

FILED / PRODUIT

Date: October 18, 2022

CT-2022-002

Sara Pelletier for / pour
REGISTRAR / REGISTRAIRE

CT-2022-002

OTTAWA, ONT.

Doc. # 391

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*.

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

ROGERS COMMUNICATIONS INC. and SHAW COMMUNICATIONS INC.

Respondents

– and –

ATTORNEY GENERAL OF ALBERTA and VIDEOTRON LTD.

Intervenors

**SUPPLEMENTARY AFFIDAVIT OF DANIEL STERN
(Affirmed October 17, 2022)**

I, DANIEL STERN, of the City of Toronto, in the Province of Ontario MAKE OATH
AND SAY:

1. I am the Director, Regulatory Law and Policy of TELUS Corporation (collectively with its subsidiaries “**TELUS**”), a position that I have held since December 2017. I have affirmed this affidavit (my “**Supplementary Affidavit**”) to supplement the affidavit that I delivered on October 13, 2022 (“**Original Affidavit**”) in support of TELUS’ motion to quash the documentary production demands set out in the subpoena issued by the

Registrar of the Tribunal at Shaw's request on October 3 ("**Shaw Original Subpoena**") and the subpoena issued by the Registrar of the Tribunal at Roger's request on October 5, 2022 ("**Rogers Original Subpoena**") in each case to Messrs. Benhadid and Casey of TELUS. The Shaw Original Subpoena and Rogers Original Subpoena are collectively referred to as the "**Original Subpoenas**". The capitalized terms in this Supplementary Affidavit have the meaning ascribed to them in my Original Affidavit unless defined otherwise herein.

2. In my Original Affidavit, I set out the facts and background relating to the Original Subpoenas. In my Original Affidavit, I also set out TELUS' objections to the Original Subpoenas, given the history of this proceeding, the active case management that has occurred to date, the fact that TELUS is not a party to this proceeding and the scope, burden and delay associated with the demands of the Original Subpoenas.

3. I understand that TELUS delivered and filed its motion to quash and my Original Affidavit with the Tribunal on October 13, 2022.

4. I further understand that following the delivery of TELUS' Motion to Quash and my Original Affidavit, there was a meeting among external counsel to TELUS, Rogers, Shaw, Bell and the Commissioner on October 14, 2022, during which external counsel to Rogers and Shaw indicated that they would be withdrawing the Original Subpoenas.

5. I further understand that following that meeting, Rogers and Shaw circulated new subpoenas to replace the Original Subpoenas, specifically:

- (a) a subpoena issued by the Registrar of the Tribunal on October 14, 2022 pursuant to Section 7(1) of the *Competition Tribunal Rules*, at the request

of Rogers, a copy of which is attached hereto at **Exhibit “A”** to this Affidavit (the “**Rogers Second Subpoena**”); and

- (b) a subpoena issued by the Registrar of the Tribunal on October 14, 2022 pursuant to Section 7(1) of the *Competition Tribunal Rules* at the request of Shaw, a copy of which is attached hereto as **Exhibit “B”** to this Affidavit (the “**Shaw Second Subpoena**”).

6. I understand that Shaw’s counsel circulated the Shaw Second Subpoena at 2:03 PM on Friday, October 14, 2022, and that Rogers’ counsel circulated the Rogers Second Subpoena on 3:46 PM on Friday, October 14, 2022. I have been provided with copies of their email correspondence, and I have attached their email correspondence as **Exhibit “C”** to this Affidavit.

7. I have received and reviewed copies of the Rogers Second Subpoena and the Shaw Second Subpoena (together the “**Second Subpoenas**”). On the face of these Second Subpoenas, Rogers and Shaw have added me as an additional respondent to the Second Subpoenas. In other words, Rogers and Shaw are seeking to summon me as a witness for the hearing of this application that will commence on November 7, 2022.

8. Over the weekend of October 15 and 16, 2022, I reviewed and assessed the potential scope of the document production requirements of the Second Subpoenas. On the basis of my personal involvement in these matters, my review of the Second Subpoenas and my review of certain correspondence exchanged between the parties in this matter, I have knowledge of the matters described in this Supplementary Affidavit, except where it is indicated that my knowledge is based upon information and belief, in which case I believe that information to be true.

