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CT-2022-002

OTTAWA, ONT.

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THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*;

B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

MOTION RECORD

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TAB 1

CT-2022-002

THE COMPETITION TRIBUNAL**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34;**AND IN THE MATTER OF** the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*;**B E T W E E N:****COMMISSIONER OF COMPETITION****Applicant****- and -****ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.****Respondents**

NOTICE OF MOTION

TAKE NOTICE THAT the Commissioner of Competition ("**Commissioner**") will make a motion to the Competition Tribunal ("**Tribunal**") on a date to be scheduled to be fixed by the Tribunal.

THE MOTION IS FOR:

- a. a variation or amendment of the Confidentiality Order issued by the Tribunal on May 19, 2022 ("**Confidentiality Order**");
- b. the Commissioner's costs of the motion; and

- c. such further relief as the Commissioner may request and the Tribunal may permit.

THE GROUNDS FOR THE MOTION ARE:

Overview

- a. Rogers Communications Inc. ("**Rogers**") and Shaw Communications Inc. ("**Shaw**") have brought a motion before the Tribunal to re-designate all Level "A" materials forming part of a section 104 application record and the Commissioner's Affidavit of Documents to a Level "B" designation. The Confidentiality Order allows the Commissioner, as one of the parties to the proceeding, to designate documents at a Level "A" where they are deserving of a greater level of protection and, to the extent that there is disagreement on the designation, it may be challenged by the Respondents in the manner provided for in the Confidentiality Order.
- b. The Respondents offer a different interpretation to the terms of the Confidentiality Order and contend that the Commissioner's right to designate materials at Level "A" is limited to cases where the identity of a third party is at issue. This narrow and misguided reading of the Order would give Rogers and Shaw increased access to commercially sensitive information, including the competitive commercial information of each other as well as that of third parties.
- c. While the terms of the Order are abundantly clear, to the extent that they are not, the Commissioner seeks a variation to the Confidentiality Order confirming that the Commissioner has the requisite authority to designate Protected Documents to Level "A", as provided for in paragraph 2 and 3 of the Order.

Background

- d. On March 13, 2021, Rogers agreed to purchase all of the issued and outstanding shares of Shaw under an arrangement agreement (“**Proposed Transaction**”).
- e. On May 8, 2022, the Commissioner commenced an application under section 92 of the *Competition Act*, R.S.C. 1985, c. C-34 (“**Act**”) for an order to block the Proposed Transaction (“**Section 92 Application**”).
- f. On the same day, the Commissioner sought interim orders under section 104 of the Act to prohibit Rogers and Shaw from closing the Proposed Transaction pending the Tribunal’s disposition of the Section 92 Application, and to prohibit Rogers from enforcing any agreement or taking any steps that limit the operation, maintenance, enhancement or expansion of the Shaw’s wireless business (“**Section 104 Application**”).
- g. On May 30, 2022, a consent agreement was registered with the Tribunal further to the Section 104 Application.

Section 104 Application Record

- h. The Section 104 Application Record contains almost 13,000 pages, containing evidence from 12 witnesses and over 350 exhibits. The Section 104 Application Record contains commercial information of competitors, including Rogers, Shaw and third parties.
- i. At the time, the Commissioner marked all affidavits and exhibits, including expert reports, or parts thereof, as either Level “A” or Public. The affidavits and

expert reports also referenced information of competitors, Rogers, Shaw and third parties.

- j. The entire Application Record was shared with outside counsel for Rogers and Shaw. Counsel for the Respondents is fully apprised of the content of the 104 Application Record, including that it contains the commercial information of third parties.

The Confidentiality Order

- k. On May 19, 2022, the Tribunal issued the Confidentiality Order. It applies to all records produced in the Commissioner's applications under both sections 92 and 104 of the Act.
- l. The Confidentiality Order allows any of the Parties to the proceeding, including the Commissioner, to designate Protected Documents at either Level "A" or Level "B". The level of protection is described as follows:
 - a. **Level "A"** records may be disclosed only to: the Commissioner, his counsel and his staff; outside counsel of the Respondents and their staff; Independent Experts and their staff; and Record Review Vendors; and
 - b. **Level "B"** records may be disclosed only to: the individuals set out for Level "A"; and Designated Representatives of the Respondents who have executed the Confidentiality Undertaking.

"Designated Representatives" means up to two in house counsel and up to six additional individuals designated by each of the Respondents who will be permitted access to Records designated as Level "B" Protected Documents in accordance with the terms of this

Order, which designations shall be made by written notice to the Tribunal with a copy sent concomitantly to the Commissioner. The Commissioner may make a motion to the Tribunal objecting to such designations.

- m. The Confidentiality Order also bestows added authority on the Commissioner to designate any information at Level “A” where the information that could identify a third party who is reasonably concerned about the public disclosure of its identity. This added right to designate at Level “A” is in addition to the general right to designate the Protected Documents bestowed on all Parties.

Matter that arose or was discovered subsequent to the making of the Confidentiality Order

- n. Following the Tribunal’s issuance of the Confidentiality Order, the parties disagreed on the interpretation of the Confidentiality Order, specifically on whether the Commissioner was entitled to designate Protected Documents at Level “A”.
- o. The Respondents contend that the Commissioner is only entitled to designate information that could reasonably identify a third party who is reasonably concerned about the public disclosure of its identity. The general right to designate at Level “A” described in paragraph 2 of the Confidentiality Order does not apply to the Commissioner.
- p. On May 24, 2022, counsel for Shaw sought agreement from the Commissioner to have all confidential documents in the Section 104 Application Record marked as Level “A” be remarked as Level “B”. The documents include third party information. The Commissioner refused to concede to the narrow interpretation of the Confidentiality Order and to allow the Respondents to gain increased access to the Protected Documents.

- q. The Commissioner served an Affidavit of Documents comprised of more than 2.6M documents was served on the Respondents. A number of documents were designated Level “A” and contains third party information.
- r. On July 21, 2022, Rogers and Shaw served the Commissioner with a new Notice of Motion for:
- (a) An Order that the following documents and records the Commissioner has designated “Confidential – Level A” be re-designated as “Confidential Level B” under the Tribunal’s May 19, 2022 Confidentiality Order (“Confidentiality Order”):
- (i) the expert reports, affidavits and associated exhibits in the Commissioner’s Application Record delivered in support of his Application under s. 104 of the Competition Act (“Commissioner’s s. 104 Record”); and
- (ii) the productions the Commissioner served on July 15, 2022 in his Application under s. 92 of the Competition Act, as set out in Schedule “A” to his Affidavit of Documents
- (“Motion to Redesignate”).**
- s. The new Motion to Redesignate misreads the Confidentiality Order and seeks to do an end-run on the process for challenging a designation under the terms of the Confidentiality Order. The demand to re-designate applies to the section104 materials as well as to the Affidavit of Documents.
- t. The narrow interpretation of the Confidentiality Order would allow Rogers and Shaw to see the competitive information of each other and that of third party competitors that are not necessarily concerned with protecting their identity.

Burden on the Commissioner to review and redesignate millions of records

- u. On July 21, 2022, the Commissioner advised the Respondents that it was prepared to redesignate some of the documents forming part of the 104 Application Record and the Affidavit of Documents. Although not required to do so under the terms of the Confidentiality Order, the Commissioner provided a rationale for the Level “A” designations. To the extent that the Respondents are not content with the re-designations, the terms of the Order provide for a challenge before this Tribunal.

Specific and direct harm is likely to result if certain Protected Records are shared among Designated Representatives of competitors as Level “B”

- v. Specific and direct harm to competition is likely to result if competitively sensitive information of one competitor is disclosed to another, including if the information of a third party competitor is disclosed to Rogers or Shaw.
- w. Protected Records are designated as Level “A”, where an executed Confidential Undertaking by a Designated Representative is insufficient. It is unrealistic to believe that the Designated Representative of a competitor can unlearn competitively sensitive information. Disclosure of such information provides a competitive advantage, even if the receiving party has no intention of misusing the information. Disclosure of such information will likely result in coordination or enhanced coordination and the softening of competition between competitors, with worse competitive outcomes for consumers and Canadians.
- x. While the terms of the Confidentiality are clear and allow the Commissioner to designate Protected Documents at Level “A”, the Respondents continue to

misread the terms of the Confidentiality Order. To the extent that there is ambiguity, the Confidentiality Order should be varied to confirm that the Commissioner has the requisite authority to designate any Protected Records as Level “A” under paragraph 2, beyond what is provided for in paragraph 3 of the Confidentiality Order.

General

- y. Sections 34, 66 and 67 and Part 3 of the *Competition Tribunal Rules*;
- z. Section 399 of the *Federal Courts Rules*;
- aa. Section 8.1 of the *Competition Tribunal Act*; and
- bb. Such further and other grounds as the Commissioner may advise and the Tribunal may permit.

THE FOLLOWING EVIDENCE will be used at the hearing of the Motion:

- a. the Affidavit of Eric Widdowson, affirmed July 27, 2022;
- b. the Affidavit of Lilla Csorgo, affirmed July 27, 2022; and
- c. such further and other evidence as the Commissioner may advise and the Tribunal may permit.

July 28, 2022

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TAB 2

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THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*;

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

**AFFIDAVIT OF ERIC WIDDOWSON
(Affirmed July 27, 2022)**

I, Eric Widdowson, a Competition Law Officer with the Competition Bureau (“**Bureau**”), of the City of Ottawa, in the Province of Ontario, **AFFIRM AND SAY AS FOLLOWS:**

1. I have been employed by the Bureau since October 2018. During my employment with the Bureau, I have been involved in the review of mergers and proposed mergers to determine whether grounds to exist for the making of orders under Part VIII of the *Competition Act*, R.S.C. 1985, c. C-34 (“**Act**”).
2. I am a member of the Bureau’s team reviewing the proposed acquisition (“**Proposed Transaction**”) of Shaw Communications Inc. (“**Shaw**”) by Rogers Communications Inc. (“**Rogers**”) (collectively, the “**Respondents**”). I have personal knowledge of the matters herein except where stated to be on information and belief and where so stated, I verily believe it to be true.
3. On May 8, 2022, the Commissioner commenced an application under section 92 of the Act for an order to block the Proposed Transaction (“**Section 92 Application**”).
4. On the same day, the Commissioner sought interim orders under section 104 of the Act to prohibit Rogers and Shaw from closing the Proposed Transaction pending the Tribunal’s disposition of the Section 92 Application, and to prohibit Rogers from enforcing any agreement or taking any steps that limit the operation, maintenance, enhancement or expansion of the Shaw’s wireless business (“**Section 104 Application**”).

5. The Section 104 Application Record is almost 13,000 pages, containing evidence from 12 witnesses and over 350 exhibits. The Section 104 Application Record contains sensitive commercial information, including that of Rogers, Shaw and a number of third parties.
6. The Section 104 Application Record predates the Confidentiality Order. At the time, the Commissioner marked all affidavits and exhibits, including expert reports, or parts thereof, as either Level “A” or Public.
7. The Commissioner served the Section 104 Application Record on counsel for Rogers and Shaw. Counsel for Rogers and Shaw are aware of the content of the Section 104 Application Record, including that it contains the competitive commercial information of third parties.
8. Between May 24 and July 11, 2022, counsel for the Commissioner and counsel for the Respondents corresponded with each other about the Commissioner’s Level “A” designations. Counsel for the Respondents expressed concern with respect to the Commissioner’s authority to designate at Level “A” under the Confidentiality Order. While the Commissioner worked with counsel for each Respondent to expeditiously identify information of that Respondent which could be disclosed to that Respondent, the Commissioner expressed concerns to the Respondents about Shaw sharing its competitively sensitive information with Rogers, Shaw receiving highly sensitive competitive commercial information of Rogers and the Respondents receiving highly sensitive competitive commercial of third parties. **Exhibit A** to this Affidavit contains an email chain, starting with an email from Derek Ricci dated May 24, 2022, and ending with an email from Derek Leschinsky dated July 11, 2022, which describe the Respondents’ interpretation of the Confidentiality Order.

9. On July 14, 2022, the Respondents served a Motion Record on the Commissioner where they were seeking to have all Level “A” Protected Records contained in the Section 104 Application Record redesignated to Level “B”.
10. By letter, dated July 15, 2022, counsel for the Commissioner sent a letter to the Respondents requesting that they serve their Motion Record on affected third parties. Both the Section 104 Application Record and the Affidavit of Documents contains sensitive third party commercial information. **Exhibit B** to this Affidavit contains the said letter from Alexander Gay.
11. By letter, dated July 18, 2022, counsel for Rogers replied to Alexander Gay’s letter of July 15, 2022. The letter advises the Commissioner that the Respondents have no obligation to serve their Motion Record on non-parties, and that the Commissioner is required to provide justification for the Level “A” designations under the Confidentiality Order. **Exhibit C** to this Affidavit contains a copy of the said attached letter.
12. On July 19, 2022, counsel for Rogers sent a letter to counsel for the Commissioner. The letter provides that Rogers also has concerns with the designations of the Protected Records referenced in the Affidavit of Documents. The letter provides that Rogers is also intent on challenging the Commissioner’s claims to litigation privilege over a number of documents. The letter further advises that counsel for Rogers will serve new motion materials on the Commissioner by the end of that week, returnable on August 4, 2022. **Exhibit D** to this Affidavit attaches a copy of the said letter.
13. On July 21, 2022, Rogers and Shaw served a new Motion Record on the Commissioner demanding that all Protected Documents designated as Level “A” in the Section 104 Application Record and the Commissioner’s AOD be redesignated to Level “B”. The relief sought provides as follows:

(a) An Order that the following documents and records the Commissioner has designated “Confidential – Level A” be re-designated as “Confidential – Level B” under the Tribunal’s May 19, 2022 Confidentiality Order (“Confidentiality Order”):

(i) the expert reports, affidavits and associated exhibits in the Commissioner’s Application Record delivered in support of his Application under s. 104 of the Competition Act (“Commissioner’s s. 104 Record”); and

(ii) the productions the Commissioner served on July 15, 2022 in his Application under s. 92 of the Competition Act, as set out in Schedule “A” to his Affidavit of Documents.

(“New Motion”)

14. On July 21, 2022, counsel for the Commissioner sent a letter to counsel for Rogers and Shaw which provides justification for the Commissioner maintaining Level “A” designations. The letter advises that Level “A” designations would be maintained over records that could “(a) compromise the competitive integrity of the Respondents or their competitors; (b) indicate a market participant’s future business plans; or (c) promote coordination within the market”. **Exhibit E** to this Affidavit contains a copy of the said letter of Alexander Gay.
15. The letter of July 21, 2022, also provides that the Commissioner is prepared to conduct a re-review of the Level “A” designations found in the section 104 Application Record, but it provides that meeting the same demands in respect of the Commissioner’s Affidavit of Documents would impact the schedule with significant delays.
16. I was directly involved in articulating the justification that was provided to counsel for Rogers for not redesignating certain types of information from Level “A” to Level “B”, as described in the letter of Mr. Gay. In so doing, I had reviewed a number of the documents contained in the section 104 Application Record and documents referenced in the Affidavit of Documents.

