



Practice Direction for the Competition Tribunal

Amended Practice Direction

Introduction

The purpose of this Practice Direction is to provide guidance on the procedure to be followed before the Tribunal with respect to the new provisions of the *Competition Act*, R.S.C. 1985, c. C-34 ("the Act") that came into effect under Bill C-23, an *Act to amend the Competition Act and the Competition Tribunal Act*, 1st Session, 37th Parliament, 2001, which received Royal Assent on June 4, 2002; section 124.1 was proclaimed on April 1, 2003.

This Practice Direction is intended to clarify and supplement the *Competition Tribunal Rules*, SOR/94-290, as amended ("the Rules"), and to provide detailed procedural instructions until formal amendments to the Rules are finalized. This Practice Direction should be read in conjunction with the existing Rules.

Further, this Practice Direction is designed to provide flexibility to the Tribunal as it provides that matters may be dealt with not only by the Chairman, but also by a judicial member designated by the Chairman.

This Practice Direction has been prepared in consultation with members of the Competition Tribunal-Bar Liaison Committee, a consultative committee created for the purpose of suggesting amendments to the Rules. This committee comprises Tribunal members, members of the Competition Law Section of the Canadian Bar Association, and the General Counsel of the Department of Justice's Competition and Consumer Law Section.

This Practice Direction is the same as the Practice Direction issued on August 30, 2002, except for some editorial changes and the repeal of sections 4.3 and 4.4. All matters related to the electronic filing of documents with the Competition Tribunal are to be found in the Practice Direction Regarding Electronic Filing of Documents issued January 10, 2005.

January 10, 2005

(s) Sandra J. Simpson

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

**The Practice and Procedure of the Competition Tribunal
with respect to the new provisions of the *Competition Act*
requires the *Competition Tribunal Rules* to be clarified and supplemented as follows:**

INTERPRETATION

2. In this Practice Direction,

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"application" means an application made to the Tribunal under Part VII.1 and Part VIII of the Act except an application for leave to make an application pursuant to section 103.1 of the Act; (*demande*)

...

"consent agreement" means an agreement made under sections 74.12, 105 or 106.1 of the Act, the terms of which have been agreed on by the parties;

...

"reference" means the determination of a question referred to the Tribunal pursuant to section 124.2 of the Act;

...

"summary disposition" means a determination of an application in a summary way pursuant to subsection 9(4) of the *Competition Tribunal Act*.

PART I
CONTESTED PROCEEDINGS

Application

2.1 (1) Subject to subsection (2), this Part applies to all applications to the Tribunal except applications for a consent order, to which Part II applies, and applications pursuant to section 103.1 of the Act, to which Part IV of this Practice Direction applies.

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Applications by the Commissioner

3. (1) An application by the Commissioner shall be made by filing a notice of application.

(2) A notice of application by the Commissioner shall set out, in numbered paragraphs,

- (a) the sections of the Act under which the application is made;
- (b) the name and address of each person against whom an order is sought;
- (c) a concise statement of the grounds for the application and of the material facts on which the Commissioner relies;
- (d) the particulars of the order sought;
- (e) the official language that the Commissioner wishes to use in the proceedings; and
- (f) the medium (electronic or paper) in which documents shall be filed for the hearing.

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Disclosure Statement - Application

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4.3. Repealed.

4.4. Repealed.

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Specialization Agreements

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8. (2)(g) the medium (electronic or paper) in which documents shall be filed for the hearing.

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Case Management Procedures

(Note: All references to pre-hearing conferences have now been changed to case management)

17. Unless the Chairman or a judicial member designated by the Chairman orders that a schedule for the disposition of the application shall be established earlier upon the motion of a party or an intervenor, sections 18 and 19 and paragraph 20(a) apply to the establishment of a schedule for the disposition of an application referred to in section 3.

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20. The Chairman or a judicial member designated by the Chairman shall consult with the parties and issue an order establishing a schedule for the disposition of the application, including a date and place for the hearing,

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21. (1) The Tribunal may, at the request of a party or if the Chairman or a judicial member designated by the Chairman deems it advisable, conduct one or more case management conferences:

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(2) The Tribunal may consider the following matters at a case management conference:

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(3) The Chairman or a judicial member designated by the Chairman shall direct in writing that the parties appear at a case management conference, or attend by teleconference, at a time and place to be fixed by the Chairman or a judicial member designated by the Chairman.

