of third party wholesaling or distributing of trade books to unrelated entities in Canada, the Parties will notify the Commissioner at least 30 days prior to re-entering such business. Such notice will include the identity of any other proposed investors and the details of their interests. Within 30 days of such notice, the Commissioner may advise the Parties that they are required to sell their interest in such wholesaler or distributor. If the Parties proceed with the proposal and a sale of such interest is required by the Commissioner but has not been completed to a third party acceptable to the Commissioner within 4 years of the date of this order, the Commissioner may appoint a trustee and a trustee sale will then be undertaken within the one year remaining of the Consent Order on the same terms as contemplated in paragraphs 16(a) and (c) to (m) of this order, provided that the trustee may not sell such interest at less than fair market value as determined by a major Canadian investment bank chosen by the Commissioner at that time. For greater certainty, nothing herein shall limit the ability of the Parties to distribute books or other products to their own stores. Also for greater certainty, nothing herein shall prevent the Commissioner's ability to apply to the Tribunal under any section of the Act within the 5-year term of this order in respect of the notified transaction.

General

[37] Notices, reports or other communications required or permitted pursuant to this order shall be in writing and shall be considered to be given if dispatched by personal delivery or by registered mail or by facsimile transmission to the parties listed in Schedule B to this order. Jurisdiction shall be retained by the Tribunal for the purpose of any application by the Commissioner, the Parties or the Trustee to rescind or vary any of the provisions of this order in the event of a change in circumstances or otherwise.

Term of the Consent Order

[38] Paragraphs 33, 34, 36 and Schedule C (including attachments thereto) of this order shall remain in effect for five years from the date of this order, but in no event shall the obligations set out in paragraphs 33, 34, 36 and Schedule C (including attachments thereto) be extended beyond such five years. Within such five-year period, the rest of the order shall remain in effect according to its terms or until the Tribunal receives notice in writing from the Commissioner that

final divestiture has occurred or is no longer required hereunder or until further order of the Tribunal, as the case may be.

DATED at Ottawa, this 8th day of June 2001.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Marc Nadon

[39] Schedule A: Designated Assets

I. RETAIL BOOKSTORES

A. Large Format Stores:

	Chapters Store No.	Store Name	Current Banner*	Address
1.	758	Woodbridge	CHP	East Woodbridge Centre 3900 Highway #7, Unit 1 Woodbridge, Ontario
2.	760	Yonge & Steeles	CHP	7040 - 7054 Yonge Street Toronto, Ontario
3.	765	Oakville Town Centre	CHP	310 North Service Road West Oakville, Ontario
4.	768	Richport Town Centre	CHP	Richport Town Centre 8171 Ackroyd Road Richmond, British Columbia
5.	772	Brick Plaza	CHP	9631 Macleod Trail South West Calgary, Alberta
6.	919	Runnymede Theatre	CHP	2223-2231 Bloor Street West Toronto, Ontario
7.	928	Strawberry Hill	CHP	12101 - 72nd Avenue, Suite 100 Surrey, British Columbia
8.	931	Belleville	CHP	Quinte Mall 390 North Front Street Belleville, Ontario
9.	944	Rockland Montreal	CHP	Centre Rockland 2305 Chemin Rockland Mont-Royal, Quebec
10.	n/a	Kingston	IND	259 Princess Street Kingston, Ontario
11.	n/a	Scarborough Town Centre	IND	300 Borough Drive Scarborough, Ontario
12.	n/a	South Edmonton	IND	1837 99 Street Edmonton, Alberta
13	n/a	Yorkdale	IND	Yorkdale Shopping Centre 3401 Dufferin Street Toronto, Ontario

* CHP means Chapters. IND means Indigo. These are current names that are not part of the Designated Assets.