9. I have affirmed this Supplementary Affidavit in support of the motion by TELUS to quash the documentary production demands set out in the Second Subpoenas. I have limited the statements in this Supplementary Affidavit to matters of fact relating to the nature and scope of these Proceedings, TELUS' prior productions to the Commissioner and relates issues of confidentiality and privilege associated with the production demands set out in Second Subpoenas. For the avoidance of doubt, TELUS does not waive any privilege in connection with its discussions and/or advice from internal and external legal counsel relating to these production processes.

A. The Shaw Second Subpoena

(i) Submissions to the Bureau are in the Commissioner's Possession, Subject to the Commissioner's Claims of Public Interest and Litigation Privilege, Contain Highly Competitively Sensitive Information and Are Not Relevant to the Proceeding

10. TELUS' submissions to the Bureau included a significant amount of confidential and highly competitively sensitive information relating to its businesses (particularly businesses other than its wireless business) and current and future strategies for these businesses and TELUS' concerns about the implications of the Proposed Transaction for the future of these businesses.

11. Given the confidential and highly competitively sensitive nature of these submissions, and the fact that the Respondents are two of TELUS' direct competitors and one is a significant supplier to TELUS, at the time these submissions were made to the Bureau, TELUS requested: (i) confidential treatment pursuant to Section 29 of the *Competition Act* and the Bureau's policies and practices relating to confidentiality; and (ii) that the Commissioner not waive any applicable privilege and assert public interest privilege and all other applicable forms of privilege in response to any third party's

attempts to gain access to these submissions (or any information therein) from the Commissioner.

12. Accordingly, at the time these submissions were made to the Commissioner, TELUS expected that the Commissioner would assert public interest privilege and all other applicable forms of privilege in response to the attempts by any third party (most particularly, the proponents of the transaction, Rogers and Shaw) to gain access to the submissions (or any information therein) from the Commissioner. Therefore, TELUS expects that the Commissioner will assert or will continue to assert public interest privilege and any other applicable forms of privilege to all submissions requested by Paragraph 2(1) of the Shaw Second Subpoena (including the December 3, 2021 submission referenced therein) and Paragraph 2(3) of the Shaw Second Subpoena.

13. In addition, the vast majority of these submissions are not relevant to the Proceedings as they are not related to the wireless markets, matters covered by the Section 92 Application, or the matters covered by the TELUS Witness Statements. Accordingly, the vast majority of these submissions are not relevant to any aspect of the Proceedings.

(ii) The Demand for ISED Submissions

14. TELUS' submissions to ISED contain highly confidential and competitively sensitive information and were drafted by TELUS' counsel. These submissions were made on the explicit basis that they would be treated confidentially and not be disclosed to any third party. TELUS provided these submissions in connection with ISED's enforcement of the *Radiocommunication Act* as it relates to the application to transfer

Shaw's spectrum licenses to Rogers, on the expectation that they would be subject to a claim of public interest privilege.

15. Further, the TELUS Witnesses did have not any involvement with any discussions with ISED or any submissions to ISED and will not be in a position to speak to these documents.

B. The Rogers Second Subpoena

16. Paragraph 2(1) of the Rogers Replacement Subpoena demands the production of: "All memoranda or presentations dated on or after May 7, 2022 to Telus Communications Inc.'s ("Telus") board of directors or executive leadership team considering the proposed divestiture of Freedom Mobile Inc. to Videotron Inc."

17. Given that Telus Communications Inc.'s board would not have any such documents and Telus Communications Inc. does not have an executive leadership team, I understand this to be a reference to TELUS Corporation's board and TELUS' executive leadership team.

18. Based on TELUS' reading of the Rogers Second Subpoena, I understand this request to cover non-privileged presentations directed to the board or executive leadership team as a whole relating to the "proposed divestiture of Freedom Mobile Inc. to Videotron Inc.", and as excluding discrete communications or emails relating to a single member of the board or the team.

19. I am still making inquiries regarding the scope of work involved in producing documents in response to the Rogers Second Subpoena. However, given the nature of the request, the documents sought will necessarily contain highly confidential,

competitively sensitive forward-looking information regarding TELUS' commercial plans in light of a potential divestiture of Freedom Mobile to Videotron. Such information is highly confidential even within TELUS itself. The TELUS Witnesses are not on the TELUS board or executive leadership team, and it is highly unlikely that the TELUS Witnesses would have been involved in the preparation of any such documents, nor will they be in a position to speak to them.