(4) The Chairman or a judicial member designated by the Chairman may include in the direction referred to in subsection (3) a list of the matters to be considered at the case management conference and may require the filing of memoranda regarding any of those matters. SOR/96-307, s. 6.

22. (1) After a case management conference, the Tribunal shall issue an order reciting any agreements relating to the matters considered at the case management conference and any rulings by the Tribunal arising from matters considered at the case management conference.

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Interim or Temporary Orders

23. (1) An application by the Commissioner for an interim order under subsection 100(1), subsection 103.3(1), 103.3(5), 103.3(5.1), section 104 or 104.1(5.1) of the Act or for a temporary order under section 74.11 of the Act shall be made by filing, in addition to a notice of application that satisfies the requirements of section 3,

(a) an affidavit setting out the facts on which the application is based; and

(b) a memorandum summarizing the arguments that the Commissioner intends to make at the hearing of the application for an interim order or a temporary order and providing the citations of any laws and legal precedents that the

Commissioner intends to rely on.

(2) In respect of applications under subsection 100(1), or section 104 of the Act, and except in the case of an *ex parte* application, section 4 applies to the service and filing of the notice of application, affidavit and memorandum referred to in subsection (1), with such modifications as the circumstances require.

...

(4) An order of the Tribunal under subsection 103.3(1) of the Act shall be served by the Commissioner on the person against whom the order was obtained. The time and manner for effecting service shall be established by the Tribunal according to the circumstances.

(5) In respect of applications under subsections 103.3(5) and (5.1) of the Act, subsections 103.3(5) and (5.2) apply respectively to the service and filing of the notice of application, affidavit and memorandum referred to in subsection 23(1), with such modifications as the circumstances require.

(6) In respect of applications under subsection 104.1(5.1) of the Act, subsection 104.1(5.2) applies to the service and filing of the notice of application, affidavit and memorandum referred to in subsection 23(1), with such modifications as the circumstances require.

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Application to vary or set aside interim and temporary orders

24.1(1) An application under subsection 103.3(7) or 104.1(7) of the Act to, respectively, vary or set aside an interim order issued by the Tribunal pursuant to subsection 103.3(1) of the Act or a temporary order made by the Commissioner pursuant to subsection 104.1(1) of the Act shall be made by filing, in addition to a notice of application that satisfies the requirements of section 23(1),

(a) an affidavit setting out the facts on which the application is based; and

(b) a memorandum summarizing the arguments that the person intends to make at the hearing and providing the citations of any laws and legal precedents that the person intends to rely on.

(2) The person shall, within 48 hours after a notice of application is filed, serve the notice of application, affidavit and memorandum referred to in subsection 24.1(1) on the Commissioner and, in the case of an application made pursuant to subsection 104.1(7) of the Act on every person to whom the Commissioner gave written notice pursuant to subsection 104.1(3) of the Act.

(3) The person shall, within 48 hours after the service of the notice of application, affidavit and memorandum, file proof of service.

24.2(1) The Chairman or a judicial member designated by the Chairman may, upon receipt of proof of service of the notice of application under subsection 103.3(7) or 104.1(7) of the Act, convene one or more case management conferences by telephone or in person or by any other means.

(2) Case management conferences may include the determination of:

(a) a time and place for the hearing;

(b) the time limit for filing and serving a memorandum summarizing the arguments that the person intends to make at the hearing and providing the citations of any laws and legal precedents that the person intends to rely on referred to in paragraph 24.1(1)(b), if not already filed;

(c) the establishment of a schedule for serving and filing affidavit(s) and memoranda in response;

(d) the establishment of a schedule for serving and filing affidavit(s) and memoranda in reply, if any;

(e) the determination of whether leave will be granted to cross-examine a deponent to an affidavit; and

(f) such other matter as may aid in the disposition of the application.

(3) After a case management conference, the Tribunal shall issue an order establishing a schedule for the disposition of the application, including the time and place for the hearing and any rulings by the Tribunal arising from matters considered at the case management conference.