B. Mall Stores:

	Chapters Store No.	Store Name	Current Banner**	Address
1.	032	Eaton Sheridan Place	CLS	Sheridan Mall 2225 Erin Mills Parkway Mississauga, Ontario
2.	044	CentrepoinTE Mall	CLS	CentrepoinTE Mall 6374 Yonge Street Willowdale, Ontario
3.	067	Burlington Mall	CLS	Burlington Mall 777 Guelph Line Burlington, Ontario
4.	068	East York Town Centre	CLS	East York Town Centre 45 Overlea Boulevard Toronto, Ontario
5.	158	Yonge & Sheppard	CLS	Sheppard Centre 4841 Yonge Street Willowdale, Ontario
6.	315	Fairview Pointe Claire	SMB	Centre Fairview Pointe-Claire 6801 Trans-Canada Highway Pointe-Claire, Quebec
7.	334	Place Ville Marie	SMB	Place Ville Marie Shopping Promenade 1 Place Ville Marie Montreal, Quebec
8	368	Rideau Centre	SMB	Rideau Centre 50 Rideau Street Ottawa, Ontario
9.	604	1 st Canadian Place	CLS	1 First Canadian Place Management Office Concourse Level Toronto, Ontario
10.	722	Carrefour Laval	SMB	Le Carrefour Laval 3003 Boulevard le Carrefour Laval, Quebec

** CLS means Coles. SMB means SmithBooks. These are current names that are not part of the Designated Assets except potentially for SmithBooks.

The decision of any Purchaser not to acquire any of the assets described in sections II, III or IV will not trigger paragraph 11 of this order.

II. INDIGO ONLINE INC.

All rights, title and interest of whatever character in Indigo Online, including any leasehold interest in equipment, software and portal agreements that the Parties or any of their Affiliates may own in respect of Indigo Online; provided, however, that Indigo Online's tradename, intellectual property rights, brand specific content and customer lists are not Designated Assets and are not required to be divested under this order.

III. TRADENAMES

All rights, title and interest of whatever character in the "Classic Books", "Prospero" and "SmithBooks" tradenames; provided, however, that any single Purchaser of some or all of the Designated Assets may acquire no more than one of these tradenames.

IV. DISTRIBUTION FACILITY

As long as Indigo has possession of its current distribution facility located at 6160 Kenway Drive, Mississauga, Ontario, it will offer it up as part of the Designated Assets to any willing prospective purchaser.

[40] Schedule B: Parties

Chapters Inc.
90 Ronson Drive
Etobicoke, Ontario
M9W 1C1

Attention: Heather M. Reisman

Trilogy Retail Enterprises L.P.
161 Bay Street
49th Floor
Toronto, Ontario
M5J 2S1

Attention: Gerald W. Schwartz

Indigo Books & Music Inc.
468 King Street West
Suite 500
Toronto, Ontario
M5V 1L8

Attention: Michel Gagnier

Commissioner of Competition
Competition Bureau
Place du Portage, Phase 1
50 Victoria Street
Hull, Quebec
K1A 0C9

Attention: Gaston Jorré

DEFINITIONS

"Bookseller" means, until the Combination Date, Chapters or any Successor; after the Combination Date, it means the entity or entities that own or operate the combined businesses of Chapters and Indigo, or any Successor;

"Combination Date" means the date when Chapters and Indigo are combined as a single entity, or operate under common control or under a common operating arrangement;

"Effective Date" means the date on which this order is issued by the Competition Tribunal;

"Publisher-Specific Terms" means the terms of trade as to discount levels, payment period of outstanding accounts, allocation of shipping costs, and maximum return levels that prevailed (i.e., that governed in practice, as distinct from the term of contractual arrangements) in relation to a particular Publisher immediately prior to the acquisition by Trilogy of control of Chapters on February 1, 2001, except that the discount levels shall be adjusted to eliminate the impact of wholesaler-related changes. For this purpose, a wholesaler-related change is a change adverse to the Publisher that was required by Chapters in connection with the organization by Chapters of Pegasus Wholesale Inc. ("Pegasus"). The Publisher-Specific Terms as to any particular Publisher shall be determined by discussion between the Publisher and the Bookseller, and either shall be entitled to have the issue determined by arbitration if they cannot agree as to what these terms were;

"Publisher" means, at any particular time, an entity engaged in the business of publishing trade titles for the retail market in Canada;

"Successor" with respect to Chapters, Indigo or the combined Chapters/Indigo means another entity that acquires (whether through ownership of shares or of assets) the business of Chapters or of Indigo with accompanying goodwill, but does not include the acquiror of one or more separate stores in a transaction that does not involve transfer of the goodwill of the business as a whole;

"trade titles" means copies of books published for sale through bookstores or other retail outlets and, for greater certainty, does not include books intended primarily for the educational market. For greater certainty, the term "books" in Schedule C does not include e-books.