C. Costs of this Motion

20. Between the time period when the Original Subpoenas were served on TELUS' external counsel through the Thanksgiving long-weekend, to the date of filing the Original Affidavit, I, together with other TELUS employees and our external counsel, made substantial efforts and incurred material cost to immediately respond to the Original Subpoenas.

21. First, on Friday October 7, 2022, TELUS' external counsel promptly advised the Respondents that TELUS believed the Original Subpoenas were extraordinarily broad and a fishing expedition, and that TELUS would be moving to quash them. TELUS' counsel advised that many of the documents requested were already produced by TELUS in response to the section 11 Order, and that the balance of the demand would require TELUS to collect a significant volume of confidential and highly commercially sensitive documents from dozens of custodians, and would require several months to comply with. A copy of this letter is attached as **Exhibit "D"** to this Affidavit.

22. Shaw's counsel, Mr. Ricci, responded that same day, to deny that the Original Subpoenas were framed in extremely broad terms, and to allege that the requests "are highly focused both in the subject matter and time frame." Mr. Ricci further advised that

that the Chief Justice had time available on Friday October 14 to hear motions such as TELUS' motion, and that if this motion were to proceed on October 14, that the Respondents would require TELUS' motion materials by no later than Tuesday October 11, 2022. A copy of Mr. Ricci's email is attached as **Exhibit "E"** to this Affidavit.

23. I, together with other TELUS employees and our external counsel, worked throughout the Thanksgiving long weekend to determine the work involved in complying with the document production demands of the Original Subpoenas, and to prepare materials for the motion to quash. This work continued on Tuesday October 11 and Wednesday October 12.

24. On Tuesday October 11, 2022, TELUS' external counsel emailed the Respondents' counsel to propose an expedited schedule for the hearing of this matter, including the delivery of TELUS' motion materials on Thursday October 13, 2022. A copy of TELUS' counsel's email is attached as **Exhibit "F"** to this Affidavit. Mr. Ricci responded later that day, among other things, to demand that TELUS immediately take the steps necessary to collect and prepare for timely production of the documents requested in the subpoenas, in the event TELUS' motion was unsuccessful. A copy of Mr. Ricci's email is attached as **Exhibit "G"** to this Affidavit.

25. On Wednesday October 12, 2022, Mr. Ricci sent a further email, advising for the first time that "we are not expecting or requesting your clients to re-collect or re-produce any documents that have already been produced to the Commissioner in response to the section 11 orders in connection with these matters." A copy of this email was attached as Exhibit "D" to my Original Affidavit. This was the first time that Shaw provided this position, notwithstanding having been advised by TELUS' counsel the prior Friday that there was

significant overlap between the Section 11 Order and the Original Subpoenas (which overlap should have also been self-evident to the Respondents given that they had access to the Section 11 Productions at the time they formulated the Original Subpoenas). It was also unclear if this position was being articulated solely on behalf of Shaw, or on behalf of Shaw and Rogers.

26. On Thursday October 13, 2022, my Original Affidavit was prepared, served, and filed on schedule. Less than a day later, and hours before a case conference with the Tribunal, external counsel to Rogers and Shaw advised TELUS' counsel that they were retracting the Original Subpoenas in their entirety and issuing the Second Subpoenas in their place.

27. This is now the second time the Respondents have put TELUS to significant expense and inconvenience to respond on an expedited basis to a tactical and unreasonable position taken by the Respondents, only for that position to be abandoned once TELUS' Motion to Quash was served (the first being a motion to redesignate all of TELUS' section 11 productions as "Confidential Level B", which was served on July 21, 2022, and subsequently abandoned).

28. TELUS incurred significant time and expense to address the Original Subpoenas.

SWORN remotely by Daniel Stern of the City of Toronto in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 17, 2022 in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Danielle Chu
LSO #78576V



Daniel Stern

This is Exhibit "A" referred to in the Supplementary Affidavit of
Daniel Stern Affirmed October 17, 2022



Commissioner for Taking Affidavits (or as may be)

Danielle Chu
LSO #78576V

Competition Tribunal



Tribunal de la concurrence

CT-2022-002

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

DANS L'AFFAIRE de la *Loi sur la
concurrence*, LRC 1985, ch C-34, et ses
modifications;

AND IN THE MATTER of an application by
the Commissioner of Competition pursuant
to section 92 of the *Competition Act*.