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Intervention

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29. If the Tribunal is of the opinion that a hearing should be held to determine a request for leave to intervene, the request shall be heard at the next scheduled case management conference after the expiration of the period set out in subsection 28(1), unless the Chairman or a judicial member designated by the Chairman fixes a different time and place for the hearing of the request.

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32. (1) Unless the Tribunal orders otherwise, an intervenor may only attend and make submissions at motions, case management conferences and the hearing of the application.

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Intervention by the Attorney General of a Province

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36. (1) Unless the Tribunal orders otherwise, an attorney general who has filed a notice of intervention may only attend and make submissions at motions, case management conferences and the hearing of the application.

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Motions

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40. Unless the Chairman or a judicial member designated by the Chairman fixes a different time and place for the hearing of the motion by the Tribunal, a motion shall be heard at the case management conference following the expiration of the period set out in subsection 38(4).

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Summary Dispositions

Motion

46.1 (a) A party who files a motion for summary disposition pursuant to subsection 9(4) of the *Competition Tribunal Act* where an application was filed in accordance to section 111 of this Practice Direction, shall serve it on the other party and file it for a return date to be set by the Tribunal.

(b) The motion shall be accompanied by a memorandum of fact and law and affidavits.

(c) A motion for summary disposition may only be filed at the expiration of the time limit to file a response to the application.

Obligations of responding party

46.2 (a) A party served with a motion for summary disposition shall serve and file a respondent's motion record not later than 20 days before the day set out by the Tribunal for the hearing of the motion.

(b) A response to a motion for summary disposition shall be accompanied by a memorandum of fact and law and affidavits.

(c) A response to a motion for summary disposition shall not rest merely on allegations or denials of the pleadings of the moving party, but must set out specific facts showing that there is a genuine basis for a hearing.

46.3 Where a motion for summary disposition is refused or is granted only in part, the Tribunal may make an order specifying any issues that are not in dispute and defining the issues to be determined.

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Variation or Rescission of Order

49. Unless the Tribunal orders otherwise, the provisions of this Practice Direction that relate to an application for an order apply to an application made under section 74.13 or subsection 106(1) of the Act to rescind or vary an order or a consent agreement, with such modifications as the circumstances require.

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Filing of Documents

56. (1) Subject to subsection (2), only those documents which are printed on 21.5 cm x 28 cm (letter size) paper and which have numbered pages may be filed.

(2) A document that is not printed on 21.5 cm x 28 cm paper and that cannot be converted to that format by the person filing it, may be filed in its existing format.

(3) An electronic version of the document(s) in PDF (Portable Document Format) or any other format allowed by the Tribunal, shall be filed in a manner directed by the Registrar.

57. Documents in paper format shall be filed in five copies.

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Access to Public

61. Subject to section 62, hearings and case management conferences shall be open to the public.

62. (1) A party, an intervenor or a person interested in the proceedings may request that a hearing or case management conference not be open to the public.

(2) A person who makes a request pursuant to subsection (1) shall advise the Tribunal of the reasons for the request, including details of the specific, direct harm that would allegedly result from conducting the hearing or case management conference in public.

(3) The Tribunal may, if it is of the opinion that there are valid reasons for a hearing or case management conference not to be open to the public, make such order as it deems appropriate.

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Publication of Notice

65. (1) Unless the Chairman or a judicial member designated by the Chairman directs otherwise, the Registrar shall, forthwith after the filing of a notice of application, publish a notice

(a) in one issue of the *Canada Gazette*; and

(b) over a period of two weeks, in two issues of at least two daily newspapers designated by the Chairman or the judicial member designated by the Chairman.

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General

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73. Subject to these Rules, the Chairman or a judicial member designated by the Chairman may fix the time and place for a hearing before the Tribunal.

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PART II
CONSENT AGREEMENTS

76.(1) Subject to subsection (2), this Part applies in respect of all consent agreements filed pursuant to sections 74.12 and 105 of the Act.

(2) Sections 38 to 41 and 49 to 75 apply in respect of applications for a variation or rescission of a consent agreement, with such modifications as the circumstances require.

(3) The Tribunal may, if it is satisfied that the application of the procedure set out in section 49 for variation or rescission of a consent agreement is not appropriate because of the limited scope of the consent agreement, including the limited impact on the public or on competition, vary the procedure set out in Part I.

