

FILED / PRODUIT

Date: August 3, 2022

CT- 2022-002

Annie Ruhlmann for / pour
REGISTRAR / REGISTRARE

CT-2021-002

OTTAWA, ONT.

Doc. # 151

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF the 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*;

BETWEEN

THE COMMISSIONER OF COMPETITION

Applicant

- and -

ROGERS COMMUNICATIONS INC. AND SHAW COMMUNICATIONS INC.

Respondents

**AFFIDAVIT OF MARK GRAHAM
(Affirmed August 3, 2022)**

I, Mark Graham, of the City of Toronto, in the Province of Ontario,

AFFIRM AND SAY:

INTRODUCTION

1. I am Vice President, Legal and Regulatory of BCE Inc. (“**Bell**”). As such, I have knowledge of the matters contained in this affidavit. Where I rely on information received

from others, I state the source of that information and believe it to be true. Nothing in this affidavit is intended to waive any applicable legal privilege with respect to any information or documents contained or referenced herein.

2. Bell is a Canadian communications company, founded and headquartered in Montreal, Québec, providing advanced broadband wireless, TV, Internet, media and business communication services throughout the country. Bell offers mobile wireless services nationally through our Bell, Virgin Plus, and Lucky Mobile brands, competing against many brands operated by national and regional wireless carriers including Rogers and Shaw. Bell offers residential wireline services (i.e., Internet, TV, home phone, and others) in local market between Manitoba and the east coast of Canada primarily through our Bell and Virgin Plus brands, competing against brands operated by Rogers and Shaw (depending on the services offered and the market).
3. I have been employed by Bell since 2014. Before my current role, my positions at Bell included Senior Counsel and Assistant General Counsel. In my current role as Vice President, Legal and Regulatory, I am responsible for a wide range of legal and regulatory matters including wireless regulation, privacy and data governance, mergers and acquisitions, *Competition Act* matters, Bell's anti-piracy enforcement program, and the official reporting of data to regulatory bodies such as the Canadian Radio-television and Telecommunications Commission (the "CRTC").

BACKGROUND

4. This proceeding relates to the proposed acquisition of Shaw Communications Inc. (“**Shaw**”) by Rogers Communications Inc. (“**Rogers**”) which was publicly announced in March 2021 (the “**Transaction**”). This affidavit is made in support of the Commissioner of Competition’s (the “**Commissioner**”) opposition to the motion of the respondents for an order that certain documents¹ and records that the Commissioner has designated “Confidential – Level A” be redesignated as “Confidential – Level B” under the order of the Competition Tribunal dated May 19, 2022 concerning the confidentiality of documents produced in this proceeding (the “**Confidentiality Order**”). This aspect of the motion includes the affidavits, expert reports, and documents the Commissioner relied on in support of his application under s. 104 of the *Competition Act* in respect of the Transaction (the “**Section 104 Application**”), including the documents relied on by the Commissioner’s experts, except for the Dhamani and Verma affidavits and the documents attached thereto.
5. The documents in issue on the respondents’ motion include documents belonging to Bell, which Bell provided to the Commissioner, and which the Commissioner has designated as Confidential – Level A (the “**Bell Documents**”).
6. As discussed in this affidavit, the Bell Documents contain trade secrets, proprietary and non-public commercial information, and other sensitive commercial information. If this information were disclosed to representatives of Roger and Shaw (two of Bell’s largest

¹ In this affidavit, I use the term “documents” to refer to both documents and data unless otherwise specified.

competitors) it would provide those companies with an unfair and harmful competitive advantage. This would cause irreparable harm to Bell and, I believe, to competition in the Canadian telecommunications industry.

7. Shortly after the announcement of the Transaction in March 2021, on March 30, 2021 Bell began providing information to the Competition Bureau regarding the Transaction as part of the Competition Bureau's market outreach process.
8. On August 2, 2022, Bell was served with an order made on August 1, 2021 under section 11 of the *Competition Act*, ordering Bell to produce documents to the Commissioner to assist him in his inquiry regarding the Transaction. This order was varied with the Consent of Bell and the Commissioner to extend the deadline for Bell to produce certain documents to the Commissioner (the order as varied is referred to below as the "**Section 11 Order**"). A copy of the Section 11 Order is attached as Exhibit "**A**" to my affidavit.²
9. Bell did not move to quash or vary the Section 11 Order issued against it *ex parte*. Rather, we worked cooperatively with the Competition Bureau to furnish the required documents. In doing so, Bell expected—based on past practice and assurances from the Bureau—that the confidentiality of these materials would be respected. In particular, Bell expected and was advised by the Competition Bureau that its documents would be produced in any litigation under a "Confidential – Level A" designation and pursuant to a standard confidentiality order in Tribunal applications.

² The exhibit includes the original order issued on August 1, 2021 and the order varying the original order, issued on September 13, 2021.

10. Bell complied with the Section 11 Order and produced documents to the Bureau on September 15, November 1, and November 29, 2021. In total, Bell produced 863,211 responsive documents and 706 GB of data, which comprise the vast majority of the Bell Documents.
11. In addition to the documents Bell produced under the Section 11 Order, the Bell Documents include documents that Bell produced to the Commissioner pursuant to notice under section 114(2) of the *Competition Act* in an unrelated transaction (i.e., Bell's 2017 acquisition of Manitoba Telecom Services).
12. Several of the Bell Documents were appended to the affidavit of Blaik Kirby (an employee of Bell) sworn April 28, 2022, which the Commissioner filed in support of his application under section 104 of the *Competition Act* seeking to enjoin closing of the Transaction (the "**Kirby Affidavit**").

THE SECTION 104 DOCUMENTS ARE REplete WITH HIGHLY SENSITIVE CONFIDENTIAL INFORMATION

13. I am advised by counsel and believe that the respondents have limited the relief they are seeking on this motion such that the only Bell Documents at issue are those contained in the Section 104 Application. As a consequence, this affidavit only addresses those documents. These include Bell Documents: a) appended to the Kirby Affidavit; b) appended to the affidavit of Laura Sonley sworn May 5, 2022, a Competition Bureau officer; and c) referred to in the Commissioner's expert reports (collectively, the "**Section 104 Documents**"). The Section 104 Documents comprise 49 documents and several data

files containing Bell's internal business data. All the Section 104 Documents were produced under the Section 11 Order.

14. Bell does not object to the reclassification of three documents contained in the Section 104 Documents to "Confidential – Level B", namely documents Bell0403345 (Exhibit D to the Kirby Affidavit), Bell0046800 (Exhibit E to the Kirby Affidavit), and the Section 11 certificate from Rob Malcolmson (Exhibit KK to the Kirby Affidavit). These documents are excluded from the definition of the "Section 104 Documents" for the remainder of this affidavit.
15. The Section 104 Documents can be grouped into three categories, all of which are considered and treated by Bell as confidential commercially and competitively-sensitive documents:
 - a) **Strategic Review and Planning Documents:** Presentations and business documents outlining strategic plans for Bell, such as monthly or annual business plans and strategies for various product and service divisions. These documents contain Bell's analysis of competitive dynamics and market share, as well as details on its competitive strategies and planned competitive initiatives, including new product and service innovations and direct competitive responses to Rogers, Shaw, and other participants in the Canadian telecommunications industry.
 - b) **Internal Emails:** Internal Bell emails discussing competitively sensitive information, including Bell's business and strategic plans, and planned

competitive responses to Rogers' and Shaw's pricing, promotional activity, and product launches.

- c) **Appendix B Data:** Internal Bell data regarding transactions, sales and billing details in the most disaggregated form available, as required by specifications 10, 11, 16 and 18 in Schedule II of the Section 11 Order.

A chart listing the Section 104 documents with reference to the categories listed above is attached as Exhibit "B" to my affidavit.