ET DANS L'AFFAIRE d'une demande par
le commissaire de la concurrence en vertu de
l'article 92 de la *Loi sur la concurrence*.

B E T W E E N :

E N T R E :

Commissioner of Competition
(applicant)
and
Rogers Communications Inc.
Shaw Communications Inc.
(respondents)
and
Attorney General of Alberta
Videotron Ltd.
(intervenors)

Commissaire de la concurrence
(demandeur)
et
Rogers Communications Inc.
Shaw Communications Inc.
(défendeurs)
et
Procureur général de l'Alberta
Videotron Lté
(intervenants)



**SUBPOENA PURSUANT TO SECTION
7 OF THE *COMPETITION TRIBUNAL
RULES***

**ASSIGNATION DE TÉMOIN EN
VERTU DE L'ARTICLE 7 DES *RÈGLES
DU TRIBUNAL DE LA CONCURRENCE***

To

À

Nazim Benhadid
SVP, Network & Build
TELUS Garden
510 West Georgia Street
Vancouver, BC V6B 0M3

Charlie Casey
VP, Consumer, Controller
TELUS Garden
510 West Georgia Street
Vancouver, BC V6B 0M3

Daniel Stern
Director, Regulatory Law and Policy
TELUS Communications Inc.
TELUS Garden
510 West Georgia Street
Vancouver, BC, V6B 0M3

[1] YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding, on the 7th day of November, 2022, at 10:00 a.m., before the Competition Tribunal, 90 Sparks Street, 6th floor, Ottawa, ON, and to remain until your attendance is no longer required.

[1] IL VOUS EST ORDONNÉ DE COMPARAÎTRE à l'instruction de la présente instance, le _____ jour du mois de _____, à _____h, pour y témoigner devant le Tribunal de la concurrence, 90, rue Sparks, 6^{ième} étage, Ottawa (ON), Canada et d'y demeurer jusqu'à ce que votre présence ne soit plus requise.

[2] YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things:

[2] IL VOUS EST ORDONNÉ D'APPORTER AVEC VOUS et de produire à l'audience les documents et choses suivants :

1. All memoranda or presentations dated on or after May 7, 2022 to Telus Communications Inc.'s ("Telus") board of directors or executive leadership team considering the proposed divestiture of Freedom Mobile Inc. to Videotron Inc.

[3] IF YOU FAIL TO ATTEND or remain in attendance as required by this subpoena, you may be in contempt of the Tribunal pursuant to subsection 8(3) of the *Competition Tribunal Act*.

[3] LE DÉFAUT DE COMPARAÎTRE ou de demeurer présent tel que l'ordonne la présente assignation peut constituer un outrage au Tribunal en vertu du paragraphe 8(3) de la *Loi sur le Tribunal de la concurrence*.

DATED at Ottawa, Ontario, this 14th day of October, 2022.

FAIT à Ottawa (Ontario) ce 14^{ième} jour de octobre, 2022.



Michel Parent
Registrar/Registraire

This subpoena was issued at the request of and inquiries may be directed to:

Crawford G. Smith (LSO# 42131S)
LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750
145 King Street West
Toronto, ON M5H 1J8
Tel: 416.598.8648
Email: csmith@lolg.ca

Should the details set out above be provided in only one official language, a translation to the other official language is available from the counsel or party / intervenor serving this summons.

La présente assignation a été émise à la demande de l'avocat dont le nom apparaît ci-dessous et les demandes de renseignements peuvent lui être adressées

Si les particularités ajoutées ci-haut sont dans une langue officielle seulement, la traduction est disponible auprès de l'avocat ou de la partie / intervenant qui signifie l'assignation.

This is Exhibit “B” referred to in the Supplementary Affidavit of
Daniel Stern Affirmed October 17, 2022



Commissioner for Taking Affidavits (or as may be)

Danielle Chu
LSO #78576V

Competition Tribunal



Tribunal de la concurrence

CT-2022-002

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

DANS L'AFFAIRE de la *Loi sur la
concurrence*, LRC 1985, ch C-34, et ses
modifications;

AND IN THE MATTER of an application
by the Commissioner of Competition
pursuant to section 92 of the *Competition
Act*.