Registration of Consent Agreements

77. The procedure related to consent orders is no longer applicable, given the amendments to the *Competition Act*, S.C. 2002, c. 16, s. 11 (in force June 21, 2002).

77.1(1) A consent agreement under section 74.12 or section 105 of the Act shall be made by filing a consent form and the agreement. The consent form

(a) is signed by the parties; and

(b) sets out

(i) the sections of the Act under which the consent agreement is made,

(ii) the name and address of each person in respect of whom the consent agreement is sought.

Policy on Official languages

It is the Tribunal's policy that consent agreements under sections 74.12 and 105 of the Act shall be filed in both official languages for registration.

PART III REFERENCES

97. This Part applies to a reference made to the Tribunal under section 124.2 of the Act.

Notice of Reference

98.(1) A reference shall be made by filing with the Tribunal written notice of the reference under subsection 124.2(2) of the Act or a joint written notice under 124.2(1) of the Act that sets out;

(a) the name of the applicant(s); and

(b) the question being referred.

(2) A notice of reference shall be accompanied by:

(a) an affidavit or affidavits setting out the facts on which the reference is based or an agreed statement of facts; and

(b) a memorandum (memoranda) summarizing the arguments that the Commissioner, and a person who is the subject of an inquiry under section 10 of the Act in the case of a reference made under subsection 124.2(1) of the Act, intend to make at the hearing of the reference and providing the citations of any laws and legal precedents.

99. Without restricting the general powers of the Tribunal to appoint an *amicus curiae* in appropriate circumstances, the Tribunal may appoint an *amicus curiae* when the Commissioner files a notice of reference under subsection 124.2(2) of the Act. The fees and disbursements related to the *amicus curiae* shall be fixed by the Tribunal and be borne by the party designated by the Tribunal.

Case Management Conferences

100.(1) The Chairman or a judicial member designated by the Chairman shall, within 7 days after a reference is filed under subsection 124.2(1) or (2) of the Act, consult the parties with respect to the time and place for the hearing and any pre-hearing procedures.

(2) Case management conferences may include:

(a) the establishment of a schedule for the determination of the question being referred;

(b) the determination of whether leave will be granted to cross-examine a deponent to an affidavit;

(c) the determination of whether there will be oral evidence; and

(d) such other matter as may aid in the determination of the reference.

(3) After a case management conference, the Tribunal shall issue an order establishing a schedule for the determination of the reference, including the time and place for the hearing and any rulings by the Tribunal arising from matters considered at the case management conference.

Application for leave to refer a question

101.(1) An application for leave to refer a question to the Tribunal under subsection 124.2(3) of the Act shall be made by filing with the Tribunal written notice that sets out:

- (a) the name of the applicant(s);
- (b) the notice of reference; and
- (c) the affidavit and memorandum of argument in support of the leave.

(2) When leave is granted, the written notice shall be filed in accordance with section 98 of this Practice Direction.

Sending of Notice to the Commissioner

102. The parties shall, within five days after an application for leave to refer a question under subsection 124.2(3) of the Act is filed, give the Commissioner written notice of the reference of the question to the Tribunal.

Decision on application for leave to refer a question

103. The Tribunal may grant an application for leave to refer a question under subsection 124.2(3) of the Act, refuse the application or grant the application on such terms and conditions as it deems appropriate.

PART IV - PRIVATE ACCESS (new section 103.1)

Application by a person other than the Commissioner

Applications

104. This Part applies to applications for leave to make an application pursuant to subsection 103.1(1) of the Act and for applications under section 75 or 77 of the Act and consent agreements filed with the Tribunal by persons other than the Commissioner.

Application for leave to make an application

105.(1) An application for leave under subsection 103.1(1) of the Act to make an application under section 75 or 77 of the Act shall be made by filing an application for leave and a notice of application as prescribed by section 111 of this Practice Direction.

(2) An application for leave shall set out, in numbered paragraphs,

- (a) the sections of the Act under which the application is made;
- (b) the name and address of each person against whom an order is sought;
- (c) a concise statement of the grounds for the application and of the material facts on which the person relies;

- (d) the particulars of the order sought;
- (e) the official language that the person wishes to use in the proceedings; and
- (f) the medium (electronic or paper) for filing documents and for the hearing.