17. There are categories of information contained in Protected Records found in the Section 104 Application Record or referenced in the Affidavit of Documents that should not be redesignated from Level “A” to Level “B”, including information that would likely (a) compromise the competitive integrity of the Respondents or their competitors; (b) indicate a market participant’s future business plans; or (c) promote coordination within the market. Such information would include such things as:
- a) Confidential Forward-Looking Business Information: forward-looking planning information, including, business plans, marketing plans, strategic plans, budgets, forecasts, auction and spectrum acquisition strategies, network planning, and other similar information of Rogers, Shaw or a third party;
 - b) Confidential Data and Pricing: average or summary pricing information or other similar pricing information that is otherwise not publicly available, including, any negotiated or targeted price, capacity, specific/non-aggregated output or revenue data, market share data calculated by a market participant, negotiations with suppliers about prices, rates or incentives, or proprietary information produced by Rogers, Shaw or a third party; and
 - c) Confidential Competitive Response Information: information that describes the interpretation or competitive response of any market participant to promotions, pricing changes, and other market signals, including the timing and particulars of each, and any other such document.
18. I also assisted in identifying these types of information that should not be redesignated from Level “A” to Level “B”.
19. I have read the Affidavit of Dr. Lilla Csorgo, affirmed on July 27, 2022 (“**Csorgo Affidavit**”). At paragraph 18, Dr. Csorgo describes her review of sample records that form part of the collection over which the Commissioner designated as Level “A”, and finds that each of the records raises competition concerns. After

describing her review, Dr. Csorgo concludes that the disclosure of the information risks having a detrimental effect on competition, consumers and Canadians.

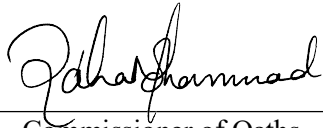
20. Upon reading the Csorgo Affidavit, my review of information in the Section 104 Application and the Commissioner's productions, as well as my participation in identifying the types of information over which the Commissioner must maintain as Level "A", I believe that the type of harm described in the Csorgo Affidavit is likely to result if the documents containing Confidential Forward-Looking Business Information, Confidential Data and Pricing, or Confidential Competitive Response Information are re-designated from Level "A" to Level "B".
21. I further believe that disclosure of Confidential Forward-Looking Business Information, Confidential Data and Pricing, or Confidential Competitive Response Information to a competitor are likely to (a) compromise the competitive integrity of Rogers, Shaw or their competitors; (b) indicate a market participant's future business plans; or (c) promote coordination within the market.
22. The redesignation of Protected Records from level "A" to Level "B" will impose an administrative burden on the Bureau. In using the Bureau's litigation support database, I was able to assess the approximate quantity of relevant records. There are approximately 2.6 million Level "A" records in the Commissioner's Affidavit of Documents, amounting to approximately 9.9 million pages, and close to 13,000 pages in the section 104 Application Record.
23. I am informed by Nicholas Janota, a Competition Law Officer and member of the Bureau team, and I verily believe that it would take 10 officers approximately 8.8 years (7.5 hours a day, 5 days a week) to manually review and redesignate this magnitude of documents.

24. I am informed by Miriam Varelalizardi, a paralegal with the Bureau, and verily believe that it would take 3 paralegals approximately 12 years to complete 3 levels (“A”, “B” and “Public”) of redesignations through a manual process of redesignating, redacting and creating three versions of each document in this magnitude of documents.
25. In light of my participation in the previous review of Level “A” information described above, my familiarity with the types of information that must be protected and my experience in conducting merger reviews, I believe that anything less than a manual review of the Commissioner’s productions would likely result in the disclosure of sensitive financial and commercial information that can reasonably be expected to prejudice the competitive position of market participants or to increase coordination in the market.
26. A number of third parties have expressed concern over the Respondents attempt to re-designate the Level “A” Protected Records to Level “B”. Bell Canada Enterprises Inc., TELUS Communications Inc., and Distributel Communications Limited, for example, have communicated with the Bureau and expressed concern with the possibility that their confidential business information could be disclosed to Rogers or Shaw, their direct competitors. These three third parties have advised the Commissioner that significant direct harm would result if such information were disclosed to Rogers or Shaw as Level “B”.
27. The Respondents have, in other situations, expressed concerns about their confidential information being shared with competitors and the harm, including prejudice to competitive position, that would result if disclosed. For example, both Rogers and Shaw expressed these concerns to the Canadian Radio-television and Telecommunications Commission (“CRTC”) in its review of mobile wireless services. As another example, Shaw expressed these concerns to the Bureau on issues related to the Bureau’s review of the Proposed Transaction. **Exhibit F** to this Affidavit is a copy of a Rogers submission to the CRTC; and

Exhibit G to this Affidavit is a copy of a Shaw submission to the CRTC. **Exhibit H** to this Affidavit is a copy of a Shaw letter to counsel for the Commissioner.

28. On July 26, 2022, counsel for the Respondents sent a letter to counsel for the Commissioner and third parties in relation to limiting the relief sought in the New Motion. **Exhibit I** to this Affidavit is the said letter.
29. Starting on May 5, 2021, I and the rest of the Bureau team requested information from market participants (including competitors, customers, and suppliers to Rogers and Shaw, as well as industry associations) for the purpose of preparing for litigation. We also requested information from government bodies, such as the CRTC and Statistics Canada for the same purpose. In so doing, we sought affidavits from several market participants and certificates from individuals at Statistics Canada.
30. I was also involved with the Bureau's review of records for the purpose of identifying litigation and solicitor-client privileged documents, among other types of privilege. In so doing, I and the rest of the Bureau team identified privileged records that were related to, among other things, communications and documents described at paragraph 29 of this Affidavit. We used the Bureau's litigation software to select these records in order to produce a spreadsheet listing the records.
31. I reviewed such a spreadsheet and verified samples of its contents, and am satisfied that **Schedule "1"** to this Affidavit contains communications and documents with third parties and government bodies, as described at paragraph 29, and that **Schedule "2"** to this Affidavit contains communications and documents related to the preparation of affidavits, as described at paragraph 29.

Affirmed remotely by Eric Widdowson)
 stated as being located in the City of)
 Gatineau in the Province of Quebec, before)
 me, in the City of Gatineau in the Province)
 of Quebec, on July 27, 2022, in accordance)
 with O. Reg. 431/20, Administering Oath)
 or Declaration Remotely.)



Commissioner of Oaths

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.



Eric Widdowson

“SCHEDULE 1”

DOCID	DOCDATE	DOCTITLE	PEOPLE/ORGANIZATIONS FROM	PEOPLE/ORGANIZATIONS TO	PEOPLE/ORGANIZATIONS CC	DOCTYPE	CONFIDENTIALITY LEVEL	PRIVILEGE
RBCH00002_000000069							Level A	Litigation Privilege
RBCH00002_000000087							Level A	Litigation Privilege
RBCH00002_000000324							Level A	Litigation Privilege
RBCH00002_000000736							Level A	Litigation Privilege
RBCH00002_000000917							Level A	Litigation Privilege
RBCH00002_000000936							Level A	Litigation Privilege
RBCH00002_000000997							Level A	Litigation Privilege
RBCH00002_000001380							Level A	Litigation Privilege
RBCH00002_000001464							Level A	Litigation Privilege
RBCH00002_000002035	6/17/2021	RE: Call with Xplomet/xplome Mobile re: Proposed Rogers/Shaw transaction	Carl MacQuarrie <carl.macquarrie@corp.xplomet.com>	"Giles, Karyn (CB/BC)" <karyn.giles@cb-bc.gc.ca> "Jakubowski, Ryan (CB/BC)" <ryan.jakubowski@cb-bc.gc.ca> "Kowalczyzyn, Andrew (CB/BC)" <andrew.kowalczyzyn@cb-bc.gc.ca> "Lang, Greg (IC)" <greg.lang@canada.ca> "Leschinsky, Derek (CB/BC)" <derek.leschinsky@cb-bc.gc.ca> "Ranchod, Viresh (CB/BC)" <viresh.ranchod@cb-bc.gc.ca> "Sam, Sorina (IC)" <sorina.sam@canada.ca> "Sansom, Steve (CB/BC)" <steve.sansom@cb-bc.gc.ca> "Sonley, Laura (CB/BC)" <laura.sonley@cb-bc.gc.ca> CJ Prudham		Microsoft Outlook Note	Public	Litigation Privilege
RBCH00002_000002213							Level A	Litigation Privilege

RBCH00002_000003397		Level A	Litigation Privilege
RBCH00002_000003453		Level A	Litigation Privilege
RBCH00002_000003609		Level A	Litigation Privilege
RBCH00002_000003621		Level A	Litigation Privilege
RBCH00002_000003623		Level A	Litigation Privilege
RBCH00002_000003812		Level A	Litigation Privilege
RBCH00002_000003836		Level A	Litigation Privilege
RBCH00002_000003899		Level A	Litigation Privilege
RBCH00002_000004000		Level A	Litigation Privilege
RBCH00002_000004019		Level A	Litigation Privilege
RBCH00002_000004054		Level A	Litigation Privilege
RBCH00002_000004327		Level A	Litigation Privilege
RBCH00002_000004437		Level A	Litigation Privilege
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RBCH00002_000004817		Level A	Litigation Privilege
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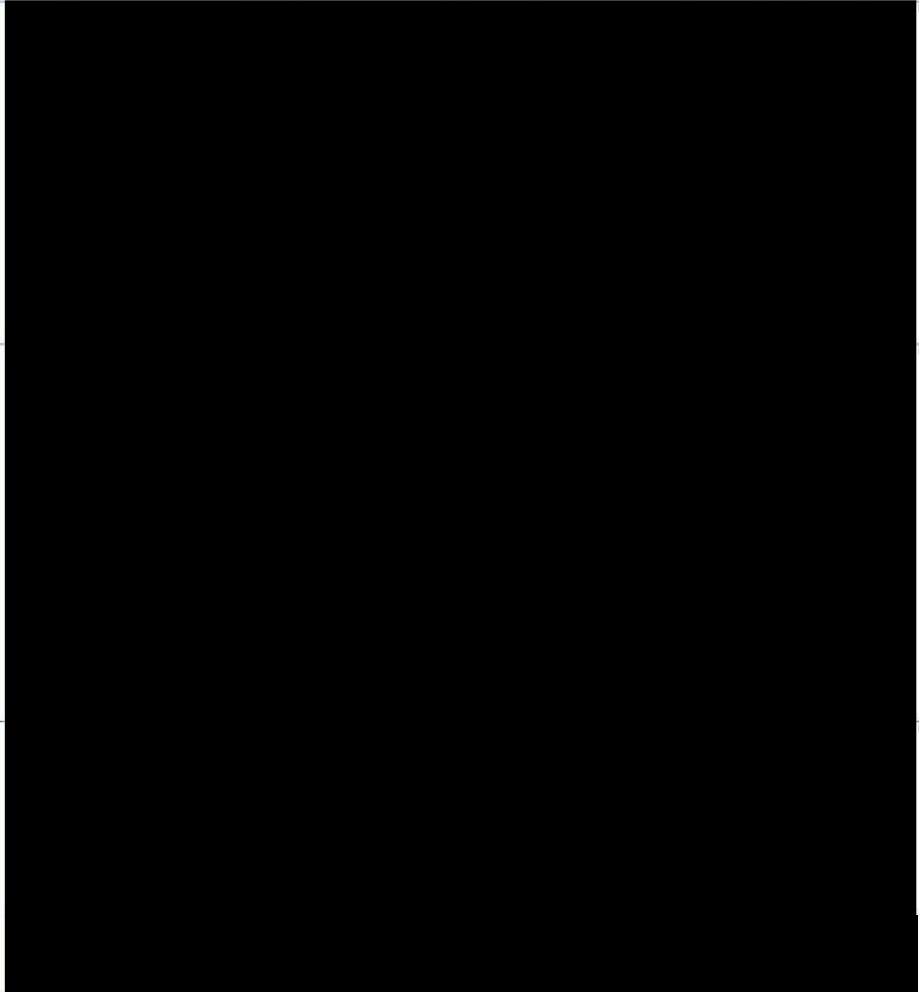
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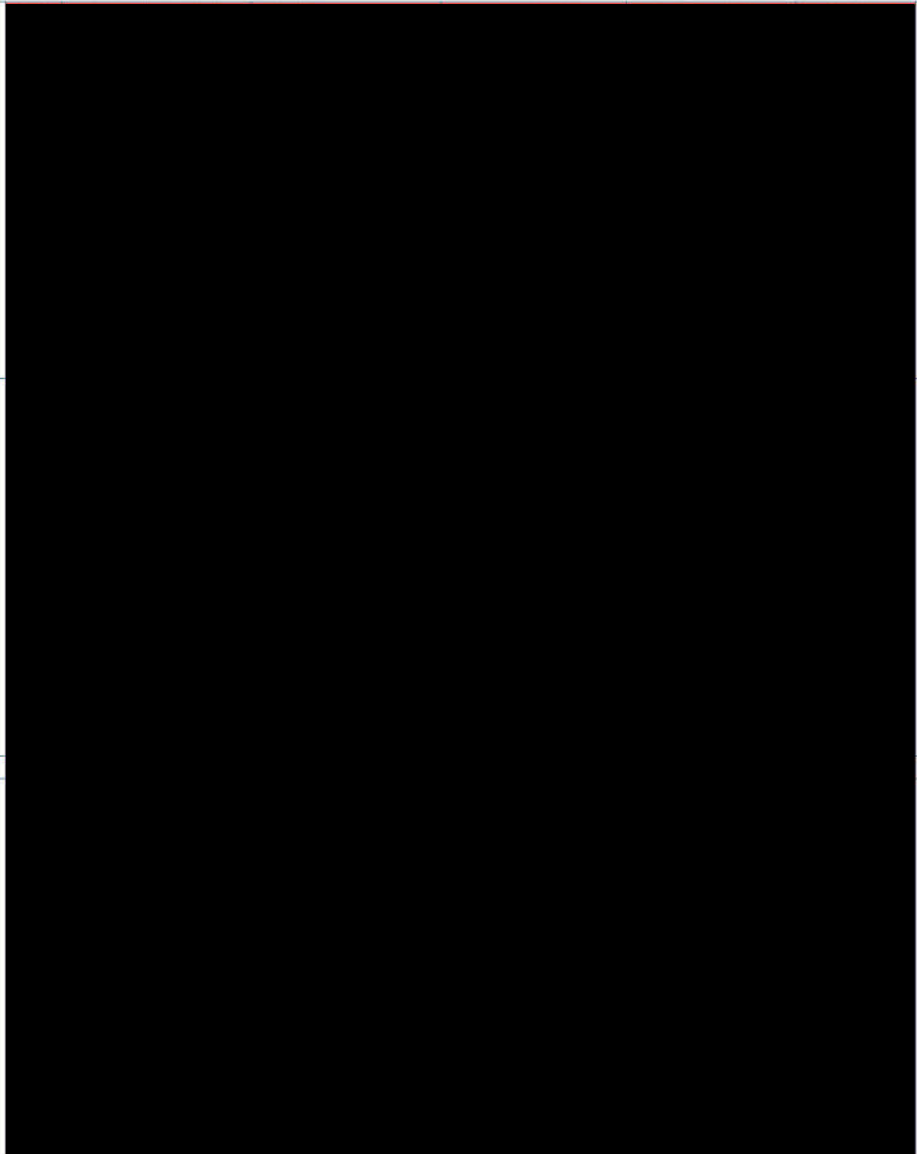
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RBCH0003_00001275	7/14/2021	RE: Update and request for a call	"Nadeau, Philippe" <philippe.nadeau@rrfr.qr.ca>	"Sornley, Laura (CB/BC)" <laura.sornley@rbc-hr.qr.ca>	"Brock, Christine" <christine.brock@rrfr.qr.ca>	Microsoft Outlook Note	Public
RBCH0003_00001375	[REDACTED]				Level A	Litigation Privilege	
RBCH0003_00001390					Level A	Litigation Privilege	
RBCH0003_00001426	[REDACTED]				Level A	Litigation Privilege	
RBCH0003_00001482					Level A	Litigation Privilege	