16. As discussed above, Bell cooperated with the Bureau to produce the documents required under the Section 11 Order and by furnishing the Kirby Affidavit for the Section 104 Application. Bell has also responded on a voluntary basis to other more informal follow-up inquiries from the Bureau regarding the Bell Documents. This cooperation was provided on the understanding that Bell's confidential information would be protected, including in particular that it would not be shared with Rogers and Shaw, who are two of Bell's most significant competitors. As explained below, if the Section 104 Documents are disclosed to Rogers and Shaw, including their designated representatives, Bell will suffer substantial and serious competitive harm.
17. In addition, if the Section 104 Documents (or other Bell Documents) are shared with Rogers and Shaw, even just their designated representatives, Bell will be less willing to cooperate with requests from the Bureau for Bell to provide information or documents in future proceedings, including responding to outstanding follow-up requests for information in this matter. Specifically, Bell will very likely challenge the issuance or scope of any

future orders issued against it under section 11 of the *Competition Act* to protect its competitively sensitive documents from potential disclosure to its competitors. Bell will also be unwilling to provide information, documents, or evidence to the Bureau on a voluntary basis, as we have done in this proceeding (and as we have done in other merger review inquiries in the past). Based on my experience working with business representatives of Bell on *Competition Act*-related matters, this would include representatives of Bell (including its executives) being unwilling to participate at all in discussions with the Bureau as part of the Bureau's regular market outreach activities on mergers or other matters.

18. As noted above, the respondents have limited the scope of the relief they are seeking on this motion to the Section 104 Documents, which comprise a very small proportion of the over 850,000 Bell Documents. For the purposes of this motion, I have reviewed all the Section 104 Documents to: a) assess whether any of them could be redesignated as "Confidential – Level B" without causing irreparable harm to Bell; and b) assist in preparing my affidavit. If Bell were required to undertake this exercise for all the Bell Documents, we estimate that it would take at least 12 months to complete, at significant expense to Bell. Considering the volume of documents, Bell would inevitably have to engage an external vendor to complete that review (the estimate above is based on a team of 10 reviewers conducting the review). Each document would need to be reviewed manually on a document-by-document basis to ensure that competitively sensitive information that would harm Bell if disclosed is properly identified. Preparing an affidavit

based on the results of the review would likely take several additional weeks, based on my past experience.

BELL ZEALOUSLY PROTECTS ITS CONFIDENTIAL INFORMATION

19. The Section 104 Documents are not available or accessible to the public generally or to Bell's competitors specifically. Bell protects its confidential information zealously, as it is part of a highly competitive and sophisticated industry (i.e., telecommunications) in which any competitive intelligence is highly valuable and likely to be exploited by other industry participants. Moreover, Bell is aware of its legal obligations, including under the *Competition Act* provisions, and protects against sharing competitively sensitive information.

20. Further, Bell's practice when interacting with the CRTC or other government agencies is not to disclose the kind of sensitive confidential information contained in the Section 104 Documents. Instead, Bell provides summaries of the contents of such information given its confidential nature. When such summaries (among other types of documents) are provided to the CRTC, they are always granted confidentiality protection and are not disclosed to third parties. Information provided by Rogers and Shaw in such proceedings receives similar protection, and both Rogers and Shaw have claimed confidentiality over information, documents and data similar to the Section 104 Documents in CRTC proceedings and have even on some occasions objected to the disclosure of such information to outside counsel and independent experts. Both Rogers and Shaw have articulated the serious harms caused by disclosure of internal documents to competitors in prior CRTC proceedings.

21. Because the disclosure of certain types of confidential information would cause harm to Bell's competitive position in the marketplace, to its operations, and to its customers, Bell has measures in place to protect the confidentiality of such information. Generally, Bell's practice is to make each employee responsible for ensuring that all information relating to trade secrets and competitively sensitive information is kept confidential.

22. More specifically, Bell has specific policies and practices in place to control the use and disclosure of confidential business information (which includes the types of information contained in the Section 104 Documents). Those measures include:
 - a) Bell's employees and contractors are required to sign agreements acknowledging their obligation to protect confidential information belonging to Bell, with penalties for non-compliance up to and including dismissal;

 - b) documents containing confidential information are to be disseminated within Bell on a limited, need-to-know basis pursuant to specific document control guidelines, and outside Bell only after execution of a non-disclosure agreement. Whether internal or external, documents are only to be disseminated where there is a legitimate need to do so;

 - c) access to electronic documents considered to be particularly confidential are controlled through various measures, including password protection and encryption;

- d) data access is granted in the most limited method possible (for example, granting access to specific documents rather than folders). Data access is also reviewed periodically and users are removed when access is no longer required;
- e) documents and data are shared using approved tools and software and subject, where necessary, to additional encryption protection. Tools and processes are in place to detect and respond to any potential unauthorized disclosure or dissemination of confidential information (including, e.g., sending documents to personal email accounts);
- f) oral discussions are to be held in private work areas with only those employees who have a business need-to-know such information and with people outside the company only after execution of a non-disclosure agreement;
- g) each employee is responsible for keeping all physical copies of confidential information in a secure, locked location when it is not in use;
- h) each employee is responsible for the proper destruction of confidential information (i.e., such information is never to be disposed of in wastebaskets). Document shredders are in place to ensure proper destruction; and
- i) if confidential information must be shared externally for legitimate business purposes, that is done only pursuant to appropriate non-disclosure

agreements and, wherever possible, Bell permits external parties only to inspect documents containing confidential information rather than taking a copy.

23. Finally, Bell provides ongoing training on the policies and guidelines each employee and contractor must follow to protect confidential information. All employees and contractors must complete regular training on confidentiality obligations, data governance, and information security, including training that focuses on data protection and security. Bell also actively monitors that the training is completed by all employees and contractors, and that the policies set out in the training are followed.

DISCLOSURE OF CONFIDENTIAL SECTION 104 DOCUMENTS WOULD HARM BELL

24. I understand that documents designated as Confidential – Level B under the Confidentiality Order may be accessed by “designated representatives” of the respondents, as defined in the order, while documents designated as Confidential Level A may be accessed by external counsel, external experts, and document review vendors. I am advised by counsel that the designated representatives of Rogers and Shaw are currently Rogers’ Chief Legal Officer and Shaw’s Executive Vice President and Chief Legal and Regulatory Officer, respectively. However, under the Confidentiality Order, Rogers and Shaw may each name up to two internal counsel and six other employees as designated representatives.
25. The Section 104 Documents are highly commercially sensitive. Disclosure of these documents and the information therein to designated representatives of Rogers and Shaw

would give those companies a substantial unearned commercial advantage and would cause ongoing and irreparable harm to Bell.

26. For example, the Section 104 Documents include numerous internal presentation materials created for the purpose of strategy and decision-making meetings at Bell. These documents reveal in detail Bell's method and capabilities of analysis, conclusions on short and long-term market factors, assessment of its competitors' and Bell's own competitive strengths and weakness, strategic priorities and limitations (including the time required by Bell to respond to certain types of competitive activity in the market), and future business plans. Some of these documents fully detail Bell's strategies to compete against specific competitors such as Rogers or Shaw, which would harm Bell and competition in the industry if disclosed to representatives of Rogers or Shaw. In other words, these documents provide a blueprint of Bell's operational and competitive strategies, akin to what the reader would have if they had attended Bell's most high-level internal meetings in person.
27. Similar harms would result from the disclosure of the internal emails included in the Section 104 documents. These internal emails contain the same insight into Bell's decision-making processes and market analysis capabilities as the presentation materials, only in a format that is less formal. This insight is evident in the internal discussions captured in the emails selected by the Bureau to support its application, regardless of what the topics of these discussions are, and disclose the fullest nuances of Bell's competitive capabilities and strategies. These documents would provide extensive and invaluable insight to any business representative who competes against Bell and would be familiar with the context.

