



## Practice Direction of the Competition Tribunal

### Practice Direction Regarding Electronic Filing of Documents

#### Introduction

This Practice Direction describes the procedure for filing and serving documents electronically and for electronic hearings before the Competition Tribunal (the “Tribunal”). In order to comply with federal legislation enacted to address the issues surrounding the use of electronic data, some of the definitions contained herein refer to sections of the *Personal Information Protection and Electronic Documents Act*, R.S.C. 2000, c. 5 (“PIPEDA”). The Practice Direction also makes reference to relevant provisions of the *Competition Tribunal Rules* (the “Rules”) and to the Practice Direction of the Competition Tribunal dated January 10, 2005 (the “Practice Direction”). For ease of reference, a schedule incorporating the relevant sections of PIPEDA is attached as Schedule “A.”

The Tribunal strongly encourages the parties to choose the electronic filing and hearing procedure in order to make proceedings before the Tribunal more efficient and expeditious.

#### A. Definitions

For the purposes of this Practice Direction, the following definitions apply:

“address” includes a valid address for electronic transmission;

“electronic document” means data that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar device;

“electronic filing” (e-filing) means the process by which documents are electronically transmitted to the Tribunal and stamped by the Registry;

“electronic hearing” means a hearing in which documents making up the record and/or exhibits are submitted electronically to the Registry and are presented electronically in the course of the hearing;

“electronic signature” means an electronic signature as defined in subsection 31(1) of PIPEDA;

“electronic transmission” includes transmission by electronic mail (e-mail) or via the Competition Tribunal website;

“electronic tribunal record” refers to the original and official case record in electronic format;

“secure electronic signature” means an electronic signature that results from the application of a technology or process prescribed by regulations made under subsection 48(1) of PIPEDA.

## **B. Notice of Application**

The Practice Direction dated January 10, 2005, requires the applicant to indicate to the Tribunal what medium (electronic or paper) he or she intends to use to file the documents and to present them at the hearing on the application. This requirement applies to the following originating documents: a notice of application (paragraph 3(2)(f) of the Practice Direction); a specialization agreement (paragraph 8(2)(g) of the Practice Direction); a notice of application for leave to make an application (paragraph 105(2)(f) of the Practice Direction) and an application for a document loan order (paragraph 131(2)(e) of the Practice Direction).

## **C. Response**

A person served with a notice of application for an order, other than an interim order, shall address in his or her response the issue of the proposed medium.

## **D. Agreement**

Unless the Tribunal orders otherwise, where the parties agree, the parties and the Registry of the Tribunal may serve and file documents electronically, subject to the provisions of this Practice Direction and of the Rules.

## **E. Dispute**

In the event the parties disagree on whether to use the Tribunal’s electronic filing and hearing procedure set out herein, the Tribunal has the discretion to decide how the proceeding will be conducted.

## **F. Authorized Electronic Service of Documents**

### ***Originating Documents***

Service of a notice of application shall be effected as provided by subsection 53(1) of the Rules.

### ***Other Documents***

#### Service of a document on a person who is not represented by a solicitor

Service of a document on a person who is not represented by a solicitor shall be effected in the usual manner as stated in subsection 54(1) of the Rules.

#### Service of a document on a person who is represented by a solicitor

Service of a document on a person who is represented by a solicitor, other than originating documents referred to in Part B herein, may be effected by electronic transmission to the solicitor. Any document served by electronic transmission shall include a cover page or a covering email setting out the information stated at subsection 54(3) of the Rules.

The solicitor who receives a document by electronic transmission shall promptly send an acknowledgement of receipt.

## **G. Authorized Electronic Filing of Documents**

Any document filed shall include a cover page or a covering email setting out the following information, as stated at subsection 54(3) of the Rules,

- (a) the name, telephone number and address of the sender;
- (b) the name of the person or the solicitor to whom a copy of the document is sent;
- (c) the date and time of the transmission;
- (d) the total number of pages transmitted, including the cover page; and
- (e) the name and telephone number the person to contact if transmission problems occur.