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RBCH00003_000002548						Level A	Litigation Privilege	
RBCH00003_000002552						Level A	Litigation Privilege	
RBCH00003_000002713						Level A	Litigation Privilege	
RBCH00003_000002756	7/5/2021	FW: Update and request for a call	"Sorley, Laura (CB/BC)" <*/o=exchange/ou=exchange administrative group (fydibohf23spdt)/cn=recipients/cn=73bb289c0469497296e59bad6978f417-1aue3_cae6c2_>	philippe.nadeau@crtc.gc.ca		Microsoft Outlook Note	Public	Litigation Privilege
RBCH00003_000002808	7/16/2021	RE: Request for a call	"Brock, Christine" <christine.brock@crtc.gc.ca>	"Assad, Stephanie (CB/BC)" <stephanie.assad@cb-bc.gc.ca>	"Briere, Marie-Helene (CB/BC)" <mari-helene.briere@cb-bc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00003_000002829	7/5/2021	RE: Update and request for a call	"Sorley, Laura (CB/BC)" <laura.sorley@cb-bc.gc.ca>	"Lelièvre, Cédrick" <cedrick.lelievre@crtc.gc.ca> "Saicheua, Kay" <kay.saicheua@crtc.gc.ca> Andrew Falcone (CRTC) <andrew.falcone@crtc.gc.ca>	"Leschinsky, Derek (CB/BC)" <derek.leschinsky@cb-bc.gc.ca> "Sam, Sorina (CB/BC)" <sorina.sam@cb-bc.gc.ca> "Sansom, Steve (CB/BC)" <steve.sansom@cb-bc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
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RBCH0003_00003347						Level A	Litigation Privilege	
RBCH0003_00003697						Level A	Litigation Privilege	
RBCH0003_00003754						Level A	Litigation Privilege	
RBCH0003_00003773						Level A	Litigation Privilege	
RBCH0003_00004032	7/15/2021	FW: Update and request for a call	"Sonley, Laura (CB/BC)" <"/o=exchange/cn=administrative_group (f7d1b0f23spdl)/cn=recipients/cn=73b6289cd46949f296e59bad6978f417-1...>	"Assad, Stephanie (CB/BC)" <stephanie.assad@cb-bc.gc.ca> "Briere, Marie-Helene (CB/BC)" <marie-helene.briere@cb-bc.gc.ca>	"Sam, Sorina (CB/BC)" <sorina.sam@cb-bc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH0003_00004099						Level A	Litigation Privilege	
RBCH0003_00004193	7/2/2021	RE: Update and request for a call	"Saicheua, Kay" <kay.saicheua@crtc.gc.ca>	"Lelièvre, Cédrick" <cedrick.lelievre@crtc.gc.ca> "Sonley, Laura (CB/BC)" <laura.sonley@cb-bc.gc.ca> Andrew Falcone (CRTC)	"Leschinsky, Derek (CB/BC)" <derek.leschinsky@cb-bc.gc.ca> "Sam, Sorina (CB/BC)" <sorina.sam@cb-bc.gc.ca> "Sansom, Steve (CB/BC)"	Microsoft Outlook Note	Public	Litigation Privilege
RBCH0003_00004275						Level A	Litigation Privilege	
RBCH0003_00004676	7/20/2021	RE: Request for a call	"Brock, Christine" <christine.brock@crtc.gc.ca>	"Assad, Stephanie (CB/BC)" <stephanie.assad@cb-bc.gc.ca>		Microsoft Outlook Note	Public	Litigation Privilege
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RBCH0003_00005903						Level A	Litigation Privilege	
RBCH0003_000010188						Level A	Litigation Privilege	
RBCH0003_000010470						Level A	Litigation Privilege	

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RBCH00003_000011013		Level A	Litigation Privilege
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RBCH00003_000011354		Level A	Litigation Privilege
RBCH00007_000000001		Level A	Litigation Privilege
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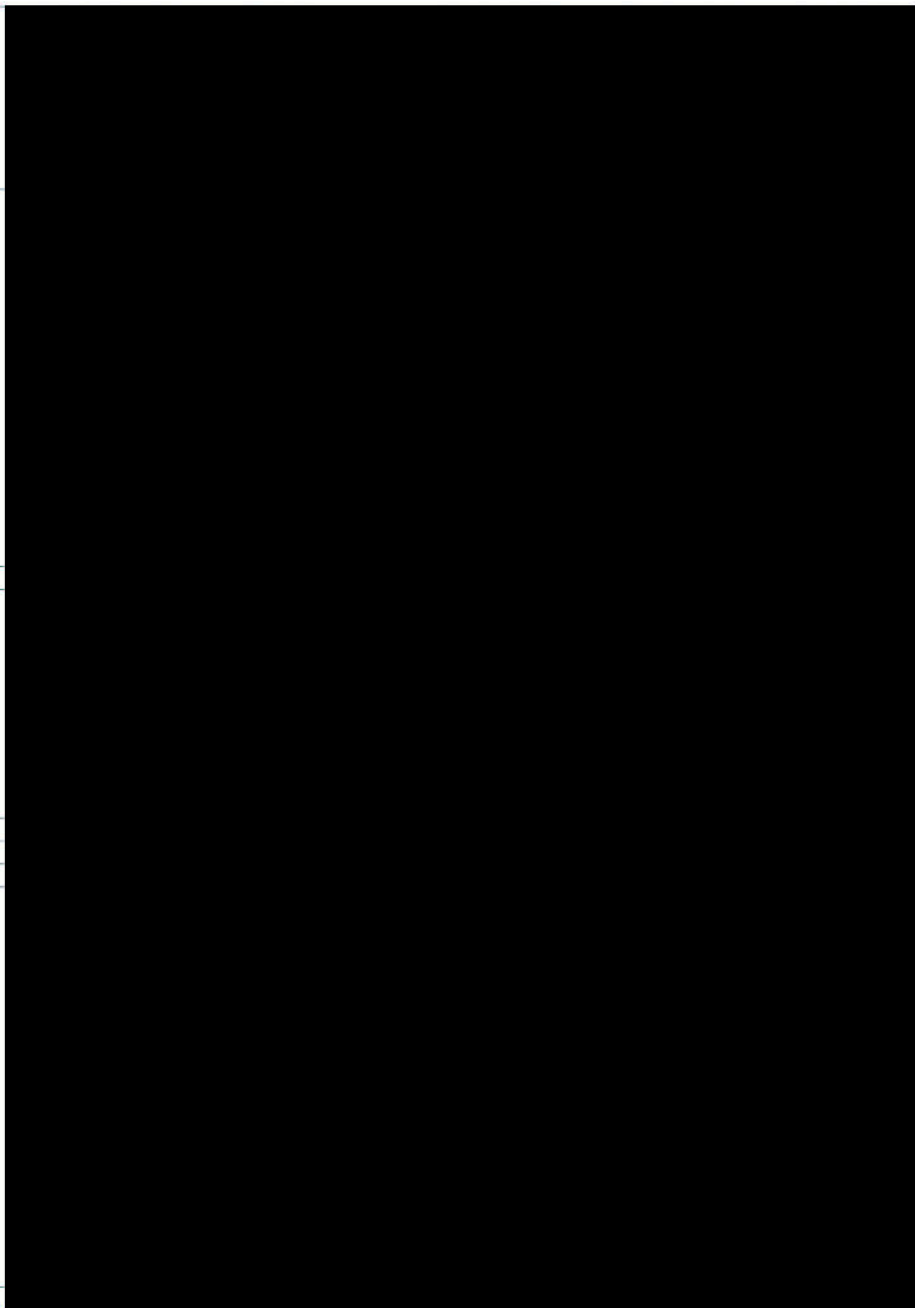
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RBCH0007_00001126	Level A	Uigation Privilege	
RBCH0007_00001384	Level A	Uigation Privilege	

RBCH0007_00001452	[REDACTED]				Level A	Litigation Privilege	
RBCH0007_00001633					Level A	Litigation Privilege	
RBCH0007_00001757					Level A	Litigation Privilege	
RBCH0007_00002028					11/7/2021	[REDACTED] Correspondence with Third Party	Communications communications@irte.or.ca
RBCH0007_00002781	[REDACTED]				Level A	Litigation Privilege	
RBCH0007_00002782					Level A	Litigation Privilege	

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RBCH00007_000003479		Level B	Litigation Privilege
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RBCH00007_000003581		Level A	Litigation Privilege	
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RBCH0007_00009349	10/7/2021	[REDACTED: Correspondence with Third Party]	"McLean, Kristen (CB/BC)" <"/o=exchangelabs/ou=exchange administrative group (fydibohf23spdl)/cn=recipients/cn=a6c ac7658f0146468d67b2c2836b2641-...>	Communications <communications@ortc.gc.ca>		Microsoft Outlook Note	Public	Litigation Privilege
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RBCH0007_000013555	10/13/2021	[REDACTED: Correspondence with Third Party]	Communications	<communications@ortc.gc.ca>		Microsoft Outlook Note	Public	Litigation Privilege
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RBCH00009_000001402	12/8/2021	RE: Quick favour	"Sorley, Laura (CB/BC)" <?o=exchange/ou=exchange administrative group (fydibohf23pdlt)/cn=recipients/cn=73b6289c046949f296e59bad6978f417-laura.sorley">	"Lendvay, Jeremy" <jeremy.lendvay@crtc.gc.ca>	"Kent, Philippe" <philippe.kent@crtc.gc.ca> "Lelièvre, Cédric" <cedrick.lelievre@crtc.gc.ca> "Nadeau, Philippe" <philippe.nadeau@crtc.gc.ca> "Slicheau, Kay" <kay.slicheau@crtc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00009_000001427					Level A	Litigation Privilege		
RBCH00009_000001594					Level A	Litigation Privilege		