28. The harm caused by such disclosure cannot be mitigated by any undertaking (such as that required per the Confidentiality Order in this case) or deemed undertaking rule that may apply in the event of disclosure. This is because the harm does not result primarily from the potential to refer directly to the documents for another purpose or to use them in unrelated proceedings. Rather, the irreparable harm would result from anyone within Rogers or Shaw gaining knowledge and insight into Bell's most confidential business intelligence, competitive strategies, internal processes, specific competitive and innovation initiatives, competitive capabilities and limitations, and other information. Such disclosure can never be undone and would inexorably influence those individuals', or other individuals' they advise, decisions that will affect Bell and the Canadian communications market in the future.
29. Based on my knowledge and experience in the telecommunications industry, I also believe that disclosure of the Section 104 Documents would cause irreparable harm to competition in the telecommunications industry in Canada and to the efficacy of competition law enforcement. Just as Rogers or Shaw could use Bell's confidential information to obtain an unfair commercial advantage against Bell, that information could also be used to the detriment of Canadian consumers. By way of example, upon learning about Bell's competitive strategies, Rogers and Shaw may be motivated to:
- a) compete less aggressively in areas where they perceive they already have an advantage based on those strategies;
 - b) avoid competing in areas where they know Bell has certain plans that would allow it to outcompete them;

- c) act to disrupt Bell's future plans, including by targeting pricing, promotions or advertising; or
- d) structure their negotiations and relationships with Bell so as to block Bell from undertaking competitive initiatives or innovations that would otherwise benefit Canadian consumers.

30. By way of illustration, below I have described specific examples from the Section 104 Documents and the irreparable harm to Bell which would result from their disclosure to Rogers and Shaw.

A. Strategic Review and Planning Documents

i. [Redacted]

[Redacted]

[Redacted]

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ii.

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iii.

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C. Appendix B Data

- 50. The public versions of the expert reports filed by the Commissioner on the Section 104 Application are redacted and it is not evident on their face to what extent the Commissioner's experts relied on the Appendix B Data in conducting their analyses. However, based on my knowledge and experience with *Competition Act* and other regulatory matters, I believe it is likely that most if not all of the Appendix B Data would have been provided to the Commissioner's experts and used in their analysis.

- 51. The Appendix B data contains highly granular, transaction level data across regions, channels, and services. This includes detailed information regarding individual Bell customers, details on Bell's rebates/discounts/promotions on a customer-by-customer level, Bell's cost of goods sold, usage data, units sold, and sales channel, among other sensitive information. By way of summary:

- a) The data produced for specification 10 of the Section 11 Order discloses the average billing per user, yearly totals for service/installment billing amounts and total average monthly user count for each year from 2017 to 2021 broken down by province for AB, BC and ON.
- b) The data produced for specification 11 of the Section 11 Order contains information about Bell's customer base for the five years from 2017 to 2021 in the form of raw transaction-level (customer-by-customer level) data, the most disaggregated format available for such data. It includes information on individual Bell customers such as account ID and billing postal code, details on individual sales prices including breakdowns for rebates/discounts/promotions and device subsidies, cost of goods sold, sales channels, contract start date, remaining contract term and device balances on a customer-by-customer level, among other sensitive information.
- c) The data produced for specification 16 of the Section 11 Order contains yearly total figures for number of subscribers, gross/net subscriber additions, revenue and data usage (in GBs) broken down by plan, customer postal code and year.
- d) The data produced for specification 18 of the Section 11 Order contains detailed information about Bell's service offerings broken down by Plan IDs and other attributes, available provinces, prices, and launch and expiry dates.

52. Because the Appendix B Data is so granular, it could serve as a statistical basis to run various analyses to reach conclusions on Bell's competitive strengths and weaknesses, such as an analysis of the breakdown of Bell's customer base on each level of detail provided (e.g. by postal code and province/plan attributes/device/level of subsidy/sales channel/contract type and duration) or an analysis to discern trends and patterns in Bell's customer base over the five years for each detail provided.
53. If Rogers/Shaw obtained access to this data, they would be able to (i) identify specific customers of Bell and target them for conversion, with full knowledge of their plans, discounts, and pricing; (ii) understand the mix of Bell's sales and distribution channels and adjust their own distribution strategy to match or counter Bell's (iii) develop a strong understanding of Bell's cost of service and margins, which would allow Rogers/Shaw to tailor their pricing to challenge/undercut Bell, or to more easily engage in parallel pricing conduct, among other anti-competitive consequences.
54. Disclosure of the Appendix B data also raises concerns from a privacy perspective, as they contain details at the level of individual customers. For example, the data set produced in response to specification 10 of Schedule II of the Section 11 Order contains full six-digit postal codes for Bell customers. Postal codes can be very narrow, in some instances as narrow as a single household, so that they are closely associated with an individual. Other data contained in this data set, such as customer account numbers, could also be reverse-engineered by someone with access to the right information to identify specific customers.

PRIVILEGED DOCUMENTS

55. I understand that in addition to seeking to redesignate materials referred to in the s.104 Application, the Respondents are also seeking an order that certain documents over which the Commissioner has claimed litigation privilege are not litigation privileged, and an order redesignating those documents from Confidential Level A to Confidential Level B. I have reviewed the references to communications with Bell and/or our external counsel in Schedules 1 and 2 of the affidavit of Eric Widdowson, which the Commissioner filed in response to this motion, and certain of the underlying documents that correspond to those references. I can confirm that documents included on Schedules 1 and 2 contain Bell Confidential Level A information. I understand from counsel that the documents listed in Schedule 1 and 2 are only a subset of all the documents over which the Commissioner is claiming litigation privilege, and thus there may be other Bell documents as issue. Accordingly, if the Commissioner's claim for litigation privilege is defeated, none of the correspondence with Bell and/or our external counsel should be redesignated as Confidential Level B until Bell has had a chance to review all of those documents and recommend appropriate designations to the Commissioner in accordance with the Confidentiality Order.

CONCLUSION

56. I swear this affidavit for the purposes of the respondents' motion in this proceeding regarding the confidentiality of documents and for no other purpose.

SWORN remotely by Mark Graham in the
City of Toronto in the Province of Ontario,
before me in the City of Toronto in the
Province of Ontario, on August 3, 2022 in
accordance with O. Reg 431/20,
Administering Oath or Declaration Remotely



A Commissioner for taking affidavits, etc.
Joe McGrade

MARK GRAHAM

**This is Exhibit A to the Affidavit
of
Mark Graham
Affirmed on August 3, 2022**

Federal Court



Cour fédérale

Date: 20210801

Docket: T-1154-21

Ottawa, Ontario, August 1, 2021

PRESENT: Mr. Justice Andrew D. Little

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

and

BCE INC.