Notice

106.(1) The applicant shall, within 14 days after a copy of the application for leave is filed, serve a copy of the application for leave on each person against whom an order is sought and on the Commissioner.

(2) The applicant shall, within five days after the service of the copy of the application for leave, file proof of service.

Certification by the Commissioner

107. The certification by the Commissioner referred to in subsection 103.1(3) of the Act shall be made by filing a letter with the Tribunal.

Notice by the Tribunal

108. The Tribunal shall, within five days after receiving the Commissioner's certification, notify the applicant, the Commissioner and any other person against whom an order is sought under section 75 or 77 of the Act, as to whether it can hear the application for leave.

Representations in writing

109.(1) A person served with an application for leave referred to in section 105 of this Practice Direction and who wishes to oppose the application shall, within 15 days after receiving the notice of the Tribunal,

- (a) serve a copy of the representations in writing on any person against whom the order is sought and on the Commissioner; and

- (b) file the representations with proof of service.

(2) Representations in writing shall set out, in numbered paragraphs,

- (a) a concise statement of the grounds on which the application for leave is opposed and of the material facts on which the person opposing the application relies;

- (b) an admission or denial of each ground and of each material fact relevant to

each ground set out in the application for leave; and

(c) the official language that the person opposing the application wishes to use in any proceedings.

Decision on application for leave to make an application under section 75 or 77 of the Act

110. Unless the Tribunal orders otherwise, it may render its decision on the basis of the written record without a formal oral hearing. The Tribunal may grant the application for leave to make an application, refuse the application or grant the application on such terms and conditions as it deems appropriate.

Application made under section 75 or 77 of the Act by a person other than the Commissioner

111.(1) If leave is granted under subsection 103.1(7) of the Act, the notice of application under section 105 of this Practice Direction filed with the leave application shall be deemed to have been filed on the date upon which leave was granted for the purpose only of calculating the time limit.

(2) A notice of application by the applicant shall set out, in numbered paragraphs,

(a) the sections of the Act under which the application is made;

(b) the name and address of each person against whom an order is sought;

(c) a concise statement of the grounds for the application and of the material facts on which the person relies;

(d) the particulars of the order sought;

(e) the official language that the person wishes to use in the proceedings; and

(f) the medium (electronic or paper) for filing documents and for the hearing.

112.(1) The applicant shall, within five days after a notice of application is filed, serve the notice on each person against whom an order is sought and on the Commissioner who may intervene pursuant to section 103.2 of the Act.

(2) The applicant shall, within five days after the service of the notice of application, file proof of service.

Response

113.(1) A person served with a notice of application filed under section 75 or 77 of the Act for an order other than an interim order and who wishes to oppose the application

shall, within 30 days after that service,

(a) serve a response on the applicant and on any person against whom the order is sought and on the Commissioner; and

(b) file the response with proof of service.

(2) A response shall set out, in numbered paragraphs,

(a) a concise statement of the grounds on which the application is opposed and of the material facts on which the person opposing the application relies;

(b) an admission or denial of each ground and of each material fact relevant to each ground set out in the notice of application; and

(c) the official language that the person opposing the application wishes to use in the proceedings.

Order in Default of Response

114.(1) Where a person served with a notice of application has not filed a response within the period set out in subsection 113.(1) of this Practice Direction, the applicant may move to have the order sought in the notice of application issued against that person by the Tribunal.

(2) On a motion pursuant to subsection (1), the Tribunal shall, if it is satisfied that the notice of application was served in accordance with this Practice Direction and it has heard such evidence as it may require, make such order as it deems appropriate.

(3) The Registrar shall, forthwith after an order is made pursuant to subsection (2), serve the order on the person described in subsection 112.(1) of this Practice Direction and on each party.

Discovery of Documents for application under section 111 of this Practice Direction

115. (1) In the case of an application referred to in section 111 of this Practice Direction, a party shall, within 20 days after the expiration of the period for filing a response to a notice of application,

(a) serve an affidavit of documents on each other party; and

(b) file proof of service of the affidavit of documents.

(2) An affidavit of documents shall include:

(a) a list of the documents that are relevant to any matter in issue and that are or were in the possession, power or control of the party;

(b) a brief description of each document;

(c) an indication of whether the party intends to move pursuant to subsection 119.(2) of this Practice Direction for an order restricting the inspection or copying of a document;

(d) any claim that a document is privileged; and

(e) a statement of the grounds for each claim for privilege.