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RBCH00009_000001717	12/9/2021	RE: Quick favour	"Lendvay, Jeremy" <jeremy.lendvay@rrtc.gc.ca>	"Sonley, Laura (CB/BC)" <laura.sonley@cb-hc.gc.ca>	"Kent, Philippe" <philippe.kent@rrtc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00009_000001730	1/5/2022	RE: Quick favour	"Lendvay, Jeremy" <jeremy.lendvay@rrtc.gc.ca>	"Sonley, Laura (CB/BC)" <laura.sonley@cb-hc.gc.ca>	"Kent, Philippe" <philippe.kent@rrtc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
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RBC100009_000004663	12/8/2021	RE: Quick Review	"Sorley, Laura (CB/BC)" <laura.sorley@cb-bc.gc.ca>	"Sorley, Laura (CB/BC)" <laura.sorley@cb-bc.gc.ca>	"Kent, Philippe" "Lalonde, Cedrick" "Nadeau, Philippe" <philippe.nadeau@ortc.gc.ca>	Microsoft Outlook Note Public	Litigation Privilege
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RBCH00010_000002792							Level A	Litigation Privilege
RBCH00010_000003224	1/18/2022	RE: Quick favour	"Lendvay, Jeremy" <jeremy.lendvay@ortc.gc.ca>	"Sorley, Laura (CB/BC)" <laura.sorley@chc-hc.gc.ca>	"Kent, Philippe" <philippe.kent@ortc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00010_000003506	1/18/2022	RE: Quick favour	"Sorley, Laura (CB/BC)" <"/o=exchangelabs/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=73b6289c046949f296e59bad6978f417-...>	"Lendvay, Jeremy" <jeremy.lendvay@ortc.gc.ca>	"Kent, Philippe" <philippe.kent@ortc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00010_000004079							Level A	Litigation Privilege
RBCH00010_000004348	1/19/2022	RE: Quick favour	"Lendvay, Jeremy" <jeremy.lendvay@ortc.gc.ca>	"Sorley, Laura (CB/BC)" <laura.sorley@chc-hc.gc.ca>	"Kent, Philippe" <philippe.kent@ortc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
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RBCH00010_000004789							Level A	Litigation Privilege
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RBCH00010_000005210	1/19/2022	RE: Quick favour	"Sorley, Laura (CB/BC)" <"/o=exchangelabs/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=73b6289c046949f296e59bad6978f417-...>	"Lendvay, Jeremy" <jeremy.lendvay@ortc.gc.ca>	"Kent, Philippe" <philippe.kent@ortc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
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RBCH00011_00000612	2/28/2022	RE: Competition Bureau: Question re [REDACTED]	"Briere, Marie-Helene (CB/BC)" <?o=exchangeabst/ou=exchange administrative group (fydibohf23spdl)/cn=recipients/cn=7a e61b1a9b6d47a89814ea9b9774edd-marie-helen">	cisws / csrbs (STATCAN) <statcan.cisws-csrbs.statcan@statcan.gc.ca>	"Asherman, Andrea - CISWS/CSRBS" <andrea.asherman@statcan.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
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RBCH00011_000001145		Level B	Litigation Privilege
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RBCH00011_000001738						Level A	Litigation Privilege	
RBCH00011_000002006	2/24/2022	RE: Competition Bureau: Question re [REDACTED]	"Briere, Marie-Helene (CB/BC)" <"/o=exchangelabs/ou=exchange administrative group (fydibohf23pdlit)/cn=recipients/cn=7a e61b1a9b6d47a89814eaa9b9774edd-...@statcan.gc.ca>	"Wang, Weimin - EAD/DAE" <weimin.wang@statcan.gc.ca>	"Kowalczyzyn, Andrew (CB/BC)" <andrew.kowalczyzyn@cb-bc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00011_000002270	2/25/2022	RE: Competition Bureau: Question re [REDACTED]	"Couture, Caroline - CISWS/CSRBs" <caroline.couture@statcan.gc.ca>	"Brennan, Jim - CISWS/CSRBs" <jim.brennan@statcan.gc.ca> "Briere, Marie-Helene (CB/BC)" <marie-helene.briere@cb-bc.gc.ca> "Fox, Dan - CISWS/CSRBs" <dan.fox@statcan.gc.ca>	"Asherman, Andrea - CISWS/CSRBs" <andrea.asherman@statcan.gc.ca> "Kowalczyzyn, Andrew (CB/BC)" <andrew.kowalczyzyn@cb-bc.gc.ca> "Leschinsky, Derek (CB/BC)"	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00011_000004089	3/1/2022	RE: Competition Bureau: Question re [REDACTED]	"Briere, Marie-Helene (CB/BC)" <"/o=exchangelabs/ou=exchange administrative group (fydibohf23pdlit)/cn=recipients/cn=7a e61b1a9b6d47a89814eaa9b9774edd-...@statcan.gc.ca>	cisws / csrbs (STATCAN) <statcan.cisws-csrb@statcan.gc.ca>	"Asherman, Andrea - CISWS/CSRBs" <andrea.asherman@statcan.gc.ca> "Kowalczyzyn, Andrew (CB/BC)" <andrew.kowalczyzyn@cb-bc.gc.ca> "Leschinsky, Derek (CB/BC)"	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00011_000004806						Level A	Litigation Privilege	
RBCH00011_000005328						Level A	Litigation Privilege	
RBCH00011_000005627	2/8/2022	RE: Follow-up questions	"Lendvay, Jeremy" <jeremy.lendvay@crtc.gc.ca>	"Kent, Philippe" <philippe.kent@crtc.gc.ca> "Sonley, Laura (CB/BC)" <laura.sonley@cb-bc.gc.ca>	"Kachi, Nanao" <nanao.kachi@crtc.gc.ca> "Leschinsky, Derek (CB/BC)" <derek.leschinsky@cb-bc.gc.ca> "McLean, Kristen (CB/BC)" <kristen.mclean@cb-bc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00011_000005673						Level A	Litigation Privilege	
RBCH00011_000006242	2/23/2022	Competition Bureau: Question re [REDACTED]	"Briere, Marie-Helene (CB/BC)" <"/o=exchangelabs/ou=exchange administrative group (fydibohf23pdlit)/cn=recipients/cn=7a e61b1a9b6d47a89814eaa9b9774edd-...@statcan.gc.ca>	"Li, Jiang Beryl - EAD/DAE" <jiangberyl.li@statcan.gc.ca>	"Kowalczyzyn, Andrew (CB/BC)" <andrew.kowalczyzyn@cb-bc.gc.ca> weimin.wang@statcan.gc.ca	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00012_000000029	3/3/2022	RE: [REDACTED: Correspondence with Third Party]	"Sonley, Laura (CB/BC)" <laura.sonley@cb-bc.gc.ca>	"Kachi, Nanao" <nanao.kachi@crtc.gc.ca>	"Leschinsky, Derek (CB/BC)" <derek.leschinsky@cb-bc.gc.ca> "Moon, Stephen (CB/BC)" <stephen.moon@cb-bc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00012_000000299	3/3/2022	RE: [REDACTED: Correspondence with Third Party]	"Kachi, Nanao" <nanao.kachi@crtc.gc.ca>	"Sonley, Laura (CB/BC)" <laura.sonley@cb-bc.gc.ca>	"Leschinsky, Derek (CB/BC)" <derek.leschinsky@cb-bc.gc.ca> "Moon, Stephen (CB/BC)" <stephen.moon@cb-bc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00012_000000465	3/7/2022	RE: [REDACTED: Correspondence with Third Party]	"Kachi, Nanao" <nanao.kachi@crtc.gc.ca>	"Sonley, Laura (CB/BC)" <laura.sonley@cb-bc.gc.ca>	"Leschinsky, Derek (CB/BC)" <derek.leschinsky@cb-bc.gc.ca> "Moon, Stephen (CB/BC)" <stephen.moon@cb-bc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
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RBCH00012_000000550						Level A	Litigation Privilege	
RBCH00012_000000602						Level A	Litigation Privilege	
RBCH00012_000001626	3/7/2022	RE: [REDACTED: Correspondence with Third Party]	"Kachi, Nanao" <nanao.kachi@crtc.gc.ca>	"Sonley, Laura (CB/BC)" <laura.sonley@cb-bc.gc.ca>	"Leschinsky, Derek (CB/BC)" <derek.leschinsky@cb-bc.gc.ca> "Moon, Stephen (CB/BC)" <stephen.moon@cb-bc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00012_000002033	3/8/2022	RE: [REDACTED: Correspondence with Third Party]	"Sonley, Laura (CB/BC)" <laura.sonley@cb-bc.gc.ca>	"Kachi, Nanao" <nanao.kachi@crtc.gc.ca>	"Leschinsky, Derek (CB/BC)" <derek.leschinsky@cb-bc.gc.ca> "Moon, Stephen (CB/BC)" <stephen.moon@cb-bc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege
RBCH00012_000002272	3/7/2022	RE: [REDACTED: Correspondence with Third Party]	"Sonley, Laura (CB/BC)" <laura.sonley@cb-bc.gc.ca>	"Kachi, Nanao" <nanao.kachi@crtc.gc.ca>	"Leschinsky, Derek (CB/BC)" <derek.leschinsky@cb-bc.gc.ca> "Moon, Stephen (CB/BC)" <stephen.moon@cb-bc.gc.ca>	Microsoft Outlook Note	Public	Litigation Privilege

Case ID	Date	Description	Party 1	Party 2	Party 3	Party 4	Category	Privilege
RBCH00012_000003865	3/1/2022	[REDACTED: Correspondence with Third Party]	"Sorley, Laura (CB/BC)" <laura.sorley@cb-bc.gc.ca>	"Kachi, Nanao" <nanao.kachi@crtc.gc.ca>	"Leschinsky, Derek (CB/BC)" <derek.leschinsky@cb-bc.gc.ca>	"Moon, Stephen (CB/BC)" <stephen.moon@cb-bc.gc.ca>	Microsoft Outlook Note	Public, Litigation Privilege
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RBCH00012_000004088								Level A, Litigation Privilege
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RBCH00014_000000079								Level A, Litigation Privilege
RBCH00014_000000085								Level B, Litigation Privilege
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RBCH00014_000000259	2/1/2022	[REDACTED: Document from Third Party]					Portable Document Format	Public, Litigation Privilege
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RBCH00014_000000262	2/1/2022	[REDACTED: Document from Third Party]					Portable Document Format	Public, Litigation Privilege
RBCH00014_000000263	2/1/2022	[REDACTED: Document from Third Party]					Portable Document Format	Public, Litigation Privilege
RBCH00014_000000264	2/1/2022	[REDACTED: Document from Third Party]					Portable Document Format	Public, Litigation Privilege
RBCH00014_000000265	2/1/2022	[REDACTED: Document from Third Party]					Portable Document Format	Public, Litigation Privilege
RBCH00014_000000266	2/1/2022	[REDACTED: Document from Third Party]					Portable Document Format	Public, Litigation Privilege
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“SCHEDULE 2”

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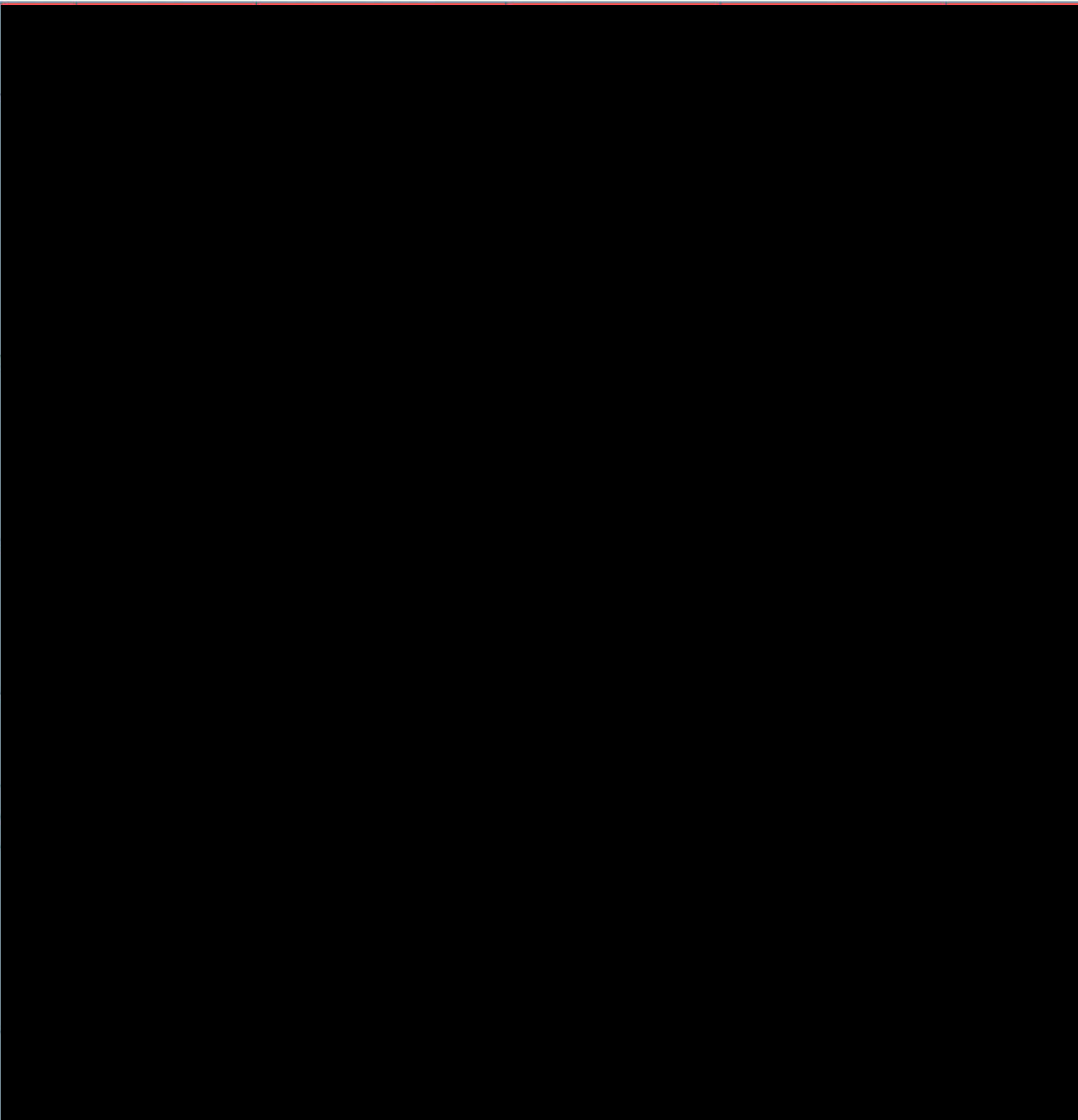
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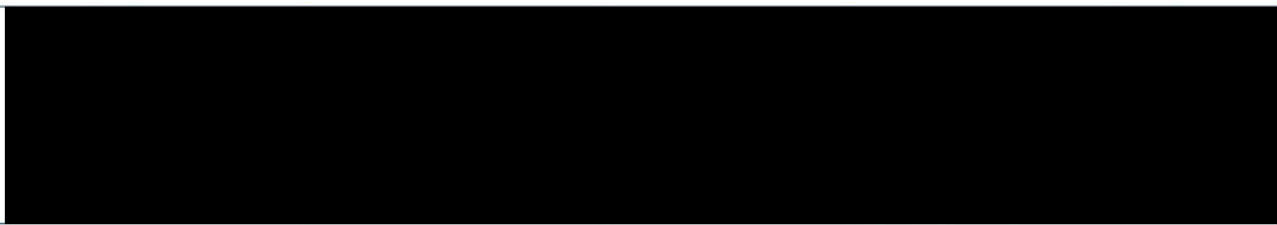
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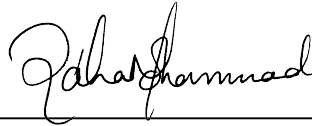
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RBCH00019_000003993		Level A	Litigation Privilege
RBCH00019_000004017		Level A	Litigation Privilege
RBCH00019_000004256		Level A	Litigation Privilege
RBCH00019_000004461		Level A	Litigation Privilege
RBCH00019_000004579		Level A	Litigation Privilege
RBCH00019_000004580		Level A	Litigation Privilege

RBCH00019_000004856		Level A	Litigation Privilege
RBCH00019_000004981		Level A	Litigation Privilege
RBCH00019_000005119		Level A	Litigation Privilege
RBCH00020_000000400		Level A	Litigation Privilege
RBCH00020_000000407		Level A	Litigation Privilege
RBCH00020_000002157		Level A	Litigation Privilege
RBCH00020_000002371		Level A	Litigation Privilege
RBCH00020_000002572		Level A	Litigation Privilege

RBCH00020_000002912		Level A	Litigation Privilege
RBCH00020_000003048		Level A	Litigation Privilege
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RBCH00020_000005989		Level A	Litigation Privilege
RBCH00020_000006989		Level A	Litigation Privilege
RBCH00020_000007567		Level A	Litigation Privilege
RBCH00020_000008204		Level A	Litigation Privilege

RBCH00020_000008286		Level A	Litigation Privilege
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This is **Exhibit "A"** to the affidavit of Eric Widdowson, affirmed remotely by Eric Widdowson stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on July 27, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

From: Leschinsky, Derek (CB/BC)
Sent: July 11, 2022 1:23 PM
To: Ricci, Derek; Crawford Smith; Tyhurst, John (CB/BC)
Cc: Jonathan Lisus; Brad Vermeersch; Banicevic, Anita; Wall, Jonathan; Thomson, Kent; Frankel, Steven; Cormack, Sarah; Syed, Amani (CB/BC); Mohammad, Raha (CB/BC); Bakelaar, Darian (CB/BC); Rydel, Katherine (CB/BC); Bodrug, John; Hong, Kevin (CB/BC); Rosner, David; Caron, Ryan (CB/BC); Kearney, Elisa
Subject: RE: Rogers/Shaw - Confidentiality Order [LOLG-DMS.FID125335]

Counsel,

We are following up with the Bureau regarding your emails below. We will not be in a position to confirm any different position by 4 pm today than we have previously communicated to you. The parties should continue to treat materials marked as Level A as Level A. We do not agree that the parties are entitled to depart, unilaterally, from the designations so marked. In the meantime, could you please identify each person who a party might identify as a Designated Representative in addition to Ms. Wyse and Mr. Johnson?

Thank you,

Derek Leschinsky

Senior Counsel
Competition Bureau Legal Services
Department of Justice / Government of Canada
Derek.Leschinsky@cb-bc.gc.ca / 613-818-1611

Avocat principal
Services juridiques Bureau de la concurrence Canada
Ministère de la Justice / Gouvernement du Canada
Derek.Leschinsky@bc-cb.gc.ca / 613-818-1611

From: Ricci, Derek <dricci@dwpv.com>
Sent: July 7, 2022 5:21 PM
To: Crawford Smith <csmith@lolg.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Banicevic, Anita <ABanicevic@dwpv.com>; Wall, Jonathan <JWall@goodmans.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Cormack, Sarah <SCormack@dwpv.com>; Syed, Amani (CB/BC) <Amani.Syed@cb-bc.gc.ca>; Mohammad, Raha (CB/BC) <raha.mohammad@cb-bc.gc.ca>; Bakelaar, Darian (CB/BC) <darian.bakelaar@cb-bc.gc.ca>; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Bodrug, John <JBodrug@dwpv.com>; Hong, Kevin (CB/BC) <Kevin.Hong@cb-bc.gc.ca>; Rosner, David <DRosner@goodmans.ca>; Caron, Ryan (CB/BC) <Ryan.Caron@cb-bc.gc.ca>; Kearney, Elisa <ekearney@dwpv.com>
Subject: RE: Rogers/Shaw - Confidentiality Order [LOLG-DMS.FID125335]

John, Derek:

We agree with Crawford's email below.