Respondent

ORDER

UPON the *ex parte* application made by the Commissioner of Competition (**“Commissioner”**) for an Order pursuant to paragraphs 11(1)(b) and 11(1)(c) of the *Competition Act*, RSC, 1985, c C-34, as amended (**“Act”**), which was heard this day at the Federal Court, Ottawa, Ontario;

AND UPON reading the affidavit of Laura Sonley affirmed on July 21, 2021;

AND UPON CONSIDERING the disclosure made by the Commissioner after filing the application, which included additional information about matters discussed with representatives of the respondent during pre-filing dialogue;

AND UPON being satisfied that an inquiry is being made under section 10 of the Act relating to the proposed acquisition of Shaw Communications Inc. by Rogers Communications Inc., reviewable under Part VIII of the *Competition Act* (“**Inquiry**”);

AND UPON being satisfied that the Respondent has, or is likely to have information that is relevant to the Inquiry;

1. **THIS COURT ORDERS** that the Respondent, BCE Inc., shall produce to the Commissioner all records and any other things specified in this Order, in accordance with the terms of this Order.
2. **THIS COURT FURTHER ORDERS** that the Respondent, BCE Inc., shall make and deliver to the Commissioner all written returns of information specified in this Order, in accordance with the terms of this Order.
3. **THIS COURT FURTHER ORDERS** that in order to facilitate the handling, use, and orderly maintenance of records and to ensure the accurate and expeditious return of records, other things specified in this Order and written returns of information produced pursuant to this Order, the Respondent, BCE Inc., shall comply with the following requirements:
 - a. the Respondent, BCE Inc., shall produce records, other things and information in its possession, control or power;

- b. the Respondent, BCE Inc., shall make and deliver a written return of information in such detail as is required to disclose all facts relevant to the corresponding specification in this Order;
- c. unless otherwise specified, the Respondent, BCE Inc., shall produce (i) records created or received during the period from January 1, 2017 to July 1, 2021; and (ii) written returns of information in respect of the same period;
- d. the Respondent, BCE Inc., shall produce all records and written returns of information in accordance with the Bureau's Guidelines for the Production of Electronically Stored Information ("**E-Production Guidelines**") attached at Schedule III of this Order;
- e. the Respondent, BCE Inc., shall scan each paper record into a separate electronic record and produce that copy in lieu of the original record unless making this copy would compromise the integrity of the original, render the copy difficult to read, or the original record size exceeds 216 mm x 356 mm (8½ in x 14 in); and a duly authorized representative of the Respondent, BCE Inc., shall certify by affidavit the copy is a true copy of the original record;
- f. a duly authorized representative of the Respondent, BCE Inc., shall certify by affidavit that all electronic records produced by the Respondent, BCE Inc., pursuant to this Order are true copies of the electronic records in their possession, control or power;
- g. each written return of information made by the Respondent, BCE Inc., shall be sworn or solemnly affirmed by a duly authorized representative of the Respondent, BCE Inc., as having been

examined by that person and as being, to the best of his or her knowledge and belief, correct and complete in all material respects;

h. if a record contains information that the Respondent, BCE Inc., claims is privileged, the Respondent, BCE Inc., shall produce the record with the privileged information redacted and in accordance with paragraph 6 of this Order;

i. the Respondent, BCE Inc., shall make all written returns of information, including those relating to revenues, costs and margins, in accordance with generally accepted accounting principles (“GAAP”), International Financial Reporting Standards (“IFRS”), or other accounting principles that the Respondent, BCE Inc., uses in its financial statements. where the Respondent, BCE Inc., produces a record or makes and delivers a written return of information using accounting principles other than GAAP or IFRS, the Respondent, BCE Inc., shall explain the meaning of all such accounting terms;

j. the Respondent, BCE Inc., shall define, explain, interpret or clarify any record or written return of information whose meaning is not self-evident;

k. the Respondent, BCE Inc., shall identify all calendars, appointment books, telephone logs, planners, diaries, and items of a similar nature that are produced in response to this Order with the name of the person or persons by whom they were used and the dates during which they were used;

l. before producing records pursuant to this Order, a duly authorized representative of the Respondent, BCE Inc., responsible for producing electronic records in accordance with the E-

Production Guidelines attached at Schedule III of this Order shall contact a person identified in paragraph 15 of this Order and provide particulars regarding how the Respondent, BCE Inc., will comply with the E-Production Guidelines. The Respondent, BCE Inc., shall make reasonable efforts to address any additional technical requirements the Commissioner may have relating to the production of electronic records in accordance with the E-Production Guidelines;

m. use of the singular or the plural in the Schedules of this Order shall not be deemed a limitation, and the use of the singular shall be construed to include, where appropriate, the plural and vice versa; and

n. use of a verb in the present or past tense in the Schedules of this Order shall not be deemed a limitation, and the use of either the present or past tense shall be construed to include both the present and past tense.

4. **THIS COURT FURTHER ORDERS** that the Respondent, BCE Inc., shall make and deliver, in a written return of information, an index in which the Respondent, BCE Inc., identifies all records (or parts of records) responsive to the Specifications in Schedule I of this Order for which privilege is claimed. The index shall include the title of the record, the date of the record, the name of each author, the title or position of each author, the name of each addressee and recipient, the title or position of each addressee and recipient, and the paragraphs or subparagraphs of Schedule I of the Order to which the record is responsive. In lieu of listing the title or position of an author, addressee or recipient for each record, the Respondent, BCE Inc., may make and deliver a written return of information listing such persons and their titles or positions.

5. **THIS COURT FURTHER ORDERS** that where the Respondent, BCE Inc. asserts a legal privilege in respect of all or part of a record, the Respondent, BCE Inc., shall, in a written return of information:

- a) produce, for each record, a description of the privilege claimed and the factual basis for the claim in sufficient detail to allow the Commissioner to assess the validity of the claim; and
- b) identify by name, title and address, all persons to whom the record or its contents, or any part thereof, have been disclosed.

Without restricting any other remedy he may seek, the Commissioner may, by written notice to the Respondent, BCE Inc., at any time require the Respondent, BCE Inc., to produce records for which solicitor-client privilege is claimed to a person identified in subsection 19(3) of the Act.

6. **THIS COURT FURTHER ORDERS** that the Respondent, BCE Inc., shall make and deliver a written return of information confirming that the records or things produced pursuant to this Order were either in the possession of or on the premises used or occupied by the Respondent, BCE Inc., or in the possession of an officer, agent, servant, employee or representative of the Respondent, BCE Inc.. If a record or thing produced by the Respondent, BCE Inc., pursuant to this Order does not meet the above conditions, the Respondent, BCE Inc., shall make and deliver a written return of information explaining the factual circumstances about the possession, power, control and location of such record or thing.

7. **THIS COURT FURTHER ORDERS** that the Respondent, BCE Inc., shall make and deliver a written return of information stating whether, upon having conducted a diligent search and made appropriate enquiries, it has reason to believe that it is not producing pursuant to this Order a record,

thing, type of record or type of thing that was formerly in the possession, control or power of the Respondent, BCE Inc., and that the record, thing, type of record or type of thing would be responsive to a Specification of this Order if the Respondent, BCE Inc., had continued to have possession, control or power over the record, thing, type of record or type of thing. The Respondent, BCE Inc., shall state in this written return of information (a) when and how the Respondent, BCE Inc., lost possession, control and power over a record, thing, type of record or type of thing; and (b) the Respondent's, BCE Inc.'s, best information about the present location of the record, thing, type of record or type of thing.

8. **THIS COURT FURTHER ORDERS** that the Respondent, BCE Inc., shall make and deliver a written return of information stating whether, upon having conducted a diligent search and made appropriate enquiries, it has reason to believe that it never had possession, control or power over a record, thing, type of record or type of thing responsive to a Specification in this Order, that another person not otherwise subject to this Order has possession, control or power over the record, thing, type of record or type of thing, and that the record, thing, type of record or type of thing would be responsive to a Specification of this Order if the Respondent, BCE Inc., possessed the record, thing, type of record or type of thing. The Respondent, BCE Inc., shall state in this written return of information its best information about (a) the Specification to which the record, thing, type of record or type of thing is responsive, (b) the identity of the person who has possession, control or power of the record, thing, type of record or type of thing, and (c) that person's last known address.

9. **THIS COURT FURTHER ORDERS** that the Respondent, BCE Inc., shall make and deliver a written return of information stating whether, upon having conducted a diligent search and made appropriate enquiries, it has reason to believe that a record, thing, type of record or type of thing responsive to this Order has been destroyed and that the record, thing, type of record or type of thing

would have been responsive to a Specification of this Order if it had not been destroyed. The Respondent, BCE Inc., shall in this written return of information state whether the record, thing, type of record or type of thing was destroyed pursuant to a record destruction or retention policy, instruction or authorization and shall produce that policy, instruction or authorization.

