

## **Competition Tribunal Rules**

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SOR/94-290

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## COMPETITION TRIBUNAL ACT

### Competition Tribunal Rules

The Competition Tribunal, pursuant to subsection 16(1) of the Competition Tribunal Act\* and subject to the approval of the Governor in Council, hereby revokes the Competition Tribunal Rules, approved by Order in Council P.C. 1987-1252 of June 25, 1987\*\*, and makes the annexed Rules for regulating the practice and procedure of the Competition Tribunal, in substitution therefor.

March 23, 1994

P.C. 1994-548 14 April, 1994

Whereas, pursuant to section 17 of the Competition Tribunal Act\*, a copy of the proposed Rules for regulating the practice and procedure of the Competition Tribunal, substantially in the form annexed hereto, was published in the Canada Gazette Part I on October 30, 1993 and interested persons were invited to make representations in writing with respect to the proposed Rules within 60 days after the date of publication;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Industry, Science and Technology, pursuant to section 16 of the Competition Tribunal Act\*, is pleased hereby to approve the revocation of the Competition Tribunal Rules, approved by Order in Council P.C. 1987-1252 of June 25, 1987\*\*, and to approve the annexed Rules for regulating the practice and procedure of the Competition Tribunal, made by the Competition Tribunal on March 23, 1994, in substitution therefor.

\* R.S., c. 19 (2nd Supp.)

\*\* SOR/87-373, 1987 Canada Gazette Part II, p. 2505

## RULES FOR REGULATING THE PRACTICE AND PROCEDURE OF THE COMPETITION TRIBUNAL

### **SHORT TITLE** ➔

1. These Rules may be cited as the Competition Tribunal Rules.

### **INTERPRETATION** ➔

2. In these Rules,

"Act" means the Competition Act; (Loi)

"application" means an application made to the Tribunal under Part VII.1 or VIII of the Act; (demande)

"certified copy" of a document means a copy of the document certified by the Registrar or a person designated by the Registrar; (copie certifiée)

"Chairman" means the judicial member designated to be Chairman of the Tribunal pursuant to subsection 4(1) of the Competition Tribunal Act; (président)

"Commissioner" means the Commissioner of Competition appointed under subsection 7(1) of the Act; (commissaire)

"consent order" means an order made under section 74.12 or 105 of the Act, the terms of which have been agreed to by the parties, but does not include an order directing registration of a specialization agreement under subsection 86(1) of the Act; (ordonnance par consentement)

"Director" [Repealed, SOR/2000-198, s. 1]

"file" means file with the Registrar; (déposer)

"intervenor" means

- a. a person granted leave to intervene by the Tribunal in accordance with section 30 or 89, or
- b. an attorney general who has filed a notice of intervention in accordance with section 34 or 93; (intervenant)

"move" means request by way of motion in the manner set out in section 38; (requête)

"party" means

- a. the Commissioner,
- b. a person who files a notice of application pursuant to subsection 8(1),
- c. a person who files a response to a notice of application, and
- d. a person in respect of whom a consent order is sought; (partie)

"record" has the same meaning as in subsection 2(1) of the Act. (document)

"Registrar" means the Registrar of the Tribunal. (registraire) SOR/96-307, s. 1; SOR/2000-198, ss. 1, 9; SOR/2002-62, s. 1.

## **PART I. CONTESTED PROCEEDINGS** ➔

### ***Application*** ➔

2.1 Subject to subsection (2), this Part applies to all applications to the Tribunal except applications for a consent order, to which Part II applies.

(2) Sections 4.1 and 4.2, subsection 5(2), sections 5.1, 5.2, 13.1 and 13.2, paragraph

21(2)(d.1) and sections 22.1, 48.1 and 48.2 apply in respect of applications other than applications referred to in section 92 of the Act. SOR/96-307, s. 2; SOR/2002-62, s. 2.

### ***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 shall be signed by the Commissioner and 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; and
  - e. the official language that the Commissioner wishes to use in the proceedings. SOR/96-307, s. 3; SOR/2000-198, s. 9.

4.

1. The Commissioner shall, within five days after a notice of application is filed, serve the notice on each person against whom an order is sought.
2. The Commissioner shall, within five days after the service of the notice of application, file proof of service. SOR/96-307, s. 4; SOR/2000-198, s. 9.

### ***Disclosure Statement -- Application ➔***

4.1

1. The Commissioner shall, within 14 days after the notice of application other than an application for an interim order is filed, serve on each person against whom an order is sought the disclosure statement referred to in subsection (2).
2. The disclosure statement shall set out
  - a. a list of the records on which the Commissioner intends to rely;
  - b. the will-say statements of non-expert witnesses; and
  - c. a concise statement of the economic theory in support of the application, except

with respect to applications made under Part VII.1 of the Act.

3. If new information that is relevant to the issues raised in the application arises before the hearing, the Commissioner may by motion request authorization from the Tribunal to amend the disclosure statement referred to in subsection (2).
4. The Commissioner shall allow a person who wishes to oppose the application to inspect and make copies of the records listed in the disclosure statement referred to in subsection (2) and the transcript of information for which the authorization referred to in section 22.1 has been obtained. SOR/2002-62, s. 3.

4.2 Unless the Tribunal orders otherwise, the Commissioner shall serve on each person against whom an order other than an interim order is sought a notice identifying each witness referred to in paragraph 4.1(2)(b) by name and address, at least two days before the date that the witness is called to testify. SOR/2002-62, s. 3.