ET DANS L'AFFAIRE d'une demande par
le commissaire de la concurrence en vertu
de l'article 92 de la *Loi sur la concurrence*.

B E T W E E N :

E N T R E :

Commissioner of Competition
(applicant)
and
Rogers Communications Inc.
Shaw Communications Inc.
(respondents)
and
Attorney General of Alberta
Videotron Ltd.
(intervenors)

Commissaire de la concurrence
(demandeur)
et
Rogers Communications Inc.
Shaw Communications Inc.
(défendeurs)
et
Procureur général de l'Alberta
Videotron Lté
(intervenants)



**SUBPOENA PURSUANT TO SECTION
7 OF THE *COMPETITION TRIBUNAL
RULES***

**ASSIGNATION DE TÉMOIN EN
VERTU DE L'ARTICLE 7 DES *RÈGLES
DU TRIBUNAL DE LA CONCURRENCE***

To

Nazim Benhadid

SVP, Network & Build
TELUS Communications Inc.
TELUS Garden
510 West Georgia Street
Vancouver, BC, V6B 0M3

Charlie Casey

VP, Consumer, Controller
TELUS Communications Inc.
TELUS Garden
510 West Georgia Street
Vancouver, BC, V6B 0M3

Daniel Stern

Director, Regulatory Law and Policy
TELUS Communications Inc.
25 York Street
Toronto, Ontario
M5J 2V5

[1] YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding, on the 7th day of November, 2022, at 10:00 am, before the Competition Tribunal, 90 Sparks Street, 6th floor, Ottawa, ON, and to remain until your attendance is no longer required.

[2] YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things:

1. Written submissions dated on or after March 15, 2021 provided by or on behalf of TELUS Communications Inc. and/or its various subsidiaries and affiliates (“**TELUS**”) to representatives of the Competition Bureau concerning the proposed transaction involving Shaw Communications Inc. (“**Shaw**”) and Rogers Communications Inc. (“**Rogers**”), including any written submission provided to representatives of the Competition Bureau on December 3, 2021;

2. Written submissions dated on or after March 15, 2021 provided by or on behalf of TELUS to representatives of Industry, Science and Economic Development Canada (“**ISED**”) concerning the proposed transaction involving Shaw and Rogers;

3. Written submissions dated on or after June 17, 2022 provided by or on behalf of TELUS to representatives of the Competition Bureau concerning the proposed transaction involving Shaw, Rogers and Quebecor Inc.; and

4. Written submissions dated on or after June 17, 2022 provided by or on behalf of TELUS to representatives of ISED concerning a proposed transaction involving Shaw, Rogers and Quebecor Inc.

[3] IF YOU FAIL TO ATTEND or remain in attendance as required by this subpoena, you may be in contempt of the Tribunal pursuant to subsection 8(3) of the *Competition Tribunal Act*.

À

[1] IL VOUS EST ORDONNÉ DE COMPARAÎTRE à l'instruction de la présente instance, le 7^{ième} jour du mois de Novembre 2022, à 10h00, pour y témoigner devant le Tribunal de la concurrence, 90, rue Sparks, 6^{ième} étage, Ottawa (ON), Canada et d'y demeurer jusqu'à ce que votre présence ne soit plus requise.

[2] IL VOUS EST ORDONNÉ D'APPORTER AVEC VOUS et de produire à l'audience les documents et choses suivants :

[3] LE DÉFAUT DE COMPARAÎTRE ou de demeurer présent tel que l'ordonne la présente assignation peut constituer un outrage au Tribunal en vertu du paragraphe 8(3) de la *Loi sur le Tribunal de la concurrence*.

DATED at Ottawa, Ontario, this 14th day of
October, 2022.

FAIT à Ottawa (Ontario) ce 14^{ième} jour d'octobre,
2022.



Michel Parent
Registrar/Registraire

This subpoena was issued at the request of and
inquiries may be directed to:

Derek Ricci, Counsel

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7 Canada
Telephone: 416-367-7471
dricci@dwpv.com

La présente assignation a été émise à la demande de
l'avocat dont le nom apparaît ci-dessous et les
demandes de renseignements peuvent lui être
adressées au:

Derek Ricci, Counsel

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7 Canada
Telephone: 416-367-7471
dricci@dwpv.com

Should the details set out above be provided in only
one official language, a translation to the other
official language is available from the counsel or
party / intervenor serving this summons.