Peter Johnson, Executive Vice President & Chief Legal and Regulatory Officer of Shaw, has filed a Confidentiality Undertaking with the Tribunal authorizing him to review confidential material. Our intention is to

provide all section 104 materials to Mr. Johnson, unless you advise of the specific portions of the record that are Level A Protected by 4pm on July 11.

We also expect to designate additional representatives of Shaw in due course.

Regards,

Derek.

From: Crawford Smith <csmith@lolg.ca>

Sent: July 6, 2022 5:09 PM

To: Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>

Cc: Jonathan Lisus <jlisus@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Ricci, Derek <dricci@dwpv.com>;

Banicevic, Anita <ABanicevic@dwpv.com>; Wall, Jonathan <JWall@goodmans.ca>; Thomson, Kent

<KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Cormack, Sarah <SCormack@dwpv.com>; Syed,

Amani (CB/BC) <Amani.Syed@cb-bc.gc.ca>; Mohammad, Raha (CB/BC) <raha.mohammad@cb-bc.gc.ca>; Bakelaar,

Darian (CB/BC) <darian.bakelaar@cb-bc.gc.ca>; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Bodrug, John

<JBodrug@dwpv.com>; Hong, Kevin (CB/BC) <Kevin.Hong@cb-bc.gc.ca>; Rosner, David <DRosner@goodmans.ca>;

Caron, Ryan (CB/BC) <Ryan.Caron@cb-bc.gc.ca>; Kearney, Elisa <ekearney@dwpv.com>

Subject: RE: Rogers/Shaw - Confidentiality Order [LOLG-DMS.FID125335]

External Email / Courriel externe

John, Derek

We have reflected on Derek Ricci's note below and the parties' discussions last month. We have also reviewed the issued Confidentiality Order and the relevant cases both before the Competition Tribunal and the Federal Court concerning the use of the Level A designation and the test required for a protective order. It remains our view that the Commissioner's designation of all of the materials as "Level A" confidentiality is overinclusive and inconsistent with the Confidentiality Order. The Level A designation in the Order is reserved for information designated by the Commissioner that could identify a third party who is reasonably concerned about the public disclosure of its identity.

Your May 24 email and our last discussion on this topic suggest that the Commissioner is using the Level A designation to shield information he believes could be competitively sensitive. This is inconsistent with the express terms of the Order and an improper use of the Level A designation. Further, the concern you have articulated – assuming it is valid – is answered entirely by the undertaking attached to the Order which must be provided by designated representatives, not to mention the implied undertaking in section 62 of the *Competition Tribunal Rules*. In any event, it is the Commissioner who must demonstrate with evidence that there is a specific, direct harm that would result from disclosure of the information. The Commissioner's concern that Rogers and Shaw will receive competitively sensitive information is an insufficient basis to shield the small number of designated representatives at Shaw or Rogers from reviewing the vast majority of the s. 104 materials, even if this were permitted by the Order which it is not. There is no specific, direct harm flowing from sharing the s. 104 record with the limited number of designated representatives for Shaw and Rogers and the Commissioner has not adduced any evidence to suggest there would be.

Marisa Wyse for Rogers has filed the undertaking with the Tribunal to authorize her to review confidential material. Our intention is to provide all section 104 materials to Ms. Wyse unless you advise of the portions of the record that are Level A Protected by 4pm on July 11. We expect further designated representatives will be identified in due course.

If there is an issue with this approach, we intend to bring a motion. As you can appreciate, with production being made next Friday, it is important the parties reach a resolution of this issue promptly.

Crawford G. Smith

Direct 416 598 8648

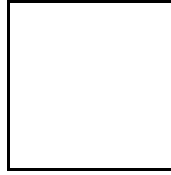
Cell 416 419 6442

csmith@lolg.ca**Lax O'Sullivan Lisus Gottlieb LLP**

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This e-mail message is confidential, may be privileged and is intended for the exclusive use of the addressee. Any other person is strictly prohibited from disclosing, distributing or reproducing it. If the addressee cannot be reached or is unknown to you, please inform us immediately by telephone at 416 598 1744 at our expense and delete this e-mail message and destroy all copies. Thank you.

From: Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>**Sent:** May-24-22 9:48 AM**To:** Ricci, Derek <dricci@dwpv.com>**Cc:** Jonathan Lisus <jlisus@lolg.ca>; Crawford Smith <csmith@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Koch, Michael <mkoch@goodmans.ca>; Banicevic, Anita <ABanicevic@dwpv.com>; Wall, Jonathan <JWall@goodmans.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Cormack, Sarah <SCormack@dwpv.com>; Rosenthal, Julie <jrosenthal@goodmans.ca>; Syed, Amani (CB/BC) <Amani.Syed@cb-bc.gc.ca>; Mohammad, Raha (CB/BC) <raha.mohammad@cb-bc.gc.ca>; Bakelaar, Darian (CB/BC) <darian.bakelaar@cb-bc.gc.ca>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Chua, Suzanie (CB/BC) <suzanie.chua@cb-bc.gc.ca>; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Bodrug, John <JBodrug@dwpv.com>; Hong, Kevin (CB/BC) <Kevin.Hong@cb-bc.gc.ca>; Gay, Marie-Helene (CB/BC) <Marie-Helene.Gay@cb-bc.gc.ca>; Rosner, David <DRosner@goodmans.ca>; Caron, Ryan (CB/BC) <Ryan.Caron@cb-bc.gc.ca>; Kearney, Elisa <ekearney@dwpv.com>**Subject:** RE: Rogers/Shaw - Confidentiality Order

Derek,

The designation of records as Level A confidential by the Bureau was intentional and subject to further consideration of particular designations you might bring to our attention, is something that the Bureau intends to maintain. Among other things, the Bureau is naturally concerned about competitors Rogers and Shaw sharing competitively sensitive information. We trust that you understand the competition basis for this approach and that the Respondents will maintain all Level A designations.

Thank you,

Derek Leschinsky

Senior Counsel

Competition Bureau Legal Services

Department of Justice / Government of Canada

Derek.Leschinsky@cb-bc.gc.ca / 613-818-1611

Avocat principal

Services juridiques Bureau de la concurrence Canada

Ministère de la Justice / Gouvernement du Canada

Derek.Leschinsky@bc-cb.gc.ca / 613-818-1611

From: Ricci, Derek <dricci@dwpv.com>**Sent:** May 24, 2022 8:55 AM

To: Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>

Cc: Jonathan Lisus <jlisus@lolg.ca>; Crawford Smith <csmith@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Koch, Michael <mkoch@goodmans.ca>; Banicevic, Anita <ABanicevic@dwpv.com>; Wall, Jonathan <JWall@goodmans.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Cormack, Sarah <SCormack@dwpv.com>; Rosenthal, Julie <jrosenthal@goodmans.ca>; Syed, Amani (CB/BC) <Amani.Syed@cb-bc.gc.ca>; Mohammad, Raha (CB/BC) <raha.mohammad@cb-bc.gc.ca>; Bakelaar, Darian (CB/BC) <darian.bakelaar@cb-bc.gc.ca>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Chua, Suzanie (CB/BC) <suzanie.chua@cb-bc.gc.ca>; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Bodrug, John <JBodrug@dwpv.com>; Hong, Kevin (CB/BC) <Kevin.Hong@cb-bc.gc.ca>; Gay, Marie-Helene (CB/BC) <Marie-Helene.Gay@cb-bc.gc.ca>; Rosner, David <DRosner@goodmans.ca>; Caron, Ryan (CB/BC) <Ryan.Caron@cb-bc.gc.ca>; Kearney, Elisa <ekearney@dwpv.com>

Subject: Rogers/Shaw - Confidentiality Order

Derek:

I'm writing concerning the confidentiality designation of the materials filed to date by the Commissioner.

The Confidentiality Order issued by the Tribunal last week (attached) contemplates two types of "Protected Records" – Level A Protected and Level B Protected. Pursuant to paragraph 3 of the Confidentiality Order, the Level A Protected designation is restricted to information designated by the Commissioner that "could identify a Third Party who is reasonably concerned about the public disclosure of its identity". The Level B Protected designation applies to all other Protected Records.

To the extent that the materials filed to date by the Commissioner include a confidentiality designation, the Commissioner has used only the "Level A" designation, rather than the "Level B" designation. The Commissioner's use of the "Level A" designation – which, in fairness, pre-dates the issuance of the Confidentiality Order – appears to us to be in error. Instead, it is apparent based on our review of the materials that the Commissioner intended to apply the "Level B" designation to the materials in question. We have not to date identified any material that could properly fall within the "Level A" designation.

Accordingly, unless we hear from you by 2:00 pm today, we will proceed on the basis that all of the "Level A" designations in the Commissioner's materials are, in fact, "Level B" designations.

While we are eager to sort out this labelling issue as soon as possible in order to allow disclosure of information to Designated Representatives, we continue to reserve all of our rights with respect to the Commissioner's confidentiality designations.

Kind regards,

Derek.

Derek Ricci

T 416.367.7471

dricci@dwpv.com

[Bio](#) | [vCard](#)

DAVIES

155 Wellington Street West

Toronto, ON M5V 3J7

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DAVIES WARD PHILLIPS & VINEBERG LLP

This email may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply email or by telephone. Delete this email and destroy any copies.

This is **Exhibit “B”** to the affidavit of Eric Widdowson, affirmed remotely by Eric Widdowson stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on July 27, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.



**Department of Justice
Canada**

**Ministère de la Justice
Canada**

National Capital Region
National Litigation Sector
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Région de la Capitale nationale
Secteur national du contentieux
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Ottawa (ON) K1A 0H8

Telephone/Téléphone: 613 296 4770
Fax /Télécopieur: 613-954-1920
Email/Courriel: Alexander.gay@justice.gc.ca

July 15, 2022

LAX O'SULLIVAN LISUS GOTTLIEB LLP

145 King Street West
Suite 2750
Toronto, ON M5H 1J8

Attn: Jonathan Lisus
Crawford Smith
Matthew Law
Bradley Vermeersch

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto, ON M5V 3J7

Attn: Kent E. Thomson
Derek D. Ricci
Steven Frankel
Chanakya A. Sethi

Dear Sirs:

Re: Commissioner v. Rogers and Show/CT-2002-002

I am counsel to the Commissioner of Competition in respect of your impending motion. I acknowledge receipt of your Motion Record, returnable July 25, 2022.

The motion you have brought on behalf of your clients affects the rights and interests of parties other than the Commissioner, as you are aware. I would ask that you serve your Motion Record on all affected parties whose information may be disclosed to Rogers and Shaw personnel under the re-designation sought and compromised as a result of your motion, specifically BCE Inc., TELUS Corporation, Distributel Communications Limited, Sudeep Verma, Sameer Dhamani and Stonepeak Infrastructure Partners LP.

Given the number of parties that we anticipate may wish to be involved in this motion, among other things, we do not see that this motion can be argued on July 25, 2022. We will need to coordinate with the affected parties in the scheduling of this motion.

I will move to advise these affected parties of your motion materials.

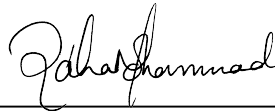
Yours very truly,

Alexander Gay

Alexander Gay

General Counsel

This is **Exhibit “C”** to the affidavit of Eric Widdowson, affirmed remotely by Eric Widdowson stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on July 27, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

Crawford G. Smith

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csmith@lolg.ca

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Suite 2750, 145 King St W
Toronto ON M5H 1J8 Canada
T 416 598 1744 F 416 598 3730
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The logo for Lax O'Sullivan Lisus Gottlieb is a dark blue square with white text. The text is arranged in four lines: "Lax", "O'Sullivan", "Lisus", and "Gottlieb".

July 18, 2022

BY EMAIL

Alexander Gay
General Counsel
Department of Justice
National Capital Region
National Litigation Sector
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Dear Mr. Gay:

Commissioner v. Rogers and Shaw/CT-2002-002

We are in receipt of your letter dated July 15, 2022, and respond on behalf of the Respondents.

The Commissioner chose to designate the materials at issue as subject to Level A confidentiality. At no point did either the Commissioner or any of the individuals/entities said by your letter to be affected by this motion identify a "reasonabl[e] concern about the public disclosure of [their] identity" pursuant to paragraph 3 of the Confidentiality Order, or provide some other justifiable basis for which documents should be restricted only to the Respondents' external counsel and experts. If there were a serious and significant concern that could warrant maximum confidentiality protections, we expect that the Commissioner would have asserted it by now. He has not, and despite counsel's overtures, has failed [to] provide any basis in the Confidentiality Order or at common law for a blanket "Level A" designation across the s. 104 materials.

The Respondents have no obligation to serve their motion record on non-parties. The Commissioner alone bears the burden of justifying his designations under the Confidentiality Order. It is not the Respondents' responsibility to locate and serve persons who may or may not have a position on this issue or any aspect of it. This is unnecessary for the Commissioner to respond to this motion in any event.

Finally, it is regrettable that the Commissioner raises concerns about non-party interests at this late hour, despite having been aware of the Respondents' position for weeks, and having had ample time to formulate his position on confidentiality designations in consultation with the affiants in his s. 104 application. This matter is proceeding on a

highly expedited timeline on the agreement of all parties. Our motion will proceed at the case conference on July 25, 2022, and we will resist any attempt to delay the resolution of a dispute that the Commissioner should have addressed long ago.

Yours truly,

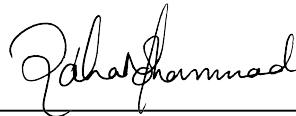
A handwritten signature in blue ink, appearing to read 'C.G. Smith', with a long horizontal flourish extending to the right.

Crawford G. Smith

CGS/rp

cc. Jonathan Lisus, Matthew Law, Brad Vermeersch – *Lax O'Sullivan Lisus Gottlieb LLP*
Kent E. Thompson, Derek D. Ricci, Steven Frankel, Chanakya Sethi, *Davies Ward Phillips & Vineberg LLP*

This is **Exhibit “D”** to the affidavit of Eric Widdowson, affirmed remotely by Eric Widdowson stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on July 27, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

Crawford G. Smith

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July 19, 2022

BY EMAIL

Alexander Gay
General Counsel, Department of Justice
National Litigation Sector
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Dear Mr. Gay:

Commissioner v. Rogers and Shaw/CT-2002-002

We have now had an opportunity to review the Commissioner's Affidavit of Documents. The Commissioner's broad designation of "Confidential - Level A" over hundreds of thousands of documents raises the same concerns as those set out in the Motion Record we served last week, in respect of the s. 104 application. At no time did the Commissioner assert a "reasonable concern" for the public disclosure of any third party's identity in connection with these documents, pursuant section 3 of the Confidentiality Order.

Further, Rogers and Shaw have concerns about the Commissioner's claims to litigation privilege over many of the documents in his Schedule "B".

In order to resolve these issues efficiently and expeditiously, we will serve new motion materials by the end of this week in respect of (a) the Commissioner's overbroad "Level A" confidentiality designations across his s. 92 productions and his s. 104 application record, and (b) the Commissioner's privilege claims over his Schedule "B" documents. These motions will be returnable on August 4, 2022, which the Scheduling Order reserved for production and privilege-related motions.