10. **THIS COURT FURTHER ORDERS** that the Respondent, BCE Inc., shall make and deliver a written return of information stating whether, upon having conducted a diligent search and made appropriate enquiries, it has reason to believe it does not have records, things or information responsive to a Specification in this Order because the record, thing or information never existed. The Respondent, BCE Inc., shall, upon request of the Commissioner, make and deliver a further written return of information explaining why the record, thing or information never existed.

11. **THIS COURT FURTHER ORDERS** that where the Respondent, BCE Inc., previously produced a record or thing to the Commissioner the Respondent, BCE Inc., is not required to produce an additional copy of the record or thing provided that the Respondent, BCE Inc.: (1) identifies the previously produced record or thing to the Commissioner's satisfaction; (2) makes and delivers a written return of information in which it agrees and confirms that the record or thing was either in the possession of the Respondent, BCE Inc., on premises used or occupied by the Respondent, BCE Inc., or was in the possession of an officer, agent, servant, employee or representative of the Respondent, BCE Inc.; and where this is not the case, the Respondent, BCE Inc., shall make and deliver a written return of information explaining the factual circumstances about the possession, power, control and location of such record or thing; and (3) receives confirmation from the Commissioner that such record or thing need not be produced.

12. **THIS COURT FURTHER ORDERS** that where the Respondent, BCE Inc., produces records or things or delivers written returns of information that are, in the opinion of the Commissioner, adequate for the purposes of the Inquiry, the Commissioner may, by written notice, waive production of any additional records, things or information that would have otherwise been responsive to the Order.

13. **THIS COURT FURTHER ORDERS** that the Respondent, BCE Inc., shall make and deliver a written return of information that:

- a. describes the authority of the person to make the written return of information on behalf of the Respondent, BCE Inc.;
- b. includes a statement that, in order to comply with this Order, the person has made or caused to be made:
- c. a thorough and diligent search of the records, things and information in the possession, control or power of the Respondent, BCE Inc.;
- d. appropriate enquiries of the Respondent's, BCE Inc.'s, personnel; and
- e. states the person has examined the records and things produced and written returns made and delivered pursuant to the Order and that those records, things and written returns are, to the best of his or her knowledge and belief, correct and complete in all material respects.

14. **THIS COURT FURTHER ORDERS** that the returns of:

- a. records in Schedule I shall be completed within 120 calendar days of the service of this order herein;
- b. written return specifications 11, 12 and 15 of Schedule II shall be completed within 90 calendar days of the service of this order; and

- c. the remainder of Schedule II shall be completed within 45 calendar days of the service of this order.

15. **THIS COURT FURTHER ORDERS** that the Respondent, BCE Inc., shall produce all records and things and deliver all written returns of information to the Commissioner at the following address:

Competition Bureau
Mergers Directorate
Place du Portage Phase I
50 Victoria Street
Gatineau, Quebec K1A 0C9

Attention: Laura Sonley, Sorina Sam, Mathew McCarthy

Communications or inquiries regarding this Order shall be addressed to:

Department of Justice
Competition Bureau Legal Services
Place du Portage Phase I
50 Victoria Street
Gatineau, Quebec K1A 0C9

Attention: Derek Leschinsky, Steve Sansom, Katherine Rydel

16. **THIS COURT FURTHER ORDERS** that this Order may be served in person or by means of facsimile machine, electronic mail (with acknowledgement of receipt) or registered mail on a duly authorized representative of the Respondent(s) or on counsel for the Respondent(s) who have agreed to accept such service.

“Andrew D. Little”

Judge

SCHEDULES I AND II

Notice Concerning Obstruction

Any person who in any manner impedes or prevents, or attempts to impede or prevent, any inquiry or examination under the Act, or who destroys or alters or causes to be destroyed or altered, any record or thing that is required to be produced under section 11 of the Act may be subject to criminal prosecution for obstruction of justice, contempt of court or other federal criminal violation. Where a corporation commits such an offence, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in the commission of the offence, may also be prosecuted. Conviction of any of these offences is punishable by fine or imprisonment, or both.

Relevant Period

For the purpose of Schedules I and II, the Respondent, BCE Inc., shall unless otherwise specified: (i) produce records created or modified during the period from 1 January 2017 to 1 July 2021; and (ii) make and deliver written returns of information for the period from 1 January 2017 to 1 July 2021.

Definitions

For the purpose of Schedules I and II, the following terms shall have the respective meanings set out below and any grammatical variations of those terms shall also have the corresponding meanings:

“**5G**” means 5th generation technology;

“**Act**” means the Competition Act, R.S.C., 1985, c. C-34, as amended;

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

“**Backhaul**” means the infrastructure used to connect wireless cell sites to one another and the core network, including but not limited to fibre and microwave connections;

“**Bureau**” means the Competition Bureau;

“**Company**” means BCE Inc., its domestic and foreign parents, predecessors, divisions, Affiliates, and all directors, officers, and employees of the foregoing;

“**Data Dictionary**” means documentation of the organization and structure of databases or data sets, including, for each table of information: the size (number of records and overall volume); a general description; a list of field names; a definition for each field as it is used by the Company, including the meanings of all codes that can appear as field values; the format, including variable type and length, of each field; and the primary key in a given table that defines a unique observation;

“**Person**” means any individual, partnership, limited partnership, firm, corporation, association, trust, unincorporated organization, or other entity, including Company;

“**Proposed Transaction**” means the proposed acquisition of Shaw Communications Inc. by Rogers Communications Inc. as described in Rogers and Shaw news releases dated March 15, 2021;¹

“**RAN**” means radio access network;

“**Record**” has the same meaning as in subsection 2(1) of the Act and, for greater certainty, includes any email or other correspondence, mobile phone text messages, messages using third party messaging applications, memorandum, pictorial or graphic work, spreadsheet or other machine readable record and any other documentary material, regardless of physical form or characteristics;

“**Relevant Area**” means (unless otherwise specified in a particular paragraph or subparagraph of this order) Canada;

“**Senior Officer**” means the chairperson, president, chief executive officer, vice-president, secretary, treasurer, chief financial officer, chief operating officer, general manager, managing director, or any individual who performs their functions;

“**Wireless Network**” means any infrastructure used to provide Wireless Services; and

“**Wireless Services**” means the provision of mobile communication services including voice, text, data, mobile broadband internet, and applications to consumers and business users of mobile devices excluding tablets and internet of things devices.

¹ Rogers (2021). Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada’s 5G rollout.

Shaw (2021). Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada’s 5G rollout.

SCHEDULE I

RECORDS TO BE PRODUCED PURSUANT TO PARAGRAPH 11(1)(b) OF THE ACT

1. Provide all Records prepared or received by a Senior Officer relating to the Company's assessment of the Proposed Transaction with respect to competition, competitors, market shares, markets, pricing strategies, investment including related to 5G, implications for pre-existing or potential future network sharing agreements, the potential for sales growth or expansion into new products or geographies, and alternative transactions involving either of the merging parties.
2. Provide all reports, studies, surveys, analyses, strategic, business, and marketing plans prepared or received by a Senior Officer during the Relevant Period with respect to Wireless Services in the Relevant Area for the purpose of Company's short term and long term network planning and network cost modelling including but not limited to factors like traffic, costs, quality, the introduction of new products and services, and including such reports prepared by equipment vendors.
3. Provide any training materials, scripts, frequently asked questions or other guidance materials provided to Company's sales staff and customer service representatives relating to Wireless Services during the Relevant Period in the Relevant Area.
4. Provide all Records prepared or received by a Senior Officer during the Relevant Period, with respect to Wireless Services in the Relevant Area relating to:
 - (a) the market share of Company or any of its potential or actual competitors;
 - (b) the strengths, weaknesses, or competitive position of any Person, including but not limited to network capability (e.g. coverage, quality, RAN, spectrum, Backhaul, and 5G deployment), bundling, distribution, pricing, and device offerings;
 - (c) Company's considered or actual competitive response to any Person; and
 - (d) price monitoring, pricing policies, pricing lists, pricing forecasts, pricing zones, pricing strategies, pricing analyses, price competition, price matching, and discounts of any Person, including with respect to devices.
5. Provide all reports, studies, surveys, analyses, strategic, business, and marketing plans prepared or received by a Senior Officer during the Relevant Period with respect to Wireless Services in the Relevant Area relating to:
 - (a) customer segments, customer profiles and brand positioning including but not limited to customer preferences such as technology (3G, 4G, and 5G), network quality, bundling, usage levels, payment type (pre-paid vs. post-paid), and devices; and, customer characteristics such as demographics and geographic location;
 - (b) potential or actual investments in Company's network, including to enter new geographic areas and improve network quality;
 - (c) customer retention and customer switching;