TERMS

1. ***Current Accounts Payable.*** All accounts payable to Publishers by Chapters and by Pegasus outstanding when Trilogy acquired control of Chapters will be paid in accordance with the terms of Schedule C as to the payment period of outstanding accounts and maximum return levels; in consequence, payment will be made forthwith of any account which, at that time, has been outstanding longer than permitted under the terms of Schedule C. Similarly, offsets attributable to returned books will be limited to what is permissible under the terms of Schedule C.

2. ***Terms of Bookseller-Publisher Relationship.*** The Bookseller will extend to all Publishers the terms set out in Appendix I to this Schedule C (the "Reference Terms"), except that any Publisher is entitled at any time to elect to have the Publisher-Specific Terms for that Publisher govern its relationships with the Bookseller. A Publisher not electing within 30 days after the Effective Date to have the Publisher-Specific Terms for that Publisher govern its relationships with the Bookseller may subsequently so elect upon three months' notice to the Bookseller, with the transfer to be effective for the following calendar year. Further, the Publisher and the Bookseller may at any time and from time to time settle by mutual agreement the terms of trade between them, including any modification of the Publisher-Specific Terms or of the Reference Terms.
3. ***Non-discrimination.*** The Bookseller shall not discriminate against or penalize a Publisher for availing itself of the Reference Terms in any of its dealings with the Publisher or otherwise attempting to enforce this Schedule C.
4. ***Purchase Decisions Not Linked.*** The Bookseller will make book purchase decisions based on commercial considerations such as the quality and saleability of the book, and will under no circumstances discriminate against any book because the Publisher has not agreed to participate in a related promotional programme or to use or purchase other goods or services. The preceding sentence does not: (i) preclude a promotional agreement between the Publisher and the Bookseller to enhance the sales of any particular book; or (ii) in any way affect the Publisher's obligation under section 51 of the Act to offer promotional allowances to all competing retailers on proportionate terms.
5. ***Transitional Competitive Provisions.*** During the period commencing February 1, 2001, and ending 30 months thereafter, the Bookseller shall not close down any superstores without taking the following steps pursuant to an orderly plan to:
 - (a) advise Publishers at least 60 days in advance of a store closing;
 - (b) move such portion of the inventory of the store being closed as is commercially feasible to other stores so as to minimize the need for returns; and
 - (c) subject to mutual agreements with Publishers, sell remainders in place, but this does not affect the right of the Bookseller to discount books without Publisher consent where the Bookseller absorbs the cost of the discount.
6. ***Submission to Arbitration.*** Any and all controversies, questions, claims or other disputes arising out of or relating to this Schedule C including, without limitation, issues concerning the arbitrability of any dispute and any dispute concerning the interpretation or application of Schedule C, shall be finally settled by arbitration in accordance with the rules of arbitration set out in Appendix II hereto. Any Bookseller or any Publisher or group of Publishers may initiate an arbitration. Any person who relies on, takes advantage of or seeks to enforce any provision of Schedule C shall thereby have irrevocably consented to submitting to arbitration any controversy, question, claim or other dispute arising out of or relating to Schedule C in

accordance with the rules of arbitration set out in Appendix II hereto. Arbitration shall be the sole and exclusive procedure for resolving any and all disputes hereunder and, except as provided in Appendix II or for the purposes of the enforcement of an award, no recourse may be had to any court or tribunal, whether federal or provincial, in respect of any matter whatsoever relating to Schedule C including, without limitation, any dispute arising hereunder, any arbitration initiated to resolve a dispute and any arbitration award or decision. These provisions are without prejudice to the Publishers' rights to avail themselves of the courts of normally applicable civil jurisdiction with respect to matters outside the scope of this Schedule C, including to seek judgment for and collect any debts due to them by any Bookseller.

7. **Term.** This Schedule C in its entirety shall terminate five years from the Effective Date.
8. **Governing Law.** This Schedule C shall be exclusively governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

APPENDIX I TO SCHEDULE C

REFERENCE TERMS

1. These reference terms govern the relationships between the Bookseller (including any Successor) and the Publisher with respect to trade titles to the extent and in the circumstances described in paragraph 2 of this Schedule C.
2. The Bookseller shall be given the discounts off the suggested retail price by the Publisher that are determined under the Publisher-Specific Terms, including as to any difference in discount levels based on whether the shipment is to the store or to a distribution centre. If these terms: (i) are not settled as to any new particular Publisher who does not have Publisher-Specific Terms or (ii) do not deal with this matter, the discounts shall be no more than:

