



**Date:** February 28, 2022

**Matter:** CT-2021-002 – *Commissioner of Competition v Secure Energy Services Inc.*

**Direction to Counsel (from Justice Gascon, Chairperson)**

**Re: Filing of Documents with the Tribunal**

On February 25, 2022, the Commissioner of Competition (“**Commissioner**”) filed two expert reports with the Tribunal, in accordance with the terms of the Scheduling Order issued on October 12, 2021. The Tribunal notes that one of the expert reports filed was a Confidential Level A version, which was not accompanied by its Public version. In his email correspondence to the Tribunal, counsel for the Commissioner indicated that the Public version would be provided “early [this] week”.

As this is one of many more documents to be filed with the Tribunal in this matter, the Tribunal needs to remind the parties and their counsel that, pursuant to the March 2018 *Practice Direction Regarding the Filing of Confidential and Public Documents with the Tribunal* (“**Practice Direction**”), “[t]he Confidential Level A, Confidential Level B and Public versions of documents are to be filed with the Tribunal at the same time” (emphasis added). This requirement is not an optional one. It is instead a requirement to be followed by the parties for all filings of documents made with the Tribunal. If there are circumstances where time constraints preclude the parties from filing a public version of a document at the same time as the confidential version(s) – which the Tribunal expects will only be “rare” occurrences –, the Practice Direction expressly “directs counsel to obtain approval from the presiding judicial member or the case management judge prior to filing any confidential version of the document with the Tribunal or as soon as possible after filing”. No such approval has been sought and no reasons have been provided by the Commissioner for the omission to file the public version of his Confidential Level A expert report.

The Tribunal pauses to observe that, in this and other recent matters, parties and their counsel too often fail to file the required public versions of documents at the same time as the confidential versions and do not comply with the clear requirements of the Practice Direction, without even seeking the Tribunal’s approval. This is not acceptable as it creates unwarranted additional work for the Tribunal.

The Tribunal therefore expressly directs the parties and their counsel, in conformity with the express language of the Practice Direction, to ensure that, for any filings of documents with the Tribunal, the Confidential Level A, Confidential Level B and Public versions of documents shall be filed with the Tribunal at the same time. If there are exceptional circumstances where such simultaneous filings of all versions is not possible, parties are to request approval from the presiding judicial member or case management judge to be exempted from the Practice Direction’s requirement, with reasons supporting such requests. Needless to say, such requests shall be rare.

Failure to follow these requirements may result in the Tribunal Registry refusing the filing of documents, and may also be in factor to be considered by the Tribunal in the exercise of its discretion with respect to costs.

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