### **Response ➡**

5.
  1. A person served with a notice of application referred to in section 92 of the Act who wishes to oppose the application shall, within 30 days after that service,
    - a. serve a response on the Commissioner and on each other person against whom an order is sought; and
    - b. file the response with proof of service.
  2. A person served with a notice of application who wishes to oppose the application shall, within 45 days after the service of the disclosure statement referred to in subsection 4.1(2),
    - a. serve a response on the Commissioner and on each other person against whom an order is sought; and
    - b. file the response with proof of service.
  3. 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 intends to use in the proceedings. SOR/2000-198, s. 9; SOR/2002-62, s. 4.

## **Disclosure Statement -- Response ➡**

### 5.1

1. A person served with a notice of application, other than an application for an interim order, who wishes to oppose the application shall, within 14 days after the service of the response, serve a disclosure statement referred to in subsection (2) on the Commissioner and on each other person against whom an order is sought.
2. The disclosure statement shall set out
  - a. a list of the records on which the person served with a notice of application intends to rely;
  - b. the will-say statements of non-expert witnesses; and
  - c. a concise statement of the economic theory in support of the response, except with respect to applications made under Part VII.1 of the Act.
3. If new information that is relevant to the issues raised in the response arises before the hearing, the person who serves the disclosure statement referred to in subsection (2) may by motion request authorization from the Tribunal to amend the disclosure statement.
4. The person who wishes to oppose the application shall allow the Commissioner to inspect and make copies of the records listed in the disclosure statement referred to in subsection (2). SOR/2002-62, s. 4.

5.2 Unless the Tribunal orders otherwise, the person served with a notice of application, other than an application for an interim order, shall serve on the Commissioner and each other person against whom an order is sought a notice identifying each witness referred to in paragraph 5.1(2)(b) by name and address, at least two days before the date that the witness is called to testify. SOR/2002-62, s. 4.

## **Reply ➡**

### 6.

1. The Commissioner may, within 14 days after being served with a response, serve a reply on the person who filed the response and on each other party.
2. The Commissioner shall, within the period set out in subsection (1), file any reply with proof of service.
3. A reply shall set out an admission or denial of each ground and of each material fact relevant to each ground set out in the response.
4. Where the Commissioner does not file a reply, the Commissioner shall be deemed to have denied each ground and each material fact relevant to each ground set out in the

response. SOR/2000-198, s. 9.

### **Order in Default of Response ➡**

7.
  1. Where a person served with a notice of application has not filed a response within the period set out in subsection 5(1) or (2) or has not served a disclosure statement within the period set out in subsection 5.1(1), the Commissioner may by motion request that the Tribunal issue the order sought in the notice of application against the person.
  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 these Rules 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 (1) and on each party. SOR/2000-198, s. 9; SOR/2002-62, s. 5.

### **Specialization Agreements ➡**

8.
  1. An application under subsection 86(1) of the Act for the registration of an agreement as a specialization agreement shall be made by filing a notice of application to which is appended a copy of the agreement.
  2. A notice of application shall be signed by the applicant or the applicant's solicitor and shall set out, in numbered paragraphs,
    - a. the name and address of each party to the agreement;
    - b. whether the agreement has been entered into or is about to be entered into;
    - c. a concise statement of the grounds on which the applicant relies in asking the Tribunal to find that the agreement is a specialization agreement and that implementation of the agreement will achieve the results described in paragraph 86(1)(a) of the Act;
    - d. a concise statement of the grounds on which the applicant relies in asking the Tribunal to find that the circumstances described in paragraph 86(1)(b) of the Act exist; and
    - e. the period for which registration of the agreement is requested; and
    - f. the official language that the applicant wishes to use in the proceedings.
  3. The applicant shall, within five days after a notice of application is filed, serve the notice on the Commissioner.

4. The applicant shall, within five days after service of the notice of application, file proof of service. SOR/2000-198, s. 9.
  
- 9.

  1. The Commissioner may, within 14 days after being served with a notice of application pursuant to subsection 8(3), serve a notice of appearance on the applicant.
  2. The Commissioner shall, within the period set out in subsection (1), file any notice of appearance with proof of service.
  3. The Commissioner shall, within 30 days after serving a notice of appearance,
    - a. serve on the applicant a concise statement of the grounds on which the application is opposed or supported and the material facts relevant to those grounds on which the Commissioner relies; and
    - b. file the statement with proof of service. SOR/2000-198, s. 9.

  
- 10.

  1. Where the Commissioner has not filed a notice of appearance or a statement within the period set out in subsection 9(1) or (3), the applicant may move for an order directing that the agreement be registered.
  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 these Rules and it has heard such evidence as it may require, make such order as it deems appropriate. SOR/2000-198, s. 9.

  
- 11.

  1. An applicant may, within 14 days after being served with a statement, serve a reply dealing with the matters raised in the statement on the Commissioner.
  2. An applicant shall, within the period set out in subsection (1), file any reply with proof of service.
  3. Where the applicant does not file a reply, the applicant shall be deemed to have denied each ground and each material fact relevant to each ground set out in the statement. SOR/2000-198, s. 9.

  
12. Unless the Tribunal orders otherwise, the provisions of these Rules relating to an application for the registration of an agreement apply, with such modifications as the circumstances require, to every application
  - a. under subsection 87(1) of the Act for the registration of a modification to a specialization agreement; or



- b. under subsection 87(2) of the Act for the removal of a specialization agreement or a modification of an agreement from the register.