- (d) potential or actual introduction of new products or services by any Person, including costs or impediments to the introduction of new services by any Person;
 - (e) responses or anticipated responses of customers to changes in price, quality (including the introduction of 5G), service and innovations by any Person, including any estimated market or firm elasticities; and
 - (f) Company's considered or actual competitive or market response to outcomes of the CRTC proceeding that resulted in TRP 2021-130.
6. Provide a copy of all agreements in force at any time during the Relevant Period with respect to Wireless Services relating to:
- (a) actual or potential sharing of any component of a Person's Wireless Network;
 - (b) resale of Company's Wireless Network; and/or
 - (c) jointly building or expanding a Wireless Network.
7. Provide all information filed with the Commission for Complaints for telecom-Televisions Services relating to Wireless Services during the Relevant Period.

SCHEDULE II

WRITTEN RETURNS OF INFORMATION TO BE PRODUCED PURSUANT TO PARAGRAPH 11(1)(C) OF THE ACT

8. Provide a current organizational chart and personnel directory and identify the individuals searched for the purpose of responding to this Order, including their name, title, and a description of their roles and responsibilities.
9. Provide any managerial accounting report and financial statement (e.g. profit and loss, income statement) that records financial data on Company revenues, costs, margins, and profits for lines of business that include Wireless Services in British Columbia, Alberta, and Ontario during the Relevant Period at the most disaggregated regional level (e.g. provincial) and national level.
10. Provide the following annual Company data, including all relevant Data Dictionaries, for Wireless Services by brand where available in each of British Columbia, Alberta, and Ontario, or nationally if not available by province, during the Relevant Period:
 - (a) average billing/revenue per user;
 - (b) customer acquisition cost, including a breakdown;
 - (c) customer variable cost, including a breakdown;
 - (d) customer lifetime value, including a breakdown;
 - (e) return on investment, including a breakdown; and
 - (f) number of subscribers, subscriber gross additions, subscriber net additions, and subscriber churn.
11. Provide the following Company data, including all relevant Data Dictionaries, that record sales data related to Wireless Services in British Columbia, Alberta, and Ontario during the Relevant Period in the most disaggregated form available (e.g. transaction level, if available). The response should contain the information found in Appendix A.
12. Provide a list of all cellular sites, spectrum, and retail stores that distributed Wireless Services in British Columbia, Alberta, and Ontario during the Relevant Period. The response should contain the information found in Appendices B-1 to B-2.
13. Provide a list of all promotions for Wireless Services in British Columbia, Alberta, and Ontario during the Relevant Period. The response should contain a description of the promotion, the brand under which the promotion was offered, the time the promotion was available, the area the promotion was available, and the number of customers who subscribed to the promotion.
14. Provide the following Company data, including all relevant Data Dictionaries, regarding customer opportunities won and lost related to Wireless Services in British Columbia, Alberta, and Ontario during the Relevant Period in the most disaggregated form available. The response should contain customer switching to competitors, customer switching to different products within the Company,

surveys of exiting customers, demographics of switching customers, and wireless number porting. The information should contain the information found in Appendix C.

15. Provide any third party dataset available to Company, including all relevant Data Dictionaries, related to the supply of Wireless Services in British Columbia, Alberta, and Ontario during the Relevant Period in the most disaggregated form available. Such data should include pricing, revenues, quantities, margins, market shares, porting, switching, costs, capacities, quality, or location of suppliers.
16. Provide the following data related to Wireless Services in the Relevant Area except Manitoba during the Relevant Period for each Company wireless service plan, customer postal code, and year:
 - (a) average number of subscribers over the year;
 - (b) total gross subscriber additions for the year;
 - (c) total net subscriber additions for the year;
 - (d) total wireless service revenue for the year; and
 - (e) total wireless service data usage in gigabytes for the year.
17. Provide the following data related to Wireless Services in Manitoba during the Relevant Period for each Company wireless service plan, customer postal code, and month:
 - (a) average number of subscribers over the month;
 - (b) total gross subscriber additions for the month;
 - (c) total net subscriber additions for the month;
 - (d) total wireless service revenue for the month; and
 - (e) total wireless service data usage in gigabytes for the month.
18. Provide the following data related to Wireless Services in the Relevant Area during the Relevant Period for each Company wireless service plan:
 - (a) plan ID to link with subscriber data;
 - (b) plan provider brand (e.g. Bell, Virgin, Lucky);
 - (c) plan description;
 - (d) device category (e.g. mobile phone, tablet)
 - (e) pre-paid or post-paid indicator;
 - (f) shared plan indicator;
 - (g) first or additional line indicator;
 - (h) whether the plan includes a device or device subsidy;

- (i) plan limits for each included service (e.g. voice minutes, data);
- (j) plan speed limits (e.g. “3G” plans);
- (k) additional plan restrictions (e.g. data throttled when roaming or over plan limit).