Trade Books 45 - 46 percent*
Mass Market Paperbacks 46 - 47 percent
Diaries and Calendars 55 percent

*when the Publisher ships its titles to each store; if Bookseller specifies that all titles shall be shipped to one location in Canada, the discount shall be an additional 2 - 4 percent, but it is understood that in respect of trade books the total discount under this paragraph shall not be greater than 48 percent. The discount level within the specified ranges will be negotiated between the Bookseller and each Publisher, it being understood that the lower end of the range will apply to small or entry-level Publishers. Nothing herein shall prevent the Bookseller from negotiating additional discounts in the future with respect to the use or adoption of electronic data interchange or other technologies or other relationship items mutually agreed to.

If the Publisher provides any direct competitor of the Bookseller with pricing superior to that available to the Bookseller hereunder on the sale to the Bookseller of articles of like quality and at least the same quantity (other than under specific promotional arrangements discussed in paragraph 3 of this Appendix I, at the time that it negotiates or renegotiates its general terms of trade with such competitor) the Publisher shall forthwith offer to the Bookseller the same terms of trade as provided to the direct competitor. This provision is referred to as the "MFN Clause" and the senior executive officers of the Publisher shall certify annually, upon written request, that the Publisher is in compliance with the MFN Clause, failing which the Publisher shall not be entitled to the benefit of this Schedule C.

For greater certainty, where the Publisher-Specific Terms include discount rates, those rates govern (subject to the proviso above) until changed by agreement between the Publisher and the Bookseller.

3. The Publisher and the Bookseller may agree to allowances by the Publisher to the Bookseller for direct promotional activities with respect to specific titles, including co-op advertising, promotional product placement and other promotions, subject always to the right of the Publisher, at any time, at his or her discretion, to audit the Bookseller's promotional activity

to ensure compliance. It is acknowledged that current commercial practice is for publishers to provide the Bookseller with promotional monies equal to a certain percent of the Bookseller's net purchases of Publisher's books in the previous year.

Where the Publisher enters into promotional or similar arrangements with another bookseller more favourable to the bookseller than those in place with the Bookseller, the Publisher shall provide the Bookseller with a reasonable opportunity to enter into similarly favourable arrangements on proportionate terms.

4. The cost of shipping from Publisher to Bookseller shall be borne by the Publisher, except where allocated to the Bookseller under the Publisher-Specific Terms or specifically accepted by the Bookseller.
5. To the extent feasible, having regard to covenants to lenders or other third parties, obligations to security holders and solvency considerations: (i) payments from the Bookseller of accounts payable outstanding as at the Effective Date will be made in accordance with the Publisher-Specific Terms; and (ii) payments relating to subsequent transfers of books from the Publisher will be made within the number of days indicated below, calculated from the end of the month when the books have been delivered and the invoice has been received:

110 days for the first 12 months after the Effective Date;
100 days for the next 24 months; and
90 days thereafter.

6. Titles purchased directly from the Publisher, other than diaries and calendars, are eligible for return, subject to the following conditions:
 - (a) Titles may be returned 3 months after the later of invoice date or delivery date and not after 12 months after the later of invoice date or delivery date. (Extensions may be granted if requested in writing.)
 - (b) Returned titles must be in usable condition in order to receive credit. Books must be free of retailer's stickers.
 - (c) Permission to return is not required for the Bookseller to return books that are eligible for return.
 - (d) Returns must be properly packaged and sent prepaid to the address in Canada specified by the Publisher.
 - (e) Books returned that are damaged (but were not damaged when received by the Bookseller), out of print (and were out of print when originally delivered to Bookseller), not the Publisher's publication, or not purchased from the Publisher, will be returned to the Bookseller at the Bookseller's expense.

- (f) The Bookseller shall only issue debit notes for the return of books in the month in which the books are received by the Publisher and the Bookseller will not issue a debit note prior to the shipment of the returned books. If the books referred to in the debit note are not received by Publisher within 30 days of the date of the note, the application of the debit note shall be deferred until the end of the month in which the books are received.

Paragraphs 6(a) and 7 of this Appendix I shall not apply in relation to any inventory returned to the Bookseller in connection with the sale of any of the Designated Assets.

- 7. Returns of books to the Publisher, excluding titles subject to special agreement, shall be capped at the percentages indicated below, based on the invoice value of copies shipped to the Bookseller:

- 42 percent: first 12 months after the Effective Date
 - 30 percent: thereafter.