### ***Discovery of Documents*** ➔

13.

1. In the case of an application referred to in section 92 of the Act, a party shall, within 20 days after the expiry 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 the affidavit of documents with proof of service.
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 16(2) 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. SOR/2002-62, s. 6.

13.1 Sections 13 and 14 to 16 apply to an application only if permission is granted by the Tribunal for the purposes of paragraph 21(2)(d.1). SOR/2002-62, s. 7.

13.2 The Commissioner shall provide a list of the records to be admitted in evidence without further proof in accordance with section 69 of the Act. SOR/2002-62, s. 7.

14. 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.

15. 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.

16.

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.

### ***Pre-hearing Management Procedures*** ➔

17. Unless 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.

18. In the case of an application referred to in section 3, the Commissioner shall, within 14 days after the expiration of the period for filing an affidavit of documents,

- a. serve a proposed schedule for the disposition of the application, including a suggested date and place for the hearing, on each other party and any intervenors; and
- b. file the proposed schedule with proof of service. SOR/2000-198, s. 9.

19. Each party shall, within seven days after being served with a proposed schedule,

- a. serve comments regarding the proposed schedule on each other party and any intervenors; and
- b. file the comments with proof of service.

20. 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,

- a. within seven days after the expiration of the period for filing comments on the proposed schedule, in the case of an application referred to in section 3; or
- b. within 15 days after the expiration of the period for filing a statement pursuant to subsection 9(3), in the case of an application referred to in section 8. SOR/96-307, s. 5.
- c. [Repealed, SOR/96-307, s. 5]

21.

- 1.

The Tribunal may, at the request of a party or if the Chairman deems it advisable, conduct one or more pre-hearing conferences

- a. at any time after the expiration of the period for filing a response to a notice of application; or
  - b. at any time after the expiration of the period for filing a statement pursuant to subsection 9(3).
  - c. [Repealed, SOR/96-307, s. 6]
2. The Tribunal may consider the following matters at a pre-hearing conference:
- a. any pending motions or requests for leave to intervene;
  - b. the clarification and simplification of the issues;
  - c. the possibility of obtaining admissions of particular facts or documents;
  - d. the desirability of examination for discovery of particular persons or documents and the desirability of preparing a plan for the completion of such discovery;  
  
(d.1) in the case of applications referred to in subsection 2.1(2) and if warranted by the circumstances, the matters referred to in paragraph (d);
  - e. any witnesses to be called at the hearing and the official language in which each witness will testify;
  - f. a timetable for the exchange of summaries of the testimony that will be presented at the hearing;
  - g. the procedure to be followed at the hearing and its expected duration; and
  - h. such other matters as may aid in the disposition of the application.
3. The Chairman shall order in writing that the parties appear at a pre-hearing conference, or attend by teleconference, at a time and place to be fixed by the Chairman.
4. The Chairman may include in the direction referred to in subsection (3) a list of the matters to be considered at the pre-hearing conference and may require the filing of memoranda regarding any of those matters. SOR/96-307, s. 6; SOR/2002-62, s. 8.
- 22.
1. After a pre-hearing conference, the Tribunal shall issue an order reciting any agreements relating to the matters considered at the pre-hearing conference and any rulings by the Tribunal arising from matters considered at the pre-hearing conference.
  - 2.

The order referred to in subsection (1) shall govern the proceedings relating to the application unless the Tribunal orders otherwise.

### ***Read into Evidence ➡***

22.1 The Commissioner may by motion request authorization from the Tribunal to read into evidence information obtained pursuant to paragraph 11(1)(a) of the Act from an officer of the person filing the response, unless the person undertakes to call the officer as a witness. SOR/2002-62, s. 9.

### ***Interim or Temporary Orders ➡***

[SOR/2000-198, s. 2]

23.

1. An application by the Commissioner for an interim order under subsection 100(1) or section 104 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) and 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.
3. In respect of applications under section 74.11 of the Act, and except in the case of an ex parte application filed under subsection 74.11(4) of the Act, subsection 74.11(3) of the Act 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. SOR/2000-198, s. 3.

24.

1. Except in the case of an ex parte application, no hearing of an application under section 100 of the Act shall take place until at least 48 hours have elapsed after the service of the notice of application, affidavit and memorandum referred to in subsection 23(1).
2. No hearing of an application under section 104 of the Act shall take place until at least 48 hours have elapsed after service of the notice of application, affidavit and memorandum referred to in subsection 23(1).

25.

1. Except in the case of an ex parte application, a person against whom an interim order or a temporary order is sought may serve one or more affidavits in reply on the Commissioner and on each of the other persons against whom the order is sought.
2. A person against whom an interim order or a temporary order is sought shall file any affidavits in reply with proof of service.
3. A person against whom an interim order or a temporary order is sought shall inform the Registrar as soon as possible of the official language that the person wishes to use at the hearing of the application for an interim order or a temporary order. SOR/2000-198, s. 4.

26.

1. Subject to subsection (2), testimony on an application for an interim order or a temporary order shall be by affidavit.
2. The judicial member designated to preside at the hearing of an application for an interim order or a temporary order may, before or during the hearing, grant leave for
  - a. oral testimony in relation to an issue raised in the notice of application; and
  - b. the cross-examination of a deponent to an affidavit. SOR/2000-198, s. 5.