116. Upon a motion by a party, the Tribunal may order oral examination of an opposing party and of any other person on such terms as the Tribunal deems appropriate.

117. Upon the motion of a party who has filed an affidavit of documents and who opposes a claim for privilege of another party, the Tribunal may inspect the document and determine the validity of the claim.

118. A party who has filed an affidavit of documents and who comes into possession or control of or obtains power over a relevant document, or who becomes aware that the affidavit of documents is inaccurate or deficient, shall serve and file a supplementary affidavit of documents listing the document or correcting the inaccuracy or deficiency.

119.(1) Subject to subsection (2), a party who has served an affidavit of documents on another party shall allow the other party to inspect and make copies of the documents listed in the affidavit, other than those documents which are subject to a claim for privilege or which are not within the party's possession, power or control.

(2) Upon the motion of a party who has filed an affidavit of documents, the Tribunal may, if it is of the opinion that there are valid reasons for restricting the disclosure of a document listed in the affidavit that could otherwise be inspected and copied, make such order as it deems appropriate.

(3) The party making the motion referred to in subsection (2) shall include in the grounds for the motion the details of the specific, direct harm that would allegedly result from unrestricted disclosure of the document and shall attach a draft order restricting disclosure to the notice of motion.

Case Management Conferences

120.(1) At any time after the expiration of the period for filing a response to a notice of application, the Tribunal may conduct one or more case management conferences to consider the following matters:

- (a) the establishment of a schedule for the disposition of the application, including a date and place for the hearing;
- (b) any pending motions or requests for leave to intervene;
- (c) the clarification and simplification of the issues;
- (d) the possibility of obtaining admissions of particular facts or documents;
- (e) the conditions surrounding the right of examination for discovery of particular persons or documents and the desirability of preparing a plan for the completion of such discovery;
- (f) any witnesses to be called at the hearing and the official language in which each witness will testify;
- (g) a timetable for the exchange of summaries of the testimony that will be presented at the hearing;
- (h) the procedure to be followed at the hearing and its expected duration; and
- (i) such other matters as may aid in the disposition of the application.

(2) The Chairman or a judicial member designated by the Chairman shall direct in writing that the parties appear at a case management conference at a time and place to be fixed by the Chairman or the judicial member.

Intervention by the Commissioner (New section 103.2 of the Act)

121.(1) When intervening in a proceeding under this Part, the Commissioner shall file a notice of intervention that sets out:

- (a) the title of the proceedings;
- (b) a concise statement of the matters on which the Commissioner wishes to make representations; and
- (c) the official language to be used in the proceedings.

(2) The Registrar shall serve the notice of intervention on each party forthwith after it is filed.

122. Where a notice of intervention is filed by the Commissioner,

- (a) the Registrar shall, within five days of the filing of the notice, send to the

Commissioner a list of all documents filed in the proceedings prior to the day on which the notice of intervention was filed;

(b) each party shall serve on the Commissioner any document that is filed by them after the day on which the notice of intervention is filed; and

(c) access by the Commissioner to a document filed or received in evidence is subject to any outstanding order of the Tribunal restricting access to the document.

123.(1) Sections 38 to 41 and 49 to 75 of the Rules apply in respect of applications under section 75 or 77 of the Act for which leave has been granted by the Tribunal pursuant to subsection 103.1(7) of the Act, with such modifications as the circumstances require.

Consent Agreements

Registration

124. The filing of a consent agreement under section 106.1 of the Act shall be made in conformity with section 77.1 of the Rules.

Publication of consent agreements

125.(1) The Registrar shall, forthwith after the filing of a consent agreement under subsection 106.1(1) of the Act, publish a notice

(a) in one issue of the *Canada Gazette*.

(2) The notice referred to in subsection (1) shall state:

(a) that a consent agreement has been filed with the Tribunal for registration;

(b) the name of each party to the agreement;

(c) the text of the consent agreement;

(d) that the consent agreement and any documents filed in the matter may be accessed at the office of the Registrar; and

(e) the date on or before which an application to cancel or replace the agreement under subsection 106.1(4) of the Act must be filed.

