



Registry Doc. No.: 120

Date: November 6, 2020

Matter: CT-2019-005 – *The Commissioner of Competition v Parrish & Heimbecker, Limited*

Direction to Counsel (from Mr. Justice Gascon, Chairperson)

Re: Further steps following the Case Management Conference of November 5, 2020

Further to the pre-hearing case management conference (“**CMC**”) held on November 5, 2020, counsel for the parties should take the following points into consideration when preparing their proposed revised schedule (“**Revised Schedule**”) for the hearing of the Application and the remaining pre-hearing steps leading up to it, which will be discussed at the CMC scheduled for November 12, 2020 at 9:00 a.m.:

1. The dates on which the Tribunal is available for the hearing of this Application between December 7, 2020 and February 5, 2021 are as follows:
 - a. December 7 to 11, 2020 (5 days);
 - b. December 14 to 16, 2020 (3 days);
 - c. January 4 to 7, 2021 (4 days);
 - d. January 11 to 15, 2021 (5 days);
 - e. January 18 to 21, 2021 (4 days);
 - f. January 25, 2021 (1 day);
 - g. February 1 to 4, 2021 (4 days);
2. As was indicated in the Orders issued by the Tribunal on March 4, 2020, April 21, 2020, October 9, 2020 and October 16, 2020 (“**Scheduling Orders**”), the schedule for the hearing of the Application has always provided for 10 days for the evidentiary portion (including both fact and expert witnesses) and 2 days for oral argument. The most recent iteration detailed in the October 16, 2020 Scheduling Order provided that the evidentiary portion would include 5 hearing days for the fact witnesses and 4 hearing days for the expert witnesses. The time allocation in the Scheduling Orders reflects the estimates made by counsel at the beginning of the Application and no party has asked the Tribunal to modify those estimates prior to or after the issuance of any of the Scheduling Orders.

- a. As it does in all of its proceedings, the Tribunal assumes that the hearing time is divided equally between the parties and, in accordance with the *Notice on "Chess Clock" Proceedings*, this means that each party has been allotted 5 days or 22.5 hours for the evidentiary portion of the hearing (including both fact witnesses and expert witnesses), and 1 day or 4.5 hours for oral argument.
 - b. For greater certainty, as is always the case in Tribunal proceedings, any time allotted to the evidentiary portion includes time that a party may wish to spend on an opening statement.
 - c. Counsel shall therefore plan the Revised Schedule and the use of their respective hearing time accordingly.
 - d. The Tribunal observes that, in its proposed schedule sent to the Tribunal on November 5, 2020, counsel for the Respondent included a total of 9 hearing days for the fact witnesses (including opening statements), with two additional "spillover days", which happens to be twice as much as what is contemplated in the Scheduling Orders for the fact witnesses.
 - e. If, in the Revised Schedule, a party intends to ask for more time than what has now been planned for several months in the Scheduling Orders, it shall provide detailed reasons for the additional time sought and an explanation as to why this request was not made earlier.
 - f. Should the Tribunal agree to grant additional time to a party, it shall grant the same amount of additional time to the other party.
3. In terms of pre-hearing steps, the Tribunal is of the view that the unfortunate situation that prompted the adjournment of the hearing of the Application does not justify postponing all pre-hearing steps in the manner suggested by counsel for the Respondent. A number of steps can already be completed prior to December 7, 2020 to ensure that this matter proceeds in an efficient manner. Accordingly,
- a. The Revised Schedule shall provide that the following pre-hearing steps be completed by November 27, 2020 at the latest:
 - i. Deadline to provide the Agreed Books of Documents to the Tribunal;
 - ii. Deadline for responding to any Requests for Admission;
 - iii. Deadline to provide the read-ins from examinations on discovery to the Tribunal;
 - b. The Revised Schedule shall however provide that documents could be added to the Agreed Books of Documents as a result of the filing of the Respondent's reply expert report on matters related to efficiencies ("**Respondent Efficiencies Report**");
 - c. The Revised Schedule shall provide that the following pre-hearing steps be completed by December 4, 2020 at the latest:
 - i. Deadline for delivering any agreed statement of facts;
 - ii. Deadline to provide the Joint Briefs of Authorities to the Tribunal;
 - d. The Revised Schedule shall provide that the motions related to the evidence (documents relied upon, witness statements and expert reports), with the exception of motions related to the Respondent Efficiencies Report, are to be filed and heard by December 4, 2020 at the latest, providing for at least 5 days between the filing of any motion and the hearing;

4. With respect to the Respondent Efficiencies Report, it shall be served and filed before the start of the hearing of the Application. In light of the representations made by counsel for the Respondent to the effect that Ms. Sanderson will remain unavailable until December 7, 2020, and considering the time granted to the Respondent in the Scheduling Orders to serve and file the Respondent Efficiencies Report and the time that has already elapsed, the Revised Schedule shall provide that the Respondent shall serve and file the Respondent Efficiencies Report no later than December 11, 2020.
5. The Revised Schedule shall provide that any motions related to the Respondent Efficiencies Report shall be dealt with as follows:
 - a. Deadline for filing any motions: December 15, 2020;
 - b. Hearing of any motions: by December 18, 2020 at the latest;
6. Turning to the format of the evidentiary portion of the hearing, each party shall canvass whether each of the fact witnesses it intends to call will be ready to testify in-person in Winnipeg or in Virden, Manitoba, considering the arrangements that are contemplated to ensure the protection of all participants, or whether, due to health or safety concerns related to the COVID-19 pandemic, the witness will prefer to testify via the videoconferencing platform to be put in place by the Tribunal. At this point in time, and considering the situation regarding the COVID-19 pandemic, the Tribunal does not intend to compel any witness to appear in person against his or her will. The actual format of the evidentiary portion of the hearing shall be adjusted accordingly.
7. The Revised Schedule shall be provided to the Tribunal by 8:00 am on November 12, 2020 at the latest, so that the Tribunal can have an opportunity to review it prior to the November 12, 2020 CMC. If the parties cannot agree on a Revised Schedule, each party shall provide its proposed Revised Schedule within the above deadline, with a copy to the other party.

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