### **Intervention ➡**

27.

1. A request pursuant to subsection 9(3) of the Competition Tribunal Act for leave to intervene shall be made by
  - a. serving on each of the parties a request for leave to intervene and an affidavit setting out the facts on which the request is based; and
  - b. filing the request and the affidavit with proof of service.
2. A request for leave to intervene shall set out
  - a. the title of the proceedings in which the person making the request wishes to intervene;
  - b. the name and address of the person making the request;
  - c. a concise statement of the matters in issue that affect that person;

- d. a concise statement of the competitive consequences arising from the matters referred to in paragraph (c) with respect to which that person wishes to make representations;
  - e. the name of the party whose position that person intends to support;
  - f. the official language to be used by that person at the hearing of the request and, if leave is granted, in the proceedings; and
  - g. any request to participate in the proceedings in a manner other than that set out in subsection 32(1).
3. The Registrar shall serve the request for leave to intervene and the affidavit on each intervenor forthwith after they are filed.
  4. Where a notice has been published pursuant to paragraph 65(1)(a), a request for leave to intervene shall be filed within 30 days after publication of that notice. SOR/96-307, s. 7.
- 28.
1. A party served with a request for leave to intervene may, within 14 days after that service, serve a response to the request on the person making the request and on each of the parties.
  2. A party served with a request for leave to intervene shall, within the period set out in subsection (1), file any response to the request with proof of service.
  3. A response to a request for leave to intervene shall
    - a. deal with the matters raised in the request; and
    - b. state whether the party filing the response considers that a hearing should be held to determine the request.
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 pre-hearing conference after the expiration of the period set out in subsection 28(1), unless the Chairman fixes a different time and place for the hearing of the request.
30. The Tribunal may grant a request for leave to intervene, refuse the request or grant the request on such terms and conditions as it deems appropriate.
31. Where a request for leave to intervene is granted,
- a. the Registrar shall send to the intervenor a list of all documents filed in the proceedings prior to the day on which the request for leave to intervene was granted;
  - b. each party and each other intervenor shall serve on the intervenor any document that

is filed by them after the day on which the request for leave to intervene was granted;  
and

- c. access by an intervenor to a document filed or received in evidence is subject to any outstanding order of the Tribunal restricting access to the document.

32.

1. Unless the Tribunal orders otherwise, an intervenor may only attend and make submissions at motions, pre-hearing conferences and the hearing of the application.
2. An intervenor may move at any time for leave to participate in the proceedings in a manner other than that set out in subsection (1).

33. An intervenor shall serve a document on each party and each other intervenor before filing the document with proof of service.

### ***Intervention by the Attorney General of a Province ➡***

34.

1. The attorney general of a province who decides to intervene in any proceedings before the Tribunal under section 86, 87 or 92 of the Act shall
  - a. serve a notice of intervention on each party; and
  - b. file the notice with proof of service.
2. A notice of intervention shall set out
  - a. the title of the proceedings in which the attorney general is intervening;
  - b. a concise statement of the nature of the interest of the attorney general in the proceedings;
  - c. a concise statement of the matters in respect of which the attorney general will make representations on behalf of the province;
  - d. the name of the party whose position the attorney general intends to support;  
and
  - e. the official language that the attorney general wishes to use in the proceedings.
3. The Registrar shall serve the notice of intervention on each other intervenor forthwith after it is filed.
4. Where a notice has been published pursuant to paragraph 65(1)(a), a notice of intervention shall be filed within 30 days after publication of that notice.

35. Where a notice of intervention is filed,
- a. the Registrar shall send to the attorney general a list of all documents filed in the proceedings prior to the day on which the notice of intervention was filed;
  - b. each party and each other intervenor shall serve on the attorney general any document filed by them after the day on which the notice of intervention was filed; and
  - c. access by an attorney general to a document filed or received in evidence is subject to any outstanding order of the Tribunal restricting access to the document.
- 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, pre-hearing conferences and the hearing of the application.
  2. The attorney general may move at any time for leave to participate in the proceedings in a manner other than that set out in subsection (1).
37. An attorney general shall serve a document on each party and each other intervenor before filing the document with proof of service.

### **Motions** ➔

- 38.
1. A motion, except for a request for leave to intervene referred to in section 27, shall be commenced by notice of motion unless the Tribunal is of the opinion that the nature of the motion or the circumstances make a notice of motion unnecessary.
  2. A notice of motion shall set out the order sought and the grounds for the motion.
  3. A notice of motion shall be accompanied by
    - a. an affidavit setting out the facts on which the motion is based; and
    - b. a memorandum summarizing the arguments that the person making the motion intends to present at the hearing of the motion and providing the citations of any laws and legal precedents that the person intends to rely on.
  4. The person making the motion shall, at least three days before the day on which the motion is to be heard,
    - a. serve the notice of motion and accompanying memorandum and affidavit on each party and any intervenors; and
    - b.



file the notice of motion and accompanying memorandum and affidavit with proof of service.

39.

1. A party or intervenor served with a notice of motion and accompanying memorandum and affidavit may, no later than 14:00 local time at Ottawa on the day before the hearing of the motion, serve on the person making the motion and on each other party and intervenor, an affidavit in response, a memorandum in response or both.
2. The party or intervenor serving any affidavit or memorandum in response shall, within the period set out in subsection (1), file the affidavit or memorandum in response with proof of service.

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

41.