**SCHEDULE III
E-PRODUCTION GUIDELINES**



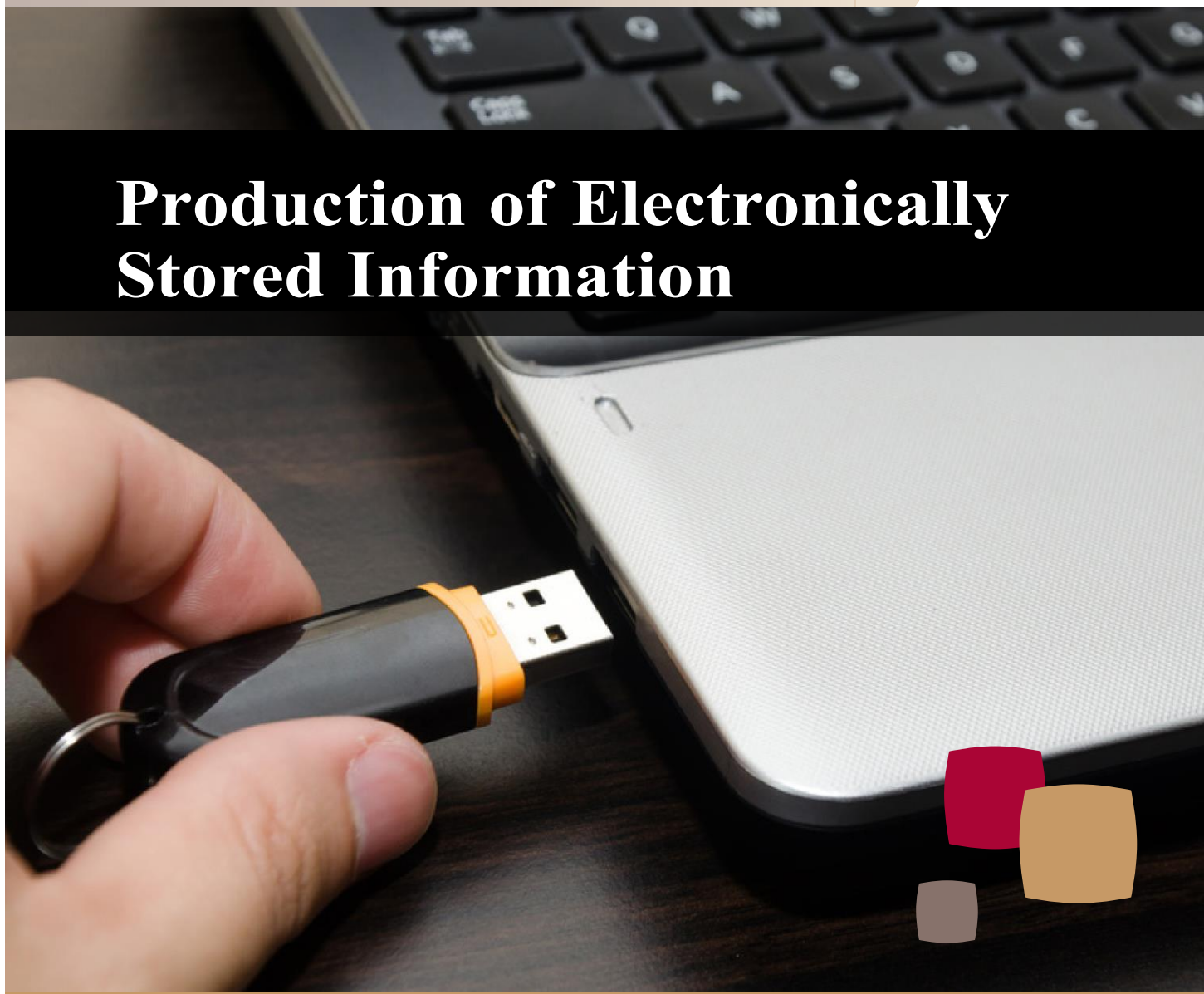
Competition Bureau
Canada

Bureau de la concurrence
Canada

Enforcement Guidelines



**Production of Electronically
Stored Information**



This publication is not a legal document. It contains general information and is provided for convenience and guidance in applying the *Competition Act*.

For information on the Competition Bureau's activities, please contact:

Information Centre
Competition Bureau
50 Victoria Street
Gatineau QC K1A 0C9

Tel.: 819-997-4282
Toll free: 1-800-348-5358
TTY (for hearing impaired): 1-800-642-3844
Fax: 819-997-0324
Website: www.competitionbureau.gc.ca

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C.D. Howe Building
235 Queen Street
Ottawa, ON K1A 0H5
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Cat. No. Iu54-54/2015E-PDF
ISBN 978-0-660-01970-3

2015-04-28

Aussi offert en français sous le titre Production de renseignements stockés électroniquement.

PREFACE

The Competition Bureau (the “Bureau”), as an independent law enforcement agency, ensures that Canadian businesses and consumers prosper in a competitive and innovative marketplace. The Bureau investigates anti-competitive practices and promotes compliance with the laws under its jurisdiction, namely the *Competition Act* (the “Act”), the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act*.

The Bureau has issued these guidelines for the Production of Electronically Stored Information (“ESI”) to promote the efficient processing and review of any electronic production received by the Bureau and to resolve any details before parties collect and produce responsive records. Transparency regarding the Bureau’s preferences for receiving ESI improves predictability and helps producing parties make informed decisions. These guidelines reflect the Bureau’s current preferences based on existing technologies used by the Bureau to process and review ESI and will be updated, as required, where the Bureau adopts new or different technologies.

John Pecman
Commissioner of Competition

I. TABLE OF CONTENTS

■ 1. INTRODUCTION	1
■ 2. APPLICABILITY OF THE GUIDELINES	1
■ 3. ONGOING COMMUNICATION	2
■ 4. TECHNICAL INSTRUCTIONS	2
■ HOW TO CONTACT THE COMPETITION BUREAU	5
SCHEDULES	
■ SCHEDULE A	6
■ SCHEDULE B	6

A.  **1. INTRODUCTION**

These guidelines for the production of electronically stored information (“ESI”) set out the Competition Bureau’s (the “Bureau”) preferred formats for receiving ESI produced in response to compulsory processes and, in certain instances, produced voluntarily in the course of an inquiry or investigation under the *Competition Act* (the “Act”).

The Bureau continuously strives to carry out its mandate in the most efficient and effective means possible. The receipt of ESI in a format set out below will assist the Bureau in achieving that objective through the reduction of processing and reviewing times and will avoid unnecessary costs and delays associated with unusable productions. Early and regular communication among the Bureau, producing parties and their counsel regarding production methodologies and formats is encouraged. Given the technical nature of the subject matter, it is also beneficial to involve persons with the requisite technical expertise, whether in-house or those of a third-party service provider, when using these guidelines, including participating in discussions with Bureau representatives regarding the production of ESI.

These guidelines reflect the Bureau’s current preferences based on existing technologies used by the Bureau to process and review ESI and will be updated, as required, where the Bureau adopts new or different technologies.

These guidelines do not address the type or scope of information that may be required or requested by the Bureau in the course of an inquiry or an investigation, nor do they address the Bureau’s preferred practices regarding the production of non-electronic records or other things, except where those records are converted to ESI.

B.  **2. APPLICABILITY OF THE GUIDELINES**

The Bureau generally seeks production in accordance with these guidelines when seeking a court order under section 11 of the Act or under the *Criminal Code*. Further, the Bureau expects that producing parties will adhere to these guidelines in the following instances:

- responding to a supplementary information request issued under subsection 114(2) of the Act;
- submitting a production pursuant to participation in the Bureau’s Immunity or Leniency Programs; and
- submitting information voluntarily.

In this regard, a copy of the guidelines will generally be incorporated in or appended to an order or request for information.

C.



(1) *3. ONGOING COMMUNICATION*

Bureau staff will contact producing parties shortly following the issuance of an order or request for information to which these guidelines apply and will be available for ongoing dialogue regarding the production of ESI.

Producing parties, together with their technical staff and/or third-party service provider, are strongly encouraged to speak with Bureau staff (case officers and technical staff) prior to collecting and prior to producing ESI to discuss production details, including the manner in which ESI is stored, the types of information that are available on the electronic source and the format of production.

D.



4. TECHNICAL INSTRUCTIONS

4.1 All ESI (i.e., information readable in a computer system) should be produced free of computer viruses or malware, be accessible, readable and printable, and be devoid of passwords or encryption.

4.2 All ESI should be produced in its original electronic format (i.e., native format), except where near-native format is required by subsections 4.3.2 or 4.6 or where an image production is produced as per subsection 4.8. Detailed instructions are set out in Schedule A for production using computer systems without application export capabilities and in Schedule B for production using litigation application exports. The Bureau's preference is to receive ESI in accordance with Schedule B.

4.3 Where a record being produced is part of a family, all parent and child records should be produced and the parent/child relationship should be preserved. A family is a collection of pages or files produced manually or by a software application, constituting a logical single communication of information, but consisting of more than one single stand-alone record. Examples include:

4.3.1 a fax cover, the faxed letter, and an attachment to the letter, where the fax cover is the parent and the letter and attachment are each a child.

4.3.2 email repositories (e.g., Outlook .PST, Lotus .NSF) can contain a variety of records, including messages, calendars, contacts, and tasks. For purposes of production, all parent records, both native (e.g., documents, spreadsheets, presentations) and near-native email, calendar, contacts, tasks, notes and child records (e.g.,

object linking and embedding items and attachments of files to emails or to other parent records) should be produced, with the parent/child relationship preserved. Similar items found and collected outside an email repository (e.g., .MSG, .EML, .HTM, .MHT) should be produced in the same manner; and

4.3.3 archive file types (e.g., .zip, .rar) should be uncompressed for processing. Each file contained within an archive file should be produced as a child to the parent archive file. If the archive file is itself an attachment, that parent/child relationship should also be preserved.