Yours truly,

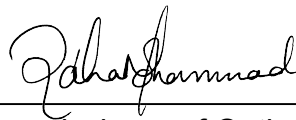
A handwritten signature in blue ink, appearing to read 'C.G.S.', with a long horizontal flourish extending to the right.

Crawford G. Smith

CGS/rp

cc. Jonathan Lisus, Matthew Law, Brad Vermeersch – *Lax O'Sullivan Lisus Gottlieb LLP*
Kent E. Thompson, Derek D. Ricci, Steven Frankel, Chanakya Sethi, *Davies Ward Phillips & Vineberg LLP*

This is **Exhibit “E”** to the affidavit of Eric Widdowson, affirmed remotely by Eric Widdowson stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on July 27, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.



**Department of Justice
Canada**

**Ministère de la Justice
Canada**

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July 21, 2022

LAX O'SULLIVAN LISUS GOTTLIEB LLP

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Attn:

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Matthew Law (LSO# 59856A)

Email: mlaw@lolg.ca

Bradley Vermeersch (LSO# 69004K)

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Steven Frankel (LSO# 58892E)

Email: sfrankel@dwpv.com

Chanakya A. Sethi (LSO# 63492T)

Email: csethi@dwpv.com

Dear Sir/Madame :

Re : Commissioner v. Rogers and Shaw/CT-2002-002

I acknowledge receipt of your of letters dated July 17, 19, 20 and 21, 2022. I hope to bring some clarity to your concerns and reach some resolution prior to the hearing of the motion.

While I can appreciate the urgency for your clients in moving this matter forward, this is the second time that we have been apprised of an impending motion date without consultation. While we strive to accommodate you, we would appreciate that you confer with counsel and canvass availability before serving motion materials.

I wish to bring an important clarification to your letters. The section 104 record and the AOD contain third party information that was designated Level “A” as well as information from each of the Respondents and other proprietary information. A copy of the materials under a designated Level “A” was served on counsel for the Respondents and, as such, you would be fully aware of what information is at issue, including the inclusion of sensitive third-party information.

The interpretation that you offer in respect of the Confidentiality Order, for which we dispute, would allow the Respondents to re-designate all information, including third party information, from Level “A” to Level “B” thereby granting the Respondents increased access to competitive information. This is unacceptable to both the Commissioner and the affected third parties. Under your interpretation, the Confidentiality Order would only allow the Commissioner to designate at the Level “A” where the identity of a third party is at issue. This makes no commercial sense nor is it true to the intent of the Confidentiality Order. We have advised some of these third parties of this matter and expect that they will voice concern. Regardless, we have instructions to bring a motion to vary the Confidentiality Order.

Although the Commissioner disagrees with your position on the level of protection that is warranted and on whether an undertaking is a suitable substitute to a Level “A” designation, the Commissioner is, for the moment, prepared to make reasonable efforts to review the documents found in the section 104 materials which were designated Level “A” to determine whether to re-designate any of them to a Level “B”. However, such documents will be limited to those which do not contain sensitive business information that could (a) compromise the competitive integrity of the Respondents or their competitors; (b) indicate a market participant’s future business plans; or (c) promote coordination within the market.

There are also obvious limitations to the proposed re-designation exercise. The Commissioner is not prepared to alter his current designation for forward-looking planning documents, including business plans, marketing plans, strategic plans, budgets, forecasts, auction and spectrum acquisition strategies, network planning, and other similar information of a Respondent or a third party. The basis for the Level “A” designation for this category of documents is the protection of sensitive financial and commercial information that can reasonably be expected to prejudice the competitive position of market participants by making their future plans known to competitors. For similar reasons, the Commissioner is unwilling to change the confidentiality designation for information relating to average or summary pricing information or other similar pricing information that is otherwise not publicly available, including any negotiated or targeted price, capacity, specific/non-aggregated output or revenue data, market share data calculated by a market participant, negotiations with suppliers about prices, rates or incentives or proprietary information produced by a Respondent or a third party. Such recent data may be indicative of a rival’s current pricing, costs, capacities and structure, which raises serious competitive concerns if known to competitors. In addition, the Commissioner is not prepared to change the “Level A” designation for documents which describe the interpretation or competitive response of any market participant to promotions, pricing changes, and other market signals, including the timing and particulars of each. Access to this information would increase coordination in the market by increasing parties’ understanding of their rivals’ internal analysis of market signals.

As you can appreciate, there are serious consequences to your demands which should be obvious to you and your clients. The Commissioner's AOD contains 2.6 million documents. We estimate that it would take the Bureau many months to manually review that magnitude of documents, draining the Bureau's already limited resources and impeding our ability to move forward on this proceeding. Anything other than a manual re-designation of the documents would result in disclosure of highly sensitive financial and commercial information that can reasonably be expected to prejudice the competitive position of market participants. This will bring long scheduling delays to our respective clients which you must be prepared to accept.

There are a number of possible options in dealing with your demands. As you know, both parties have access to their own documents and are therefore able to understand the Commissioner's case and respond accordingly. The proposed re-designation would only permit Rogers and Shaw to see each others documents, which is highly problematic for the reasons described. The benefit to the parties is, in my view, minimal in comparison to the potential harm and burden placed of the Bureau, not to mention the delays that will be experienced by your clients to the current schedule. Again, the Commissioner is prepared to review the documents found in the section 104 materials which were designated Level "A" to determine whether to re-designate any of them to a Level "B". This will be done in accordance with the terms described above. Given those terms and the nature of the documents, the Commissioner may determine that no, or minimal, re-designation is appropriate. The Bureau is prepared to do so by July 29, 2022. As for the remainder of the 2.6M documents found in the AOD, the options for the Commissioner are few, other than to apply Bureau resources and request a delay to the schedule of this proceeding.

I believe that this letter addresses your concerns in relation to the Level "A" designations.

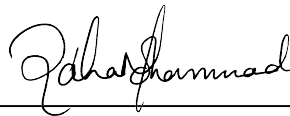
Yours very truly,

Alexander Gay

Alexander Gay

General Counsel

This is **Exhibit “F”** to the affidavit of Eric Widdowson, affirmed remotely by Eric Widdowson stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on July 27, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

Howard Slawner

350 Bloor Street East, 6th Fl
Toronto, Ontario M4W 0A1
regulatory@rci.rogers.com

May 28, 2020

Filed via GCKey
CRTC File No: 1011-NOC2019-0057

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission Ottawa,
1 Promenade du Portage
Ottawa, ON K1A 0N2

Dear Mr. Doucet:

RE: *Review of mobile wireless services, Telecom Notice of Consultation 2019-57 – Response to Undertakings*

Rogers Communications Canada Inc. (“Rogers”) filed responses to Undertakings related to the Review of mobile wireless services, Telecom Notice of Consultation CRTC 2019-57 on March 10, 2020.

In Rogers(CRTC)26Feb2020-2, Rogers was asked to provide industry-wide capital expenditure information per subscriber for year 2019. As explained in our March 10, 2020 response, this information comes from the Bank of America Merrill Lynch Global Wireless Matrix report, which had not been released. The report was recently released and Rogers now provides an updated response to this undertaking providing the capital expenditure per subscriber information for year 2019. This information is provided on the public record.

As the original response to this undertaking contained confidential information (unrelated to the capital expenditure per subscriber information) Rogers is filing parts of its response to the Commission’s requests for information in confidence. Rogers’ response includes detailed financial information that Rogers consistently holds in confidence. Therefore, Rogers requests that the Commission treat this information as confidential, pursuant to subsection 20(1)(b) of the *Access to Information Act*, and sections 38 and 39 of the *Telecommunications Act*. For competitive reasons, Rogers would never publicly disclose the information contained in this answer other than to the Commission. Release of this information would provide potential competitors with invaluable competitively-sensitive information that would not otherwise be available to them, and which would enable them to develop more effective business strategies. Release of such information could prejudice Rogers’ competitive position resulting in

material financial loss and cause specific direct harm to Rogers. Rogers submits that any possible public interest in disclosure of the information in this answer is greatly outweighed by the specific direct harm that would flow to Rogers.

An abridged version of the response is being provided for the public record.

If you have any comments or concerns, feel free to contact the undersigned.

Regards,

A handwritten signature in black ink, appearing to read "Howard Blum". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

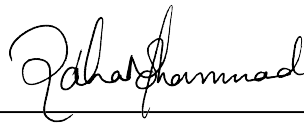
Attach.

cc: Jeremy Lendvay, CRTC: jeremy.lendvay@crtc.gc.ca
Adam Mills, CRTC: adam.mills@crtc.gc.ca
Sylvie Labbé, CRTC : sylvie.labbe@crtc.gc.ca
Allison McLean, CRTC: allison.mclean@crtc.gc.ca
Philippe Kent, CRTC: philippe.kent@crtc.gc.ca
Interested Parties to TNC 2019-57

Distribution List

Aboriginal Council of Winnipeg, the Consumers' Association of Canada (Manitoba), Winnipeg Harvest (Manitoba Coalition); kadil@legalaid.mb.ca;
Bell Mobility Inc. (Bell), bell.regulatory@bell.ca;
Bragg Communications Incorporated (Eastlink), regulatory.matters@corp.eastlink.ca;
British Columbia Broadband Association (BCBA), regulatory@bcba.ca;
Canadian Electricity Association (CEA), kent@electricity.ca;
Canadian Internet Policy & Public Interest Clinic and OpenMedia (CIPPIC and OpenMedia), tisrael@cippic.ca;
Canadian Network Operators Consortium Inc. (CNOc), regulatory@cnoc.ca;
Coalition for Cheaper Wireless Service (CCWS), jlawford@piac.ca;
Cogeco Communications Inc. (Cogeco), telecom.regulatory@cogeco.com;
Competition Bureau, matthew.boswell@canada.ca; laura.sonley@canada.ca;
Computer & Communications Industry Association (CCIA), jhowes@ccianet.org;
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Distributel Communications Limited (Distributel); christopher.hickey@distributel.ca;
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Rogers Communications Canada Inc. (Rogers), rwi_gr@rci.rogers.com;
Saskatchewan Telecommunications (SaskTel), document.control@sasktel.com;
Shaw Telecom Inc (Shaw), regulatory@sjrb.ca;
SSi Micro Ltd. (SSi Micro), regulatory@ssimicro.com;
Tbaytel, rob.olenick@tbaytel.com;
TekSavvy Solutions Inc. (TekSavvy), akaplanmyrth@teksavvy.ca;
TELUS Communications Inc. (TELUS), regulatory.affairs@telus.com;
TNW Wireless Inc. (TNW Wireless), lawry.trevor@tnwcorp.com;
Tucows Inc. (Tucows), enoss@tucows.com;
Videotron Ltd. (Videotron), regaffairs@quebecor.com;
Ville de Montréal (Montréal), jessyca.laurin@ville.montreal.qc.ca;
Xplornet Communications Inc. (Xplornet), xplornet.legal@corp.xplornet.com

This is **Exhibit "G"** to the affidavit of Eric Widdowson, affirmed remotely by Eric Widdowson stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on July 27, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.



August 30, 2019

BY GC KEY

Mr. Claude Doucet
Secretary General
Canadian Radio-Television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Re: Telecom Notice of Consultation CRTC 2019-57 – *Review of mobile wireless services – Requests for disclosure of information designated as confidential and for further responses to requests for information*
File No: 1011- NOC2019-0057

1. Shaw Communications Inc. (“Shaw”), on behalf of itself and its wholly owned subsidiary, Freedom Mobile Inc. (“Freedom”), is pleased to provide its revised responses pursuant to the Commission’s request dated August 16, 2019 for disclosure of certain information and for further information.
2. As noted in our revised response to Q209, we do not yet have EBITDA margin information available to us at the present time because we are in the middle of our fiscal year end. However, we are in the process of gathering it and we anticipate filing it with the Commission no later than September 13, 2019.
3. In accordance with section 39 of the *Telecommunications Act*, certain information contained within the responses to requests for information is being submitted in confidence with the Commission. This information includes sensitive financial and commercial information, business plans, marketing and retention activity, subscriber numbers, revenues, operating expenses, current and forecast expenditures, commercial arrangements, sales activities and details related to our facilities that is consistently

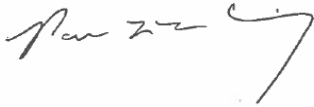
Shaw Communications Inc.

40 Elgin Street, Suite 1400
Ottawa, Ontario K1P 5K6
Tel: 613-688-6751 Fax: 613-688-6799

treated in a confidential manner by Shaw and Freedom. Furthermore, release of this sensitive information on the public record would provide existing and potential competitors with invaluable confidential information about, and insight into, Freedom's business model, operations, expenditures, network and growth strategy that would not otherwise be available to them. This information could be used by such parties to develop more effective business and marketing strategies which, given Freedom's market position as a new regional entrant, could reasonably be expected to prejudice Freedom's competitive position and/or result in material financial loss to our organization. Where feasible, an abridged version of the filing is being provided for placement on the public record.

4. If you have any questions regarding this filing, please contact the undersigned.

Shaw Communications Inc.

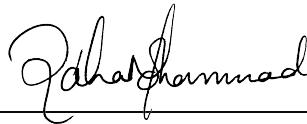


Paul Cowling
SVP, Legal & Regulatory Affairs
Shaw Communications Inc.
Tel: 416.649.5202
Fax: 416.649.5201
Regulatory@sjrb.ca

cc: Distribution List from CRTC Letter of May 24, 2019

END OF DOCUMENT

This is **Exhibit "H"** to the affidavit of Eric Widdowson, affirmed remotely by Eric Widdowson stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on July 27, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

DAVIES155 Wellington Street West
Toronto, ON M5V 3J7 Canada

dwpv.com

John Bodrug
T 416.863.5576
jbodrug@dwpv.com

August 3, 2021

PROTECTED AND CONFIDENTIALDerek Leschinsky
Competition Bureau
Place du Portage, Phase 1
50 Victoria Street
Gatineau, QC K1A 0C9

Dear Derek:

RE: Protection of Shaw Confidential Information

Thank you for your time on Friday. As we discussed, Shaw Communications Inc. (“**Shaw**”) is very concerned about the disclosure of competitively sensitive business information relating to Shaw in the application materials filed with the Federal Court on July 22, 2021 in connection with the order sought pursuant to section 11 of the *Competition Act* for productions from Quebecor Inc. (“**Quebecor**”).

You noted on Friday that the reference in an email from the Competition Bureau (the “**Bureau**”) to Quebecor’s counsel to “the fact that negotiations took place between Videotron and Shaw ... regarding a potential network sharing agreement” was part of a long email chain between the Bureau and Quebecor’s counsel attached as Exhibit M to the application materials to demonstrate for the court that Quebecor had no objection to the draft section 11 order. The existence of these discussions between Shaw and Videotron was confidential to Shaw and Videotron and it was not necessary or advisable for purposes of enforcement of the *Competition Act* for this information to be disclosed. Even if it were necessary to include the email chain to evidence Quebecor’s non-objection to the draft order, the reference to such negotiations could have been partially redacted to eliminate confidential information without detracting from that purpose. We appreciate your indication that you will have internal discussions regarding additional measures, including additional review for confidential material by another Bureau staff member with a fresh set of eyes, that can be taken to prevent unnecessary disclosure of confidential Shaw information in the future.