1. Subject to subsection (2), testimony on a motion shall be by affidavit.
2. The judicial member designated to preside at the hearing of a motion may, before or during the hearing, grant leave for
  - a. oral testimony in relation to an issue raised in the notice of motion; and
  - b. the cross-examination of a deponent to an affidavit.

42. to 46. [Repealed, SOR/96-307, s. 8]

### **Expert Evidence ➡**

47.

1. Every party who intends to introduce evidence of an expert witness at the hearing shall, at least 30 days before the commencement of the hearing, serve an affidavit of the expert witness on each other party and any intervenors.
2. A party on whom an affidavit referred to in subsection (1) has been served and who wishes to rebut with expert evidence a matter set out in the affidavit shall, at least 15 days before the commencement of the hearing, serve an affidavit of an expert witness on each other party and any intervenors.
3. The affidavits referred to in subsections (1) and (2) shall include a full statement of the evidence of the deponent and the qualifications of the deponent as an expert.

48.

1. An affidavit referred to in section 47 shall be filed with proof of service at least ten days before the commencement of the hearing.
2. Unless the Tribunal orders otherwise, an affidavit referred to in section 47 shall not form part of the record unless it has been filed in accordance with subsection (1) and the expert witness is available at the hearing for cross-examination.
3. The affidavit shall not be read aloud at the hearing but the expert witness may be examined in chief for the purpose of summarizing or highlighting the evidence contained in the affidavit and may be cross-examined and re-examined.

### ***Panel of Expert Witnesses ➡***

48.1 The Tribunal may require that some or all of the expert witnesses testify as a panel after oral evidence by non-expert witnesses of each party is given or at any other time the Tribunal may determine. SOR/2002-62, s. 10.

48.2

1. The Tribunal may identify matters that are within the area of expertise of the panel of expert witnesses and pose questions to them about those matters.
2. Expert witnesses shall, subject to the direction of the Tribunal, give their views and may comment on the views of other experts in the panel, pose questions to the other expert witnesses in the panel and make concluding statements.
3. Counsel may cross-examine and re-examine expert witnesses on completion of testimony by the panel of expert witnesses. SOR/2002-62, s. 10.

### ***Variation or Rescission of Order ➡***

49. Unless the Tribunal orders otherwise, the provisions of these Rules that relate to an application for an order apply to an application made under section 74.13 or 106 of the Act to rescind or vary an order, with such modifications as the circumstances require. SOR/2000-198, s. 6.

### ***Withdrawal of Application and Discontinuance of Participation ➡***

50.

1. A person who has filed a notice of application may withdraw all or part of the application at any time before a final determination of it by the Tribunal.
2. The person referred to in subsection (1) shall serve a notice of withdrawal on each party and on each intervenor and file the notice with proof of service.

51.

1. A person who has filed a response or an intervenor may discontinue the participation or intervention at any time before a final determination of the application by the Tribunal.
2. The person or intervenor referred to in subsection (1) shall serve a notice of discontinuance on each party and on each intervenor and file the notice with proof of service.

### **Service of Documents ➔**

52.

1. Proof of service shall be made by an affidavit of service in accordance with the form set out in the Schedule.
2. In the case of service by registered mail, a signed and dated acknowledgement of receipt shall be attached to the affidavit of service.

53.

1. Service of a notice of application shall be effected
  - a. in the case of an individual, by leaving a certified copy of the notice with the individual;
  - b. in the case of a partnership, by leaving a certified copy of the notice with one of the partners during business hours;
  - c. in the case of a corporation, by leaving a certified copy of the notice with an officer of the corporation or with a person apparently in charge of the head office or of a branch of the corporation in Canada during business hours;
  - d. in the case of the Commissioner, by leaving a certified copy of the notice at the Commissioner's office during business hours; or
  - e. in the case of a person referred to in paragraphs (a) to (d) who is represented by a solicitor, by leaving a certified copy of the notice with the solicitor if the solicitor is willing to accept service.
2. Where a person is unable to serve a notice of application in a manner described in subsection (1), the person may apply to a judicial member for an order setting out another manner for effecting service.
3. The person who obtains an order made pursuant to subsection (2) shall serve the order on each person named in the notice of application. SOR/2000-198, s. 9.

54.

1. Service of a document, other than a notice of application, on a person who is not represented by a solicitor shall be effected
  - a. in a manner set out in paragraphs 53(1)(a) to (d), except that the copy of the document need not be certified;
  - b. by leaving a copy of the document at the usual or last known address of the person;
  - c. by sending a copy of the document to the person by facsimile transmission;
  - d. by sending a copy of the document to the person by registered mail and by obtaining an acknowledgement of receipt signed and dated by the person or by someone on behalf of the person; or
  - e. in such other manner as the Tribunal may order.
  
2. Service of a document, other than a notice of application, on a person who is represented by a solicitor shall be effected
  - a. in the manner set out in paragraph 53(1)(e), except that the copy of the document need not be certified;
  - b. by leaving a copy of the document at the solicitor's business address;
  - c. by sending a copy of the document to the solicitor by facsimile transmission;
  - d. by sending a copy of the document to the solicitor by registered mail and by obtaining an acknowledgement of receipt signed and dated by the solicitor or by someone on behalf of the solicitor; or
  - e. in such other manner as the Tribunal may order.
  
3. A document that is served by facsimile transmission shall include a cover page setting out
  - a. the name, address and telephone number 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 of the person to contact if transmission problems occur.