Provided that if, during the first 12 months the Bookseller exceeds a 40 percent return rate to a particular Publisher, the Bookseller will advise the Publisher and seek to develop a strategy to minimise the impact of such excess returns on both the Publisher and the Bookseller.

APPENDIX II TO SCHEDULE C

ARBITRATION PROCEDURE

1. The party initiating the arbitration shall deliver written notice to the other party setting out in reasonable detail the nature of the alleged breach or the application for interpretation and stating that it is triggering arbitration in accordance with Schedule C.
2. The following procedures will be followed unless the parties agree otherwise.
3. The following procedure applies to all arbitration proceedings brought in connection with Schedule C (including the Reference Terms):
 - (a) The parties shall, within three (3) clear business days of receipt of the written notice described in paragraph 1 above, agree on an arbitrator to be appointed. In the absence of an agreement to appoint an arbitrator, any party may apply to the Ontario Superior Court of Justice for an order appointing an arbitrator from ADR Chambers, which appointment shall be accepted by the parties.
 - (b) The rules and procedures to be followed in the arbitration proceedings shall be determined by the arbitrator in his or her discretion, except as hereinafter agreed to by the parties. Without limiting the generality of the foregoing, the arbitrator shall determine issues relating to scheduling, requests for extension of time and adjournments.
 - (c) There shall be no oral or documentary discovery in the arbitration proceedings, except that, in respect of matters arising under paragraph 5 of Appendix I of Schedule C, the Arbitrator may decide otherwise. Any oral or documentary discovery that is permitted by the Arbitrator in accordance with this paragraph shall be kept strictly confidential amongst counsel and the Arbitrator, and any documents or information arising during the discovery shall not be disclosed to any other person, including the parties who did not produce the documents or information.
 - (d) The sole evidence to be submitted in the arbitration proceedings shall consist of affidavits that may be filed by the parties.
 - (e) The affidavit(s) filed by the initiating party shall be filed within seven (7) clear business days of the date the arbitrator has been appointed.
 - (f) An affidavit(s) filed by the responding party shall be filed within seven (7) clear business days of the date of receiving the affidavit(s) in accordance with paragraph 3(e) above.
 - (g) The initiating party may file a reply affidavit only with leave of the arbitrator and within four (4) clear business days after such leave has been obtained, and where a

reply affidavit has been filed, the responding party may also file a re-reply affidavit within two (2) clear business days after the initiating party's reply affidavit(s) are filed.

- (h) The arbitrator shall to the extent possible conduct an oral hearing within nine (9) clear business days after the responding party's affidavit(s) are filed and will issue a decision with written reasons within five (5) clear business days after the date of completion of the hearing. These time periods may be modified in the arbitrator's discretion solely in respect of issues relating to the matters arising under paragraph 5 of Appendix I of Schedule C.
4. The arbitrator shall have the same power and jurisdiction to resolve the matters in issue between the parties as would a judge of a superior court in a province, except as herein modified.
 5. An appeal lies from the decision of the arbitrator on questions of law alone to the Ontario Superior Court of Justice. An appeal lies from the decision of the Ontario Superior Court of Justice to the Court of Appeal for Ontario, with leave, and to the Supreme Court of Canada, with leave.
 6. The arbitrator's fee shall be shared equally by the parties and in all other respects each party shall be responsible for its own costs of the arbitration, except in respect of matters arising under paragraph 5 of Appendix I of Schedule C, in which case the Arbitrator may decide otherwise.
 7. The arbitration will take place in Toronto in English.
 8. Except where inconsistent with the above, the arbitration shall take place in accordance with the provisions of the *Arbitrations Act, 1991*, S.O. 1991, c. 17, other than sections 8(1), 18(1) and 28 of such Act, and any other sections which may be excluded or varied by the parties.

[42] Schedule D: CONFIDENTIAL

NOT PART OF THE PUBLIC RECORD

APPEARANCES:

For the applicant:

The Commissioner of Competition

Simon V. Potter
Josephine A.L. Palumbo

For the respondents:

Trilogy Retail Enterprises L.P.
Chapters Inc.
Indigo Books & Music Inc.

Calvin S. Goldman, Q.C.
Sandra A. Forbes

For the intervenors:

Anil Amlani
Bruce Barr

Leslie J.F. Milton
Scott M. Prescott