As we discussed, preserving the confidentiality of information is critical to the Bureau’s merger review process progressing in an efficient manner. Shaw has demonstrated a commitment to the process and to being collaborative and responsive. Shaw has delivered to the Bureau a significant volume of highly commercially and competitively sensitive information and data, and will soon be providing hundreds of thousands of confidential business records. You confirmed on Friday that the Bureau has no intention to depart from the principles set out in the Bureau’s *Bulletin on Communication of Confidential Information*. However, we must impress upon you and the Bureau team that it is critical to Shaw, its business and its relationships with its business partners that the Bureau safeguard Shaw’s confidential information. Confidentiality of Shaw’s information is especially important in the highly competitive, technologically dynamic telecommunications sector in which Shaw operates.

DAVIES

Disclosure of Shaw's confidential information provides opportunities for Shaw's competitors and potential competitors to use such information and the merger review process in opportunistic ways to advance their own strategic objectives. For example, as you pointed out, it is very surprising that a Globe and Mail reporter was able to identify a brief reference on one page of 3,636 pages of application materials within 24 hours of its public disclosure. Absent the Bureau disclosing these discussions in the application material, they would not be in the public domain. As Shaw told the Globe and Mail reporter (which the reporter did not mention in her story), these discussions are subject to confidentiality obligations in a non-disclosure agreement under which such discussions occurred. Such a non-disclosure agreement is a standard, entirely appropriate step in these kinds of highly exploratory and general discussions. The discussions never advanced and never came close to maturing into a detailed negotiation of commercial terms (as will be evident from Shaw's SIR response) and there is no reason for them to be on the public record. The inappropriate disclosure of these discussions by the Bureau, and the media attention on these discussions that resulted, have now enabled Quebecor to create the false impression that the discussions were meaningful and it is difficult to predict how such a false impression may influence views of industry participants, stakeholders and shareholders, and ultimately the Bureau's review of the proposed acquisition of Shaw by Rogers.

As this incident highlights, it is always important for the Bureau to keep in mind the strategic objectives of competitors to the merging parties in evaluating their submissions and in the Bureau's communications with such competitors.

We appreciate that you will work to implement additional steps within the Bureau to ensure that no confidential Shaw information is inappropriately disclosed in the form of material that is shared with or communicated to the public, or industry participants. In this regard, we request that, before any such disclosure of Shaw information that is or may be confidential, the Bureau provide Shaw with an opportunity to consider the information or documents prior to its disclosure, just as it provided to counsel to Quebecor in the email chain in Exhibit M. Making additional advance efforts to prevent the inappropriate disclosure of confidential information will permit the parties and the Bureau to keep their focus on the substance of the case. In this regard, we appreciate the opportunity provided today to review the Bureau's draft news release regarding the proposed transaction before its issuance.

Yours very truly,

John Bodrug

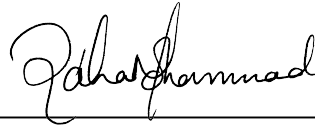
Cc Peter Johnson, Executive Vice President and Chief Legal and Regulatory Officer,
Shaw Communications Inc.

Steve Sansom and Katherine Rydel, *Competition Bureau Legal Services*

David Rosner, *Goodmans LLP*

Elisa Kearney and Joshua Hollenberg, *Davies Ward Phillips & Vineberg LLP*

This is **Exhibit "I"** to the affidavit of Eric Widdowson, affirmed remotely by Eric Widdowson stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on July 27, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

Matthew R. Law

Direct 416 849 9050
mlaw@lolg.ca

Lax O'Sullivan Lisus Gottlieb LLP

Suite 2750, 145 King St W
Toronto ON M5H 1J8 Canada
T 416 598 1744 F 416 598 3730
www.lolg.ca

The logo for Lax O'Sullivan Lisus Gottlieb LLP is a dark blue square with white text. The text is arranged in four lines: "Lax", "O'Sullivan", "Lisus", and "Gottlieb".

Lax
O'Sullivan
Lisus
Gottlieb

July 26, 2022

BY EMAIL

John Tyhurst
Competition Bureau Legal Services

Nicole Henderson
Blake, Cassels & Graydon LLP

Adam Hirsh
Osler, Hoskin & Harcourt LLP

Stephen Zolf
Aird & Berlis LLP

Dear Mr. Tyhurst, Ms. Henderson, Mr. Hirsh, and Mr. Zolf:

Commissioner of Competition v. Rogers Communications Inc. and Shaw Communications Inc. (CT-2022-002) – Confidentiality Motion

We write to set out the Respondents' position regarding the pending confidentiality and privilege motion, as communicated to Justice Little at the Case Management Conference yesterday morning. The Respondents are not withdrawing or amending their motion as currently framed, but are prepared to limit the relief they are seeking at the upcoming hearing to the following (only the first of which concerns Bell, Telus, and Distributel):

1. Challenging the Commissioner's designation as Level "A" confidential the affidavits, expert reports, and documents the Commissioner relied on in support of his s. 104 Application (including the documents and data relied on by the Commissioner's experts), except for the affidavits of Mr. Dhamani and Mr. Verma and the documents attached thereto.
2. Challenging the Commissioner's claim of litigation privilege over the documents set out in Schedule B to his Affidavit of Documents.
3. To the extent necessary, challenging the Commissioner's designation as Level "A" confidential the documents set out in Schedule B to his Affidavit of Documents and over which the Commissioner currently claims litigation privilege.

In addition, the Respondents have redesignated their own documents produced in response to the Commissioner's SIR from Level "A" to Level "B", pursuant to paragraph 9 of the Confidentiality Order. Please advise whether the Commissioner intends to challenge those re-designations. If so, this issue will proceed in accordance with the timetable set out below.

To the extent that Bell, Telus, and Distributel do not already know which of their documents the Commissioner and his experts relied on in the s. 104 materials, we expect the Commissioner will advise them. We are also copying counsel for Stonepeak and Xplornet. Although they did not substantively respond to our letters providing a courtesy copy of the motion record, nor appear at the Case Management Conference yesterday, the Respondents do not object to those parties participating in the hearing in the same manner as Bell and Telus, so long as it does not affect the scheduling of the motion. We ask that those parties please advise whether they intend to participate or not by end of day tomorrow (Wednesday July 27).

In advance of Friday's Case Management Conference, Justice Little will expect the parties to have discussed a timetable for the motion. The Commissioner has committed to delivering his responding record on July 28. Bell and Telus advised that they would prefer to see the Commissioner's record before submitting any evidence of their own. Given the significantly narrowed scope of the motion and their commitment at the Case Management Conference to work within the existing schedule in the proceeding, Bell and Telus should be able to serve any evidence the following day, July 29. The Respondents therefore propose the following timetable:

July 28 – Commissioner delivers Responding Record on all issues

July 29 – Bell and Telus serve additional affidavits, if any

August 2 – Cross-examinations (note August 1 is a holiday)

August 3 – Rogers/Shaw serve written submissions

August 4 – Commissioner and Bell/Telus serve written submission

August 5 – Rogers/Shaw serve reply submissions, if necessary

August 8 – Hearing (subject to Tribunal's confirmation)

To the extent Distributel wishes to put in evidence and make submissions, the Respondents expect it to do so in accordance with the same schedule.

Please advise if your clients will agree to this schedule, so that we can advise Justice Little accordingly.

Yours truly,



Matthew R. Law

cc: Derek Leschinsky, Alexander Gay, Katherine Rydel, Ryan Caron, Suzanie Chua, Marie-Hélène Gay, Kevin Hong, *Competition Bureau Legal Services*
Jonathan Lisus, Crawford Smith, Bradley Vermeersch, *Lax O'Sullivan Lisus Gottlieb LLP*
Kent Thomson, Derek Ricci, Steven Frankel, Chanakya Sethi, *Davies Ward Phillips & Vineberg LLP*
Randal Hoffley, *Blake, Cassels & Graydon LLP*
Michelle Lally, *Osler, Hoskin & Harcourt LLP*
Omar Wakil, *Torys LLP*
Kate McNeece, *McCarthy Tétrault LLP*

TAB 3

CT-2022-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*;

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

AFFIDAVIT OF LILLA CSORGO

1. I, **LILLA CSORGO**, of the City of Ottawa, in the Province of Ontario, affirm as follows:
2. I am the TD MacDonald Chair in Industrial Economics at the Competition Bureau (“Bureau”). I have direct knowledge of all matters hereinafter deposed to, except where it is based on information and belief. Where the source of my information is based on information and belief, I have identified the source of my information and believe it to be true.
3. As T.D. MacDonald Chair, I regularly provide the Commissioner of Competition (“Commissioner”), Senior Deputy Commissioners and others at the Bureau with advice and strategic guidance on a wide variety of economic matters. This is my second appointment to the position of T.D. MacDonald Chair. I previously held this position from 2007 to 2009. I am also a Lay Member of the High Court of New Zealand.
4. Prior to rejoining the Bureau, I was a Senior Consultant at Charles River Associates, an economic consulting firm. My other recent positions include Head of Economics at the Hong Kong Competition Commission, Chief Economist at the New Zealand Commerce Commission, Competition Branch, and Vice President at Charles River Associates. I was the Economist Lay Member of the Canadian Competition Tribunal from 2005 to 2007. I have almost 30 years of experience in the area of competition economics, during which time I have carried out economic analysis in numerous competition-related matters, including those related to mergers and acquisitions. I have acted as an economic expert for both private and public sector parties. I have also provided technical assistance to foreign governments regarding competition law and policy on a number of occasions, and has lectured on microeconomics, industrial organization, and transition economies. I hold a PhD in economics from the University of Toronto.
5. As explained below, the disclosure of proprietary commercial information to rival competitors can reduce competitive intensity by reducing uncertainty in the competitive process and so soften competition. The result is worse competitive outcomes for consumers, including business consumers.

6. The more concentrated the market, the greater the competitive risk associated with disclosure of confidential information. This is because the actions of only a few firms – or even one – can influence market outcomes.

7. The adverse competitive effects of information disclosure are akin to and can include coordination. As defined in the Bureau’s *Merger Enforcement Guidelines*, “[c]oordination involves interaction by a group of firms (including the merged firm) that is profitable for each firm because of each firm’s accommodating reactions to the conduct of the others. Coordinated behaviour may relate to price, service levels, allocation of customers or territories, or any other dimension of competition”: see *Merger Enforcement Guidelines*, Competition Bureau, Canada, 2011, at para 6.24. However, information disclosure need not extend to “accommodating reactions” to have the effect of softening competition. The mere knowledge of a rival’s confidential information can have such an effect.

8. For example, firms knowing that their rivals are not pursuing a particular innovation, including those related to product, cost, network, and marketing strategies, can provide them with greater confidence to also not pursue such competitively beneficial strategies. Likewise, knowledge of a rival’s plans to increase its price, or, similarly, plans not to respond or how it will otherwise respond to rival discounting, or other similar pricing strategies, allows firms to price with greater confidence their own products in ways that are less likely to draw a competitive response.

9. On the input side, information on such items as capacity, utilization rates, and costs of production can also impact competitive dynamics. For example, a firm that knows that a rival is close to capacity will have reduced incentive to price vigorously.

10. The risk of ongoing adverse competitive effects may not be as high in the case of one-time disclosure as ongoing disclosure, but there, nonetheless, remains a real risk of longer lasting effects. This includes the risk of coordination or enhanced coordination.

11. Disclosures that relate to a firm's strategies, including price strategies, bidding tactics, and any long-term plans can soften competition in an ongoing or, otherwise, longer lasting way. For example:

- a. disclosure of a strategy of a targeted margin above cost, along with a disclosure of cost can have a longer term impact in comparison to a more limited, one-time price plan;
- b. disclosed plans by rivals, including smaller rivals, to competitively disrupt the marketplace can also have long lasting effect. Rival firms will have an incentive to thwart such plans. This could take place by way of downstream price decreases targeted at the disruptor, or, in situations where the disruptor purchases inputs from rivals, by way of price increases and/or quality decreases of such inputs. In the case of the wireless market, this might include, for example, interruptions or other negative impacts on backhaul services. The undermining of a market disrupter's plans can have an irrevocable adverse effect on competition;
- c. even one-time price increases can have long-lasting effects if it should be the basis for future price changes.

12. Coordination and enhanced coordination are also a competitive risk of disclosure. As noted, coordination involves mutual yet independent recognition that firms can benefit from competing less aggressively with one another: see *Merger Enforcement Guidelines*, Competition Bureau, Canada, 2011, para 6.25. It is, thus, not a one-time response to disclosed information, but, rather, an ongoing change in rivals' behaviour.

13. Coordination typically relies on interpreting market signals and learning about a firm's likely decisions based on repeated interactions. Disclosed documents can lessen some of the related guesswork by providing direct insight into a rival's plans, ongoing strategies, and its considerations in its competitive responses.

14. In addition, effective coordination typically requires the ability to detect deviations from the terms of coordination and respond accordingly. Market prices, however, adjust to shifts in demand and costs. As a result, it can be difficult to attribute an observed price change to a

deviation from coordination. However, knowledge of a rival's cost components and how costs have behaved historically can provide firms with insight to the causes of an observed price change and so allow for more effective monitoring.

15. Softened competition can also extend to the purchase of scarce inputs. Knowledge of rival firms reservation prices and/or purchase strategies for scarce inputs, such as spectrum, can impact not only the price paid for that input but increased coordination regarding its allocation. For example, knowledge of rivals reservation prices for spectrum, or related strategies in regard to spectrum auctions, may have a dampening effect on the price of spectrum. Knowledge of the portions of spectrum of most interest across rivals can also allow for enhanced coordination in regard to its allocation.

16. Disclosure of the following types of information generally pose the greatest risk to the competitive process:

- a. forward-looking and current information;
- b. information that allows for the identification of a specific market participants' information; that is, information that is not aggregated across market participants or not sufficiently aggregated across market participants;
- c. historical information that provides a meaningful indication of the future. Information that tends to be stable or, given disclosed base information, changes in known or discernable ways, is more likely to give rise to such concerns.

17. In this particular legal proceeding, as per the terms of the Confidentiality Order, Confidential Level "A" information: (a) includes forward-looking network planning, business plans, marketing plans, strategic plans, budgets, forecasts and other similar information; as well, price, cost, output, capacity, revenues, financial information relating to a Respondent or its customers, suppliers or other third parties, internal market studies and analyses; (b) is by its very nature specific to specific market participants; and (c) is quite recent and covers a particularly important period to competition, and thus is liable to include information particularly pertinent to competitive dynamics, including pricing strategies and product plans.