1. Where a notice of application relating to an application under section 86, 87 or 92 of the Act is filed, the Registrar shall serve the notice on the attorney general of each province.
2. The Registrar shall inform the attorney general of each province of the date, if any, on or before which any notice of intervention pursuant to section 34 must be filed.

### **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.

57. Documents filed for the purposes of the hearing shall be filed in five copies.

58.

1. Subject to subsection (2), a document may be filed by facsimile transmission and the document so filed shall be deemed to be the original.
2. The following documents shall not be filed by facsimile transmission:
  - a. a notice of application and any documents accompanying it;
  - b. a document which is filed in multiple copies; and
  - c. a document which contains, to which is appended or which is accompanied by a document containing confidential information.

59. A document filed by facsimile transmission shall include a cover page that satisfies the requirements of subsection 54(3).

60. A document filed by facsimile transmission after 17:00 local time at Ottawa shall be deemed to be filed the next working day.

### **Access to Public ➔**

61. Subject to section 62, hearings and pre-hearing 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 pre-hearing 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 pre-hearing conference in public.
3. The Tribunal may, if it is of the opinion that there are valid reasons for a hearing or pre-hearing conference not to be open to the public, make such order as it deems appropriate.

63. Subject to section 64, every person is entitled to access to the documents filed or received in evidence.

64.

1. The tribunal may declare the following documents confidential:
  - a. on the request of a party or intervenor, a document that is filed or received in evidence; and
  - b. on the request of a party, a document listed in a disclosure statement referred to in subsection 4.1(2) or 5.1(2).
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 public access to the document.
3. The Tribunal may, if it is of the opinion that there are valid reasons for restricting access to a document, declare the document confidential and make such other order as it deems appropriate. SOR/2002-62, s. 11.

### ***Publication of Notice*** ➡

65.

1. Unless 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.
2. The notice referred to in subsection (1) shall state
  - a. that an application for an order has been made to the Tribunal;
  - b. the name of each person against whom or in respect of whom the order is sought;

- c. the particulars of the order sought;
- d. that the notice of application and accompanying documents may be examined at the office of the Registrar;
- e. the date on or before which a request for leave to intervene must be filed; and
- f. in the case of an application for a consent order, the date on or before which comments or a request for leave to intervene must be filed, which date shall be 21 clear days after the date of publication of the notice in the Canada Gazette. SOR/96-307, s. 9.

### **Time Limits ➡**

66. Unless otherwise provided in these Rules, time limits under these Rules or pursuant to an order of the Tribunal shall be calculated according to sections 26 to 30 of the Interpretation Act, R.S.C., 1985, c. I-21.

67.

1. When the time for doing an act expires on a holiday or a Saturday, the act may be done on the next day that is not a holiday or a Saturday.
2. Where a time limit is less than six days, holidays and Saturdays shall not be included in the calculation of the time limit.

68.

1. Subject to subsection (2), a judicial member may, by order, extend or shorten a time limit prescribed by these Rules.
2. No judicial member may shorten the time limit prescribed by subsection 24(1).
3. The time limits prescribed by these Rules shall not be modified other than by order of a judicial member.

### **General ➡**

69. A person making a motion or request for leave to intervene may request in writing that the Tribunal dispose of the motion or request without a hearing. SOR/96-307, s. 10.

70. Subject to sections 26 and 41, all testimony shall be given orally unless the Tribunal orders otherwise.

71.

1. The Registrar may issue a writ of subpoena for the attendance of witnesses and the production of documents.

2. The Registrar may issue a writ of subpoena in blank and the person to whom it is issued shall complete it and may include any number of names.

72.

1. Where, in the course of proceedings, a question arises as to the practice or procedure to be followed in cases not provided for by these Rules, the practice and procedure set out in the Federal Court Rules, C.R.C., 1978, c. 663, shall be followed, with such modifications as the circumstances require.
2. Where a person is uncertain as to the practice and procedure to be followed, the Tribunal may give directions on how to proceed.

73. Subject to these Rules, the Chairman may fix the time and place for a hearing before the Tribunal.

74. No proceedings are invalid by reason of a defect of form or a technical irregularity.

75. Subject to sections 10 and 11 of the Competition Tribunal Act, for the purposes of these Rules, the Tribunal shall consist of one or more members designated by the Chairman, at least one of whom is a judicial member.

## **PART II. CONSENT ORDERS** ➔

### ***Application*** ➔

76.

1. Subject to subsection (2), sections 77 and 78 to 96 apply to applications for consent orders made under section 105 of the Act, and section 77.1 applies to those made under section 74.12 of the Act.
2. The Tribunal may, if it is satisfied that the procedure set out in this Part is not appropriate because of the limited scope of the consent order applied for, including the limited impact on the public or on competition, vary the procedure set out in this Part.
3. Sections 38 to 41 and 49 to 75 apply in respect of applications for a consent order, with such modifications as the circumstances require. SOR/96-307, s. 11; SOR/2000-198, s. 7.

### ***Application for a Consent Order*** ➔

77.