Si les particularités ajoutées ci-haut sont dans une
langue officielle seulement, la traduction est
disponible auprès de l'avocat ou de la partie /
intervenant qui signifie l'assignation.

This is Exhibit "C" referred to in the Supplementary Affidavit of
Daniel Stern Affirmed October 17, 2022



Commissioner for Taking Affidavits (or as may be)

Danielle Chu
LSO #78576V

From: Ricci, Derek <dricci@dwpv.com>
Sent: Friday, October 14, 2022 2:03 PM
To: Henderson, Nicole; Hirsh, Adam
Cc: Jonathan Lisus; Matthew Law; Brad Vermeersch; Thomson, Kent; Frankel, Steven; Sethi, Chanakya; Tyhurst, John (CB/BC); Leschinsky, Derek (CB/BC); Hofley, Randall; McGrade, Joe; znaqi@lolg.ca; Naudie, Chris; Lally, Michelle; Kuzma, Kaeleigh; Littlejohn, Maureen; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC); Crawford Smith
Subject: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS
Attachments: 2022-10-14 - Bell Subpoena.pdf; 2022-10-14 - TELUS Subpoena.pdf

Nicole and Adam:

Thank you for the productive call that we just completed.

As discussed, we have received your Motion Materials that were served late yesterday, including the Affidavit affirmed by Mark Graham on October 13, 2022, as well as the Affidavit affirmed by Daniel Stern on October 13, 2022.

It is apparent from these Motion Materials that your clients have been labouring under a misapprehension concerning the documents Shaw seeks production of pursuant to its subpoenas in relation to the hearing that will be conducted by the Competition Tribunal commencing on November 7, 2022.

It is disappointing that we were unable to speak before these Motion Materials were served. You will no doubt recall that I wrote to you on a number of occasions to invite such a discussion, in an effort to avoid the very confusion that appears to have arisen.

My objective in doing so was to engage in a constructive discussion with you to clarify with precision the documents Shaw seeks production of. I wanted to ensure that Shaw receives documents it requires to proceed properly and fairly with the hearing of this matter without imposing on your client unnecessary or excessive burdens that can easily be avoided.

That said, we have reviewed your clients' Motion Materials carefully with a view to addressing on a timely basis the concerns they have raised.

In that regard, we have obtained fresh subpoenas that specify with precision and limits carefully the scope of documents Shaw seeks production of.

A copy of these fresh subpoenas are attached.

You will see that the enclosed subpoenas are addressed to each of Stephen Howe, Blaik Kirby and Mark Graham (in the case of Bell), and Nazim Benhadid, Charlie Casey and Daniel Stern (in the case of TELUS).

We are confident having regard to the contents of the Affidavits included in your clients' Motion Materials that Messrs. Stern and Graham will have readily available to them all of the documents in question, with the result that there will be no need for Bell or TELUS to search the records of multiple employees to respond properly and immediately to the enclosed subpoenas.

Please advise as soon as possible if you are authorized to accept service of the enclosed subpoenas on behalf of your respective clients. If you are not, we will make the necessary arrangements to have them served.

Shaw's original subpoenas served on Bell and TELUS dated October 5 are formally withdrawn.

Please be advised that in view of the position taken by Bell and TELUS in its Motion Materials served late yesterday that it is immunized from producing to Shaw documents it previously provided to the Competition Bureau, Shaw intends to bring a Cross-Motion against the Commissioner returnable at the same time as the motions of Bell and TELUS, in which Shaw will seek an Order compelling the production by the Commissioner of documents that fall within the scope of the enclosed subpoenas.

We wish to ensure that the demands for production made in the enclosed subpoenas are well understood by your clients and that those demands can easily be complied with if an Order dismissing your clients' Motions is made by the Tribunal.

Although we have made every effort to ensure that the enclosed subpoenas are carefully confined in scope, we would be happy to modify the wording of these subpoenas if doing so is necessary or appropriate to address remaining concerns your clients may have.

Best regards,

Derek

Derek Ricci

T 416.367.7471

dricci@dwpv.com

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

DAVIES

155 Wellington Street West

Toronto, ON M5V 3J7

dwpv.com

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.