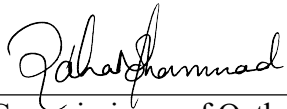
18. While my knowledge of the specifics of the documents at issue is limited, Bureau officers provided me with a small sample of relevant documents that form part of the collection. Each of these documents raise competition concerns in keeping with those noted above. For example:

- a. *Doc. SRJB-CCb0078740.pdf* sets out Shaw Mobile's plans for entry into the business segment of wireless services. The document includes, among other details, information on the initial targets for the product, the specifics of the offer in terms product features and prices, and a timeline for various milestones, including that for launch. As per the discussion herein, advanced knowledge of a competitor's plans better allows rivals to disrupt them. Such disruption could include prices targeted at businesses Shaw Mobile plans to target in its rollout, advertisement and other public statements seeking to confound Shaw Mobile's marketing message at the time of launch, and increasing the price or decreasing the quality of inputs Shaw Mobile purchases from rivals that are relied on in the provision of the new product.
- b. *Doc. SRJB-CCB00667236.pptx* sets out scenarios and associated risks with respect to Shaw's participation in an auction for spectrum licences. It includes a reservation price and the implications of the various scenarios on subsequent auctions. Clearly knowledge of a rival bidder's reservation price can impact auction outcomes. In this case, that and other information also has the potential to impact subsequent auction outcomes. The document also touches upon Shaw's alternative plans. Advanced knowledge of by rivals of such plans lays them more open to disruption and, to the extent they rely on cooperation, potentially places Shaw in a poorer position with respect to related negotiations.
- c. *Doc. ROG00206967.txt* entails an internal Rogers email exchange discussing whether to post an end date for a promotion and, if so, the related strategic choices. Items at issue included whether Rogers should go first, whether a rival is likely to follow, whether a rival is likely to take the initiative itself, and an alternative strategy should a rival not take the initiative. As noted above, coordination entails interactions that are profitable for each firm because of those firms' accommodating responses. Coordination involves interpreting market signals and learning about a firm's likely intentions based on repeated interactions. Knowledge of the contents of an email exchange such as this reduces the need for interpretation and learning by instead providing direct insight into Rogers' intentions, considerations and plans as to how to best coordinate.
- d. *Doc. Bell0405122.pdf* is an internal Bell email exchange that discusses, among other things, options with respect to throttling. The document dates back to June 2019 and it is unclear that the items it considered were actioned. If they were not, its disclosure would provide Bell's rivals insight into particular product features that Bell could

still implement. Such insight would provide rivals time to better prepare for such a possibility, potentially undermining any such plans competitive impact. In face of such a possibility, Bell might also be less inclined to follow through with any such plan.

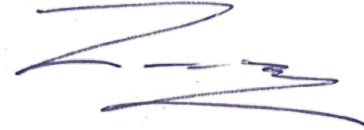
19. Based on my experience and on my assessment of the documents that I have reviewed, I can conclude that the disclosure of proprietary commercial documents to rivals risks having a detrimental effect on the competitive process, and on consumers and Canadians more broadly. The nature of the Confidential Level “A” documents, as described in the Confidentiality Order along with the small sample of documents that I have reviewed suggest that this risk applies in the current matter.

Affirmed remotely by Lilla Csorgo stated as being located in the City of Ottawa in the Province of Ontario, before me, in the City of Gatineau, in the Province of Québec on July 27, 2022, in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.



Commissioner of Oaths

**Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.**



Lilla Csorgo, PhD

CT-2022-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*, RSC 1985, c C-34.

B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

AFFIDAVIT OF LILLA CSORGO

TAB 4

CT-2022-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*;

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

PROPOSED CONFIDENTIALITY ORDER

FURTHER TO an application filed by the Commissioner on May 9, 2022 against the Respondents pursuant to section 92 of the Competition Act, RSC 1985, c C-34, as amended;

AND FURTHER TO the draft confidentiality order filed on consent by the Parties;

THE TRIBUNAL ORDERS THAT:

[1] For the purpose of this Order:

(a) “Act” means the Competition Act, RSC 1985, c C-34, as amended;

(b) “Affiliate” has the same meaning as in subsection 2(2) of the Act;

(c) “Commissioner” means the Commissioner of Competition appointed pursuant to section 7 of the Act or any person designated by the Commissioner to act on his behalf;

(d) “Designated Representatives” means up to two in house counsel and up to six additional individuals designated by each of the Respondents who will be permitted access to Records designated as Level B Protected Documents in accordance with the terms of this Order, which designations shall be made by written notice to the Tribunal with a copy sent concomitantly to the Commissioner. The Commissioner may make a motion to the Tribunal objecting to such designations;

(e) “Independent Expert” means an expert retained by a Party with respect to the Proceedings who (i) is not a current employee of a Respondent; (ii) has not been an employee of a Respondent within two years prior to the date of this Order, (iii) is not a current employee of a competitor of a Respondent; (iv) has not been an employee of a competitor of a Respondent within two years prior to the date of this Order; and (v) has executed the Confidentiality Undertaking in the form attached as Schedule A hereto;

(f) “Parties” means the Commissioner and Respondents collectively, and “Party” means any one of them;

(g) “Person” means any individual or corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;

(h) “Proceedings” means the applications filed by the Commissioner against the Respondents (File Number CT-2022-002) for orders pursuant to sections 92 and 104 of the Act;

(i) “Protected Record” means any Record (including the information such Record contains) that is produced in the Proceedings, including Records listed in affidavits of documents, excerpts from transcripts of examinations for discovery, answers to undertakings, Records produced with answers to undertakings, expert reports, lay witness statements, pleadings, affidavits and submissions that: i. the Party producing the

Record claims is confidential pursuant to Section 2 of this Order; or ii. the Tribunal has determined is confidential;

(j) “Record” has the same meaning as in subsection 2(1) of the Act and, for greater certainty, includes any email or other correspondence, memorandum, pictorial or graphic work, spreadsheet or other machine readable record and any other documentary material, regardless of physical form or characteristics;

(k) “Record Review Vendor” means a professional service provider retained by a Party with respect to the Proceedings to facilitate the review of Records, both digital and paper, by legal professionals and who has executed the Confidentiality Undertaking in the form attached as Schedule A hereto;

(l) “Respondent” means Rogers and Shaw collectively, and “Respondent” means either of them;

(m) “Rogers” means Rogers Communications Inc., its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by the foregoing entities, and their respective directors, officers, employees, agents, representatives, successors and assigns of each;

(n) “Shaw” means Shaw Communications Inc., the Shaw Family Living Trust, and, as applicable, their respective directors, officers, employees, agents, representatives, trustees, beneficiaries, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by the foregoing entities, and their respective directors, officers, employees, agents, representatives, successors and assigns;

(o) “Third Party” means any Person other than the Commissioner or Respondents; and

(p) “Tribunal” means the Competition Tribunal established pursuant to subsection 3(1) of the Competition Tribunal Act, RSC 1985, c 19 (2nd Supp), as amended.

[2] Disclosure of Records containing any of the following types of information could cause specific and direct harm, to the extent they or the information therein are not already publicly available or otherwise available to the recipient, and such Records may be designated **by any of the Parties** as Protected Records:

(a) information relating to prices, auctions, spectrum acquisition, network planning, capacity, specific output or revenue data or market shares, or negotiations with customers or suppliers about prices, rates or incentives produced by a Respondent or a Third Party;

(b) confidential contractual arrangements between a Respondent and its customers, agents, and/or suppliers or between a Third Party and its customers, agents, and/or suppliers;

(c) financial data or reports, or financial information relating to a Respondent or its customers, suppliers or a Third Party;

- (d) business plans, marketing plans, strategic plans, budgets, forecasts and other similar information of a Respondent or a Third Party;
- (e) internal market studies and analyses of a Respondent or a Third Party;
- (f) internal investigative and related Records belonging to the Commissioner; and
- (g) other Records containing competitively sensitive and/or proprietary information of a Respondent or a Third Party.

[3] Without prejudice to any position or argument a Respondent may take or make in the Proceedings and in any related appeals, including (without limiting the generality of the foregoing) with respect to any claim of privilege by the Commissioner, the Commissioner may designate as Level A Protected (as defined below), any information that could identify a Third Party who is reasonably concerned about the public disclosure of its identity. **For greater clarity, nothing in paragraph 3 limits the rights reserved for the Commissioner under paragraph 2 and paragraph 5.**

[4] If information from a Protected Record is incorporated into any other Record, that Record shall be a Protected Record. Any Protected Record shall cease to be a Protected Record if: (a) it or the protected information contained therein becomes publicly available (except if it becomes publicly available through a breach of this Order); (b) if the Parties agree in writing that the Record shall cease to be a Protected Record; or (c) the Tribunal determines that the Record shall cease to be a Protected Record.

[5] Protected Records will be identified in the following manner for the purpose of the Proceedings:

(a) a Party claiming that a Record is a Protected Record shall, at the time of production of a Protected Record, mark it with the name of the Party producing the Record and with “Confidential – Level A” or “Confidential – Level B” on the face of each Record and/or on each page that is claimed as confidential, **such level of confidentiality to be initially determined solely at the discretion of the producing party;**

(b) subject to Section 4 of this Order, all Records designated as Protected Records shall be treated as a Protected Record, save for determination otherwise by the Tribunal or re-designation pursuant to Section 9 below;

(c) the inadvertent failure to designate a Record or portion thereof as a Protected Record at the time it is disclosed does not constitute waiver of the right to so designate after disclosure has been made;

(d) if a Record originates with or from more than one Party and is designated by at least one Party as a Protected Record, the highest level of confidentiality shall universally attach to that Record, subject to the resolution of any challenge to that claim of confidentiality;

(e) at any point in the Proceedings, a Party may challenge a claim of confidentiality or level of confidentiality made by another Party. The Parties shall use their best efforts to agree as to whether the Records (or portions thereof) are to be treated as Protected Records; and

(f) if agreement cannot be reached, the Parties may apply to the Tribunal to determine whether the Record or a portion thereof is a Protected Record or what level of confidentiality should apply to a Protected Record.

[6] Subject to a further order of the Tribunal, the consent of the Party or Parties that produced and claimed confidentiality over the Protected Record, or as required by law, Protected Records marked “Confidential – Level A” (“Level A Protected”) may be disclosed only to:

- (a) the Commissioner, counsel to the Commissioner, and the Commissioner’s staff;
- (b) outside counsel to the Respondents and outside counsel’s staff who are directly involved in the Proceedings;
- (c) Independent Experts and their staff who are directly involved in the Proceedings; and
- (d) Record Review Vendors.

[7] Subject to a further order of the Tribunal, the consent of the Party or Parties that produced and claimed confidentiality over the Protected Record, or as required by law, Protected Records marked “Confidential – Level B” (“Level B Protected”) may be disclosed only to:

- (a) the individuals described in Section 6 above; and
- (b) Designated Representatives of the Respondents who have executed the Confidentiality Undertaking in the form attached as Schedule A.

[8] Notwithstanding any provision of this Order, the Commissioner may disclose any Records designated as Level A Protected or Level B Protected that he has so designated, and that have not been produced in the Proceedings by a Respondent or otherwise originated from a Respondent, to any Person for the purpose of preparing for the hearing of the Proceedings, subject to the limits prescribed by section 29 of the Act.

[9] A Party may at any time and with prior reasonable notice to the other Party re-designate any of its own Records designated as Level A Protected as Level B Protected or public Records, and/or may re-designate any of its own Records designated as Level B Protected as public Records. Where another Party disputes the re-designation, the Tribunal shall determine the proper designation. Records re-designated as public shall cease to be Protected Records and shall form part of the public record if introduced into evidence at the hearing of the Proceedings, unless the Parties agree otherwise or the

Tribunal so orders. If a Party changes the designation of a Record to confidential, a prior disclosure of it shall not constitute a breach of this Order.

[10] If a Party is required by law to disclose a Protected Record, or if a Party receives written notice from a Person who has signed a Confidentiality Undertaking pursuant to this Order that they are required by law to disclose a Protected Record, that Party shall give prompt written notice to the Party that claimed confidentiality over the Protected Record so that a protective order or other appropriate remedy may be sought.

[11] Outside counsel to the Respondents and their staff, counsel to the Commissioner, the Commissioner and his staff, and Independent Experts and their staff, may make copies of any Protected Record as they require in connection with the Proceedings.

[12] Nothing in this Order prevents a Party from having full access to or, in the case of a Respondent only, using or disclosing Protected Records that originated from that Respondent.

[13] For greater certainty, in accordance with section 62 of the Competition Tribunal Rules, all Persons who obtain access to Records and information through documentary, written and oral discovery through the Proceedings are subject to an implied undertaking to keep the Records and information confidential and to use the Records and information solely for the purposes of the Proceedings (including any application or proceedings to enforce any order made by the Tribunal in connection with the Proceedings) and any related appeals.

[14] At the hearing of the Proceedings:

(a) Protected Records tendered as evidence at the hearing of the Proceedings shall be identified and clearly marked as such, in accordance with Paragraph 5(a), above;

(b) Following submissions from the Parties, the Tribunal may determine whether the Record should be treated as a Protected Record;

(c) Protected Records shall not form part of the public record unless the Party or Parties claiming confidentiality waive the claim, or the Tribunal determines that the Record is not a Protected Record;

(d) Records over which no privilege or confidentiality claim has been asserted shall, unless otherwise determined by the Tribunal at the hearing, form part of the public record in the Proceedings if introduced into evidence or otherwise placed on the record. Public Records shall be marked "Public" on the face of the Record; and

(e) Nothing in this Order shall abrogate or derogate any legal onus, burden or requirement applicable to a sealing order or abrogate or derogate in any way from the rights of the Parties to assert confidentiality claims during the course of the hearing.

[15] The Parties shall provide the Tribunal with redacted versions of Protected Records at the time any such Records are introduced into evidence or otherwise placed on the

record, which redacted versions shall be marked “Public” on the face of the Record and shall form part of the public record in the Proceedings. Each Protected Record shall identify the portions of the Record which have been redacted from the “Public” version, by highlighting such portions in the Protected Record.

[16] The termination of the Proceedings shall not relieve any Person to whom Protected Records were disclosed pursuant to this Order from the obligation of maintaining the confidentiality of such Protected Records in accordance with the provisions of this Order and any Confidentiality Undertaking, subject to any further order of the Tribunal.

[17] Upon completion or final disposition of the Proceedings and any related appeals, all Protected Records and any copies of Protected Records, with the exception of Protected Records in the possession of the Commissioner and his staff, shall be destroyed or returned to the Party that produced them unless the Party that produced the Protected Records states, in writing, that they may be disposed of in some other manner, provided that outside counsel to the Respondents and counsel to the Commissioner may keep copies of Protected Records in their files and that any copies of Protected Records as may exist in the Parties’ automatic electronic backup and archival systems may be kept provided that deletion is not reasonably practical and the copies are retained in confidence and not used for any purpose other than backup and archival purposes.

[18] The Parties shall bear their own costs associated with the request for and issuance of this Order.

[19] Nothing in this Order prevents or affects the ability of a Party from applying to the Tribunal for further orders or directions with respect to the use or disclosure of Records or information produced by another Party.

[20] The Tribunal shall retain jurisdiction to deal with any issues relating to this Order, including, without limitation, the enforcement of this Order and any undertakings executed pursuant to this Order. This Order shall be subject to further direction of the Tribunal and may be varied by order of the Tribunal.

DATED at Toronto, this 2022.

SIGNED on behalf of the Tribunal by the Chairperson.

CT-2022-002

THE COMPETITION TRIBUNAL

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B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

MOTION RECORD

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