1. An application for a consent order shall be made by filing
  - a.



- a notice of application for a consent order;
  - b. a consent order impact statement;
  - c. a draft consent order; and
  - d. a consent form signed by the parties.
2. A notice of application for a consent order
- a. shall be signed by the person making the application;
  - b. shall indicate if the parties consider that a hearing need not be held;
  - c. where an application pursuant to section 3 has not been made, shall set out, in numbered paragraphs,
    - i. the sections of the Act under which the application for a consent order is made,
    - ii. the name and address of each person in respect of whom the consent order is sought,
    - iii. a concise statement of the grounds for the application for a consent order and of the material facts relevant to the application, and
    - iv. the official language to be used by the parties in the proceedings; and
  - d. where an application pursuant to section 3 has been made, shall set out any changes or additions relating to the application for a consent order.
3. A consent order impact statement shall provide an explanation of the draft consent order, including an explanation of the circumstances giving rise to the draft order or any provision of the draft order, the relief to be obtained if the order is made and the anticipated effects on competition of that relief. SOR/96-307, s. 11.

77.1 An application for a consent order made under section 74.12 of the Act shall be made by filing a consent form that

- a. is signed by the parties; and
- b. sets out
  - i. the sections of the Act under which the application is made,
  - ii. the name and address of each person in respect of whom the order is sought,
  - iii. a brief statement of the grounds for the application, and

- iv. the terms of the order to which the Commissioner and the person in respect of whom the order is sought agree. SOR/2000-198, s. 8.
- 78.
1. Where an application pursuant to section 3 has not been made, the person making an application for a consent order shall,
    - a. within three days after the documents set out in subsection 77(1) are filed, serve the documents on each person in respect of whom a consent order is sought; and
    - b. within two days after the service of the documents, file proof of service.
  2. Where an application pursuant to section 3 has been made, the person making an application for a consent order shall
    - a. serve the documents set out in subsection 77(1) on each person on whom the notice of application pursuant to section 3 was served and on any intervenors in proceedings in respect of that application; and
    - b. file the documents with proof of service. SOR/96-307, s. 11.

### ***Pre-hearing Management Procedures ➔***

79. The Chairman shall, within seven days after the filing of a notice of application for a consent order, consult with the parties and issue an order establishing a schedule for the disposition of the application, including a time and place for a pre-hearing conference and the hearing, in the event that the Tribunal determines that a hearing should be held. SOR/96-307, s. 11.

80.

1. The Tribunal may, at the request of a party or if the Chairman considers it advisable, conduct one or more pre-hearing conferences at any time after the filing of a notice of application for a consent order.
2. The Tribunal may, at a pre-hearing conference, consider any pending motions or requests for leave to intervene, whether a hearing of the application for a consent order should be held, and any other matters that may aid in the disposition of the application.
3. The Chairman shall direct in writing that the parties appear at a pre-hearing conference at a time and place to be fixed by the Chairman.
4. The Chairman may include in the direction referred to in subsection (3) a list of the matters to be considered at the pre-hearing conference, and may require the filing of memoranda regarding any of those matters. SOR/96-307, s. 11.

81.

1. After a pre-hearing conference, the Tribunal shall issue an order reciting any agreements relating to the matters considered at the pre-hearing conference and any rulings by the Tribunal arising from those matters.
2. The order referred to in subsection (1) shall govern the proceedings relating to the application for a consent order unless the Tribunal orders otherwise. SOR/96-307, s. 11.

### **Public Participation ➡**

82.

1. A person who wishes to participate in the proceedings concerning an application for a consent order shall do so by
  - a. filing comments for the consideration of the Tribunal; or
  - b. filing a request for leave to intervene.
2. Where a request for leave to intervene is refused by the Tribunal, the request remains on the record and is considered by the Tribunal as if it were comments. SOR/96-307, s. 11.

83. Where an application pursuant to section 3 has been made and an application for a consent order is made pursuant to section 77, intervenors in proceedings in respect of the former application shall have, for the purposes of proceedings in respect of the application for a consent order, the same rights and obligations as those set out in sections 31 to 33 and sections 35 to 37 unless the Tribunal orders otherwise. SOR/96-307, s. 11.

### **Comments ➡**

84.

1. Comments referred to in paragraph 82(1)(a) shall
  - a. be made in writing;
  - b. be signed by the person making them; and
  - c. include
    - i. the title of the proceedings in which the person making the comments wishes to participate, and
    - ii. the name and address of that person.

2. Comments shall be filed on or before the date set out in the notice referred to in section 65 and published in the Canada Gazette.
3. The Registrar shall send copies of any comments to the parties forthwith after the comments are filed. SOR/96-307, s. 11.

85.

1. The Commissioner shall, and each other party may, within seven days after the expiration of the period for filing comments, serve a reply on the person who filed the comments.
2. The Commissioner and each other party who serves a reply under subsection (1) shall, within the seven-day period referred to in that subsection, file the reply with proof of service. SOR/96-307, s. 11; SOR/2000-198, s. 9.

### ***Intervention*** ➔

86.

1. A request for leave to intervene shall be made by
  - a. serving on each of the parties a request for leave to intervene and affidavit evidence setting out all the facts on which the request is based; and
  - b. filing the request and affidavit evidence with proof of service on or before the date set out in the notice referred to in section 65 and published in the Canada Gazette.
2. A request for leave to intervene shall set out
  - a. the title of the proceedings in which the person making the request wishes to intervene;
  - b. the name and address of the person making the request;
  - c. a concise statement of the matters in issue that affect that person;
  - d. a concise statement of the competitive consequences arising from the matters referred to in paragraph (c) with respect to which that person wishes to make representations;
  - e. the reasons for requesting the status of intervenor rather than commenting;
  - f. any request for leave to present evidence to the Tribunal, including the nature and extent of the evidence and the reasons why the presentation of the evidence is necessary to make effective representations; and

- g. the official language to be used by that person at any hearing of the request and, if leave is granted, in the proceedings. SOR/96-307, s. 11.