Application for the cancellation or replacement of a consent agreement

126.(1) An application for the cancellation or replacement of a consent agreement filed

under subsection 106.1(1) of the Act shall be made by filing a notice of application that satisfies the requirements of section 3 of the Rules, with such modifications as the circumstances require.

(2) Sections 4 to 6 in Part I of the Rules shall apply to an application for the cancellation or replacement of a consent agreement with such modifications as the circumstances require.

(3) A copy of a notice of application to cancel or replace the consent agreement shall be served on the Commissioner within five days after the notice of application is filed.

127.(1)The Chairman or a judicial member designated by the Chairman shall, within seven days after the receipt of proof of service of the application for the cancellation or replacement of a consent agreement, convene one or more case management conferences by telephone or in person or by any other means to set a time and place for the hearing and any pre-hearing procedures.

(2) Case management conferences may include:

(a) the establishment of a schedule for serving and filing affidavits and memoranda in response;

(b) the establishment of a schedule for serving and filing affidavits and memoranda in reply;

(c) the determination of whether leave will be granted to cross-examine a deponent to an affidavit; and

(d) such other matters as may aid in the disposition of the application.

(3) After a case management conference, the Tribunal shall issue an order establishing a schedule for the disposition of the application for the cancellation or replacement of a consent agreement, including the time and place for the hearing and any rulings by the Tribunal arising from matters considered at the case management conference.

Application for the variation or rescission of consent agreements

128. Section 49 of this Practice Direction applies to an application made by the Commissioner pursuant to subsection 106.1(6) of the Act.

PART V - APPLICATION FOR A LOAN ORDER (Section 30.19 of the Act)

Application for a loan order

129. Before filing an application for a loan order with the Tribunal, the Commissioner or his authorized representative shall, by letter, give notice to the Chairman and to the parties to the proceedings.

130.(1) The Commissioner or his representative shall file the letter referred to in section 129 of this Practice Direction at least ten days before filing the application for a loan order.

(2) The Commissioner or his representative shall, within five days after a letter described in subsection (1) is filed, serve the letter on the parties to the proceedings.

131.(1) An application for a loan order by the Commissioner or his authorized representative shall be made by filing a notice of application.

(2) A notice of application shall be in accordance with the requirements prescribed in subsection 30.19(3) of the Act and shall set out, in numbered paragraphs,

- (a) the sections of the Act under which the application is made;
- (b) the name of the parties to the proceedings;
- (c) the terms of the loan order sought;
- (d) the official language that the Commissioner wishes to use in the proceedings; and
- (e) the medium (electronic or paper) for filing documents and for the hearing.

132. (1) The Commissioner shall, within five days after a notice of application for a loan order is filed, serve the notice on the parties to the proceedings.

(2) The Commissioner shall, within five days after the service of the notice of application, file proof of service.

133.(1) A person served with an application for a loan order under subsection 30.19(2) of the Act and who wishes to oppose the application shall, within 15 days after receiving the notice of application,

- (a) serve a response on any person referred to in subsection 30.19(2) of the Act;
- and

(b) file the response with proof of service.

(2) A response shall set out, in numbered paragraphs,

(a) a concise statement of the grounds on which the application for a loan order is opposed and of the material facts on which the person opposing the application relies;

(b) an admission or denial of each ground and of each material fact relevant to each ground set out in the application for a loan order; and

(c) the official language that the person opposing the application wishes to use in the proceedings.

Decision on application for a loan order

134. Unless the Tribunal orders otherwise, it may render its decision on the basis of the written record without a formal oral hearing. The Tribunal may grant the application for a loan order, refuse the application or grant the application on such terms and conditions as it deems appropriate.

Hearing and Case Management procedures

135. When the Chairman or a judicial member designated by the Chairman deems that a hearing is necessary, he or she shall consult the parties with respect to the time and place for a hearing and any case management procedures, within seven days after the receipt of proof of service of the response to the application for a loan order.

136. After a case management conference, the Tribunal shall issue an order establishing a schedule for the disposition of the application for a loan order, including the time and place for the hearing and any rulings by the Tribunal arising from matters considered at the case management conference.

This Practice Direction will be followed by the Competition Tribunal until further Practice Directions are issued or until the Rules are amended.