All documents filed by electronic transmission shall be filed in Portable Document Format

(“PDF”) or any other format approved by the Registry.

When documents are filed electronically, the provision of a single version of an electronic document shall suffice. No paper copy shall be filed.

## **H. Time and Effect of Electronic Filing of Documents**

All documents filed with the Tribunal through the website will be electronically time stamped. Any document transmitted electronically after 17:00 Ottawa local time shall be deemed to be filed on the next working day.

## **I. Requirement of a Signature**

Documents filed with the Registry do not require a signature, except statements made under oath or solemn affirmations which require a secure electronic signature, pursuant to section 44 of PIPEDA.

The Registry’s secure electronic signature standard E-pass will be in place until the Governor in Council, on the recommendation of the Treasury Board, makes regulations prescribing the technologies or processes for the purpose of the secure electronic signature, pursuant to section 48 of PIPEDA. E-pass is technology that is supported by the Government of Canada. The system is transparent to the user and offers digital signatures and authentication.

A requirement to submit a document in its original form is satisfied by complying with the provisions of section 42 of PIPEDA.

A requirement under the Rules for a document to be “in writing” is satisfied by complying with section 41 of PIPEDA.

## **J. Certified Copies**

If a document is filed with the Tribunal electronically, and a certified copy of the document is requested from the Tribunal, the Tribunal may respond to that request by providing an electronic copy of the document stamped “certified.”

**K. Public Access**

Subject to section 64 of the Rules, every person is entitled to access documents filed or received in evidence, in the format in which they were received by the Registry.

**L. General**

Pursuant to section 74 of the Rules, an irregularity or defect relating to electronic transmission or format shall not invalidate the proceedings.

At any time before judgment is given in a proceeding, the Tribunal may draw the attention of a party to any irregularity or defect relating to electronic documents, and permit the party to remedy it on such conditions as the Tribunal considers just (see: Rule 60 of the *Federal Court Rules*).

**M. Electronic Record**

The original and official case record will be kept by the Tribunal only in electronic format.

**N. Filing Procedure**

The Registry of the Competition Tribunal has developed procedures for filing documents either before or during hearings. These procedures, which are described on the Tribunal's website, shall be followed by the parties in the preparation of hearing documents, with such modification as the circumstances require. The Tribunal's website can be found at: <http://www.ct-tc.gc.ca/>.

January 10, 2005.

(s) Sandra J. Simpson

The Honourable Madam Justice Sandra J. Simpson  
Chairperson of the Competition Tribunal

## Schedule "A"

### Relevant Sections of the *Personal Information Protection and Electronic Documents Act*, R.S.C. 2000, c.5

**31.** (1) The definitions in this subsection apply in this Part.

(...)

"electronic signature" means a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic document.

(...)

**41.** A requirement under a provision of a federal law for a document to be in writing is satisfied by an electronic document if

(a) the federal law or the provision is listed in Schedule 2 or 3; and

(b) the regulations respecting the application of this section to the provision have been complied with.

**42.** A requirement under a provision of a federal law for a document to be in its original form is satisfied by an electronic document if

(a) the federal law or the provision is listed in Schedule 2 or 3;

(b) the electronic document contains a secure electronic signature that was added when the electronic document was first generated in its final form and that can be used to verify that the electronic document has not been changed since that time; and

(c) the regulations respecting the application of this section to the provision have been complied with.

**44.** A statement required to be made under oath or solemn affirmation under a provision of a federal law may be made in electronic form if

(a) the person who makes the statement signs it with that person's secure electronic signature;

(b) the person before whom the statement was made, and who is authorized to take statements under oath or solemn affirmation, signs it with that person's secure electronic signature;

(c) the federal law or the provision is listed in Schedule 2 or 3; and

(d) the regulations respecting the application of this section to the provision have been complied with.

**48.** (1) Subject to subsection (2), the Governor in Council may, on the recommendation of the Treasury Board, make regulations prescribing technologies or processes for the purpose of the definition "secure electronic signature" in subsection 31(1).