87.

1. The Commissioner shall, and each other party may, within seven days after the expiration of the period for filing a request for leave to intervene, serve a response on the person who made the request.
2. The Commissioner and each other party who serves a response under subsection (1) shall, within the seven-day period referred to in that subsection, file the response with proof of service. SOR/96-307, s. 11; SOR/2000-198, s. 9.

88. 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 pre-hearing conference, unless the Chairman fixes a different time and place for the hearing of the request. SOR/96-307, s. 11.

89. The Tribunal may grant a request for leave to intervene, refuse the request or grant the request on such terms and conditions as it considers appropriate. SOR/96-307, s. 11.

90. Where a request for leave to intervene is granted,

- a. each party and each other intervenor shall serve on the intervenor any document that is filed by them after leave to intervene is granted; and
- b. access by an intervenor to a document filed or received in evidence is subject to any outstanding order of the Tribunal restricting access to the document. SOR/96-307, s. 11.

91. An intervenor shall serve a document on each party and each other intervenor before filing the document with proof of service. SOR/96-307, s. 11.

### ***Participation of a Province ➡***

92. Subject to sections 93 to 95, the attorney general of a province who wishes to participate in the proceedings concerning an application for a consent order may do so by following the procedures for public participation set out in sections 82 to 91. SOR/96-307, s. 11.

93.

1. The attorney general of a province who, pursuant to section 101 of the Act, decides to intervene in the proceedings concerning an application for a consent order shall
  - a. serve a notice of intervention on each party; and
  - b. file the notice with proof of service on or before the date set out in the notice

referred to in section 65 and published in the Canada Gazette.

2. A notice of intervention shall set out
  - a. the title of the proceedings in which the attorney general is intervening;
  - b. a concise statement of the nature of the attorney general's interest in the proceedings;
  - c. a concise statement of the matters in respect of which the attorney general will make representations on behalf of the province;
  - d. the reasons for intervening rather than commenting;
  - e. any request for leave to present evidence to the Tribunal, including the nature and extent of the evidence and the reasons why the presentation of evidence is necessary to make effective representations; and
  - f. the official language to be used by the attorney general in the proceedings.  
SOR/96-307, s. 11.

94. Where a notice of intervention is filed by an attorney general,

- a. each party and each other intervenor shall serve on the attorney general any document that is filed by them after the notice of intervention is filed; and
- b. access by the attorney general to a document filed or received in evidence is subject to any outstanding order of the Tribunal restricting access to the document.  
SOR/96-307, s. 11.

95. An attorney general shall serve a document on each party and each other intervenor before filing the document with proof of service. SOR/96-307, s. 11.

### ***Disposition of Application ➡***

96.

1. The Tribunal may, in respect of an application for a consent order,
  - a. make the order;
  - b. indicate the changes that must be made in the draft order before the Tribunal will make the order; or
  - c. refuse to make the order.
2. Where the Tribunal refuses to make a consent order, none of the members of the

Tribunal who considered the application for the order shall participate in any further proceedings relating to the subject-matter of the application, unless the Chairman directs otherwise. SOR/96-307, s. 11.

## **SCHEDULE** ➔

(Section 52)

FORM

AFFIDAVIT OF SERVICE

Competition Tribunal

(title of proceedings)

I, (full name), resident at (address), swear [affirm] that:

[Choose the appropriate paragraph to complete the affidavit in accordance with section 53 or 54.]

A. SERVICE OF NOTICE OF APPLICATION ON

1. individual

On (date), at (time), I served (name of individual served) with the notice of application by leaving a certified copy with that person at (address where service was made).

2. partnership

On (date), at (time), I served (name of partnership served) with the notice of application by leaving a certified copy with (name of partner) at (address where service was made).

3. corporation

On (date), at (time), I served (name of corporation served) with the notice of application by leaving a certified copy with (name and position of the officer or person apparently in charge of the head office or a branch of the corporation) at (address where service was made).

4. Commissioner

On (date), at (time), I served the Commissioner with the notice of application by leaving a certified copy with (name of the person with whom the copy was left) at (address where service was made).

5. a person represented by a solicitor who is willing to accept service

- a. On (date), at (time), I served (name of person served) with the notice of application by leaving a certified copy with (name of solicitor), solicitor for (name of person represented), at (address where service was made).
- b. (Name of solicitor) informed me that [he/she] was willing to accept service on behalf of (name of person represented by solicitor).

**B. SERVICE OF A DOCUMENT OTHER THAN A NOTICE OF APPLICATION**

1. by leaving a copy

On (date), at (time), I served (name of person served) with the (identify the document(s) served) by leaving a copy of the document(s) at (address of person or of solicitor's office where service was made).

2. by sending a copy by facsimile transmission

On (date), at (time), I served (name of person served) with the (identify the document(s) served) by sending a copy of the document(s), including a cover page, by facsimile transmission to (name of person or solicitor) at (fax number).

3. by sending a copy by registered mail and obtaining an acknowledgement of receipt

- a. On (date), I sent the (identify document(s) mailed) by registered mail to (name of person or solicitor) at (address of person or of solicitor's office).
- b. I attach an acknowledgement of receipt indicating that the document(s) was [were] received on (date).