4.4 Hard copy or paper records produced as ESI should be produced as single page TIFF images with a resolution of 300 dpi (dots per inch) and OCR generated text. The records should be produced as they are kept, reflecting attachment relationships between records and information about the file folders within which the record is found. Where colour is required to interpret the record, such as hard copy photos, and certain charts, that image should be produced in colour. These colour images are to be produced as .jpg format. Hard copy photographs should be produced as colour .jpg, if originally in colour, or greyscale .tif files if originally in black and white.

The following bibliographic information, if it is available, should also be provided for each record:

- a. document ID
- b. date
- c. author / author organization
- d. recipient / recipient organization

4.5 The records produced should be indexed as being responsive to the applicable paragraphs or subparagraphs in the [Order/Request].

4.6 Each database record submitted in response to a paragraph or subparagraph of the [Order/Request]:

4.6.1 should be produced whole, in a flat file, in a non-relational format and exported as a delimited text file where fields are separated by the pipe character (|) and a caret (^) is used as the text qualifier (e.g. ^Field1^|^Field2^|^Field3^ etc.); and

4.6.2 should include a list of field names; a definition for each field as it is used by the producing party, including the meanings of all codes that can appear as field values; the format, including variable type and length, of each field; and the primary key in a given table that defines a unique observation.

- 4.7 With regard to de-duplication:
- 4.7.1 for investigations relating to Part VI of the Act, all copies of records should be provided; and
 - 4.7.2 for investigations relating to Parts VII.1 and VIII of the Act, the producing party may use de-duplication or email threading software if the producing party provides the Bureau with a written description of the proposed process to be used, including what is considered a duplicate, and the Bureau confirms that the deployment of such process permits the producing party to comply fully with the [Order/Request].
- 4.8 Documents requiring redaction pursuant to any claim of privilege should be produced as single-page TIFF or multi-page PDF images and designated “Redacted” in the field as described in Schedule B. Appropriately redacted searchable text (OCR of the redacted images is acceptable), metadata, and bibliographic information must also be provided. All documents that are part of a document family that includes a document withheld pursuant to any claim of privilege will be designated “Family Member of Privileged Doc” in the field as described in Schedule B for all other documents in its family. Placeholder images with BEGDOC#, FILENAME, FILEPATH and reason withheld (e.g., “Privileged”) should be provided in place of the document images of the privileged document.
- 4.9 All ESI should be provided on portable storage media appropriate to the volume of data (e.g., USB/flash drive, CD, DVD, hard drive) and should be identified with a label setting out the matter name, the contents and the date of production. Each medium should contain no more than 250,000 files (e.g., native ESI or images or a combination of both).
- 4.10 In the event that ESI is delivered in a format that is not one of the formats set out in Schedule A or Schedule B, the ESI should be provided along with all available instructions and other materials, including software, as necessary for the retrieval and use of the ESI (subject to any software licensing restrictions, which the producing party and the Bureau should discuss in advance of production).

E.



HOW TO CONTACT THE COMPETITION BUREAU

Anyone wishing to obtain additional information about the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act*, the *Precious Metals Marking Act* or the program of written opinions, or to file a complaint under any of these acts should contact the Competition Bureau’s Information Centre:

Website [

www.competitionbureau.gc.ca

Address

[Information Centre
Competition Bureau
50 Victoria Street
Gatineau, Quebec K1A 0C9

Telephone

[Toll-free: 1-800-348-5358
National Capital Region: 819-997-4282
TTY (for hearing impaired) 1-800-642-3844

Facsimile

[819-997-0324

F.



SCHEDULE A

Computer Systems with No Application Export Capabilities

1. ESI generated by office productivity suite software should be produced in its native format.
2. Emails should be produced in their near-native format. Where an email has attachments, the attachments should be left embedded in the native file and not extracted separately.

G.



SCHEDULE B

Litigation Application Exports

1. A load file (e.g., Opticon (OPT), IPRO (LFP), Summation (DII) or Ringtail (MDB)) and all related ESI should be produced in native format except where near-native format is required by subsections 4.3.2 and 4.6.
2. Within the delimited metadata file where fields are separated by the pipe character (|) and a caret (^) is used as the text qualifier (e.g. ^Field1|^Field2|^Field3^ etc.), and depending on the nature of the ESI, the following fields should be provided:

DOCID
BEGDOC

ENDDOC
BEGATTACH
ENDATTACH
FILEPATH
PARENTBATES (bates number of parent record)
CHILDBATES (bates number(s) of any child records)
MD5HASH (MD5HASH of the native format ESI)
TEXTPATH (link to extracted text on the production media for tiffs only)
NATIVEPATH (link to any files produced in native or near-native format on
the production media)
CUSTODIAN
ALLCUSTODIAN
TO
FROM
AUTHOR
CC
BCC
SUBJECT/TITLE
FILENAME
DOCDATE
DATESENT
TIMESENT
DATECREATED
TIMECREATED
DATELASTMOD
TIMELASTMOD
DATEACCESSED
TIMEACCESSED
SPECIFICATION
FILEEXTENSION
REDACTED
FAMILYMEMBERPRIVILEGEDDOC

3. The ESI produced should be indexed by using the 'SPECIFICATION' field as being responsive to the paragraphs or subparagraphs in the [Order/Request]. If multiple values exist for the specification, they should be separated by a semi-colon (e.g. 1a;1b;2a, etc.).

Federal Court



Cour fédérale

Date: 20210913

Docket: T-1154-21

Ottawa, Ontario, September 13, 2021

PRESENT: Mr. Justice A.D. Little

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

AND IN THE MATTER of an inquiry pursuant to section 10 of the *Competition Act* relating to the proposed acquisition of Shaw Communications Inc. by Rogers Communications Inc., reviewable under Part VIII of the *Competition Act*;

AND IN THE MATTER of an *ex parte* application by the Commissioner of Competition for an Order requiring BCE Inc. to produce records pursuant to paragraph 11(1)(b) of the *Competition Act* and to make and deliver written returns of information pursuant to paragraph 11(1)(c) of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

and

BCE INC.

Respondent

ORDER

UPON reviewing correspondence from counsel for the respondent dated September 10, 2021, containing an informal motion for an Order varying the *ex parte* Order dated August 1,

2021 made under s. 11 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Section 11 Order”) to extend the deadline for the Respondent to comply with certain aspects of the Section 11 Order;

AND UPON being advised that the applicant consents to the Order sought;

AND UPON being satisfied that the respondent’s request satisfies the requirements of Rule 399(2) of the *Federal Courts Rules*;

THIS COURT ORDERS THAT:

1. Paragraph 14(c) of the Section 11 Order is varied to read as follows:

“c. the remainder of Schedule II shall be completed within 45 calendar days of the service of this Order, except specifications 16(e) and 17(e) which shall be completed within 60 calendar days of the service of this Order.”

2. There is no Order as to costs.

“Andrew D. Little”

Judge

**This is Exhibit B to the Affidavit
of
Mark Graham
Affirmed on August 3, 2022**

**This is Exhibit C to the Affidavit
of
Mark Graham
Affirmed on August 3, 2022**

**This is Exhibit D to the Affidavit
of
Mark Graham
Affirmed on August 3, 2022**

**This is Exhibit E to the Affidavit
of
Mark Graham
Affirmed on August 3, 2022**

**This is Exhibit F to the Affidavit
of
Mark Graham
Affirmed on August 3, 2022**

**This is Exhibit G to the Affidavit
of
Mark Graham
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**This is Exhibit H to the Affidavit
of
Mark Graham
Affirmed on August 3, 2022**

**This is Exhibit I to the Affidavit
of
Mark Graham
Affirmed on August 3, 2022**

**This is Exhibit J to the Affidavit
of
Mark Graham
Affirmed on August 3, 2022**

**This is Exhibit K to the Affidavit
of
Mark Graham
Affirmed on August 3, 2022**