From: Zain Naqi <znaqi@lolg.ca>
Sent: Friday, October 14, 2022 3:45 PM
To: Henderson, Nicole; Ricci, Derek; Hirsh, Adam
Cc: Jonathan Lisus; Matthew Law; Brad Vermeersch; Thomson, Kent; Frankel, Steven; Sethi, Chanakya; Tyhurst, John (CB/BC); Leschinsky, Derek (CB/BC); Hofley, Randall; McGrade, Joe; Naudie, Chris; Lally, Michelle; Kuzma, Kaeleigh; Littlejohn, Maureen; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC); Crawford Smith
Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS [LOLG-DMS.FID125335]
Attachments: 2022 10 14 - Summons to Bell (Final).pdf; 2022 10 14 - Summons to Telus (Final).pdf; RBCH00008_000001572.PDF

Nicole and Adam,

We echo Derek's note below and also acknowledge your willingness to move forward in a spirit of cooperation.

We attach fresh summonses from our client. Our October 4 summonses are withdrawn. Can you please confirm that you will accept service? Let us know if another call would be helpful to see if we can reach common ground on delivery of the requested documents.

We also have a couple of discrete inquiries, which we believe will be of assistance to the Tribunal:

1. We understand that ten network sharing agreements were produced by Telus to the Commissioner in response to Specifications #7(a) / (c). We attach, for ease of reference, the index that Telus produced. Can each of you, on behalf of your clients, please confirm that this list represents all of the currently in-force network sharing agreements between Bell and Telus?
2. We also understand that there was a Next Generation Network Reciprocity letter agreement dated October 9, 2008 (which was amended by various letter agreements dated October 21, 2009, February 10, 2011, February 8, 2012, April 1, 2012, September 1, 2013, April 30, 2014, July 18, 2014, April 13, 2015, June 25, 2015, September 1, 2015, December 1, 2015, and July 12, 2016). That document does not appear to be on Telus' list. Can you please advise if this agreement is still in force?

Please let us know if you'd like to discuss.

Thanks,

Zain Naqi (he/him)
Direct 416 645 3789
Cell 647 980 4134
znaqi@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



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

From: Henderson, Nicole <nicole.henderson@blakes.com>
Sent: October-14-22 3:25 PM
To: Ricci, Derek <dricci@dwvp.com>; Hirsh, Adam <AHirsh@osler.com>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwvp.com>; Frankel, Steven <sfrankel@dwvp.com>; Sethi, Chanakya <CSethi@dwvp.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; Zain Naqi <znaqi@lolg.ca>; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwvp.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Crawford Smith <csmith@lolg.ca>
Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS

Derek,

This is to confirm that we have instructions to accept service of the fresh subpoena issued to Bell.

We are surprised by the tone of your email considering the call we had this afternoon and, frankly, astonished at the suggestion that there was any “misapprehension” about the scope of your client’s initial subpoena. It is entirely disingenuous to suggest that the initial subpoena was “precise” or tailored to the documents your client apparently now seeks—that is made all the more clear by the issuance of this fresh subpoena (which among other things, drops several of the specifications in the earlier document). The companion subpoena issued by your co-respondent, Rogers, was of course even more obviously burdensome and overbroad, and a blatant abuse of process.

Had you truly wanted to “clarify” that—contrary to the express language of the initial subpoena—Shaw was only interested production of a narrower subset of those documents, you could have done so at any time over the past two weeks instead of vaguely inviting us to calls to identify concerns that we had already set out in writing. Instead, by serving the initial subpoena with no prior notice and a demand that Bell produce the documents sought within ten days (which included a holiday weekend), you immediately put our client to the burden of investigating what efforts would be required to comply with the subpoena and preparing motion materials to quash it.

It does not escape us that this is the second time in the last four months that our client has been put to enormous inconvenience and expense to respond on an expedited basis to a tactical maneuver by Rogers and Shaw, only to have the respondents drop their initial demands once Bell’s materials have been served. Regardless of the outcome of the motions to quash, we expect that Bell will be seeking its costs.

We appreciated the desire to cooperate that Kent expressed on the call earlier, and hope that we can move forward in that spirit rather than exchanging self-serving emails. As discussed, we will need to take instructions from our client after reviewing the fresh subpoena, including as to whether we intend to file additional or different evidence on the motion to quash. We will revert on that as soon as we are able, but it will not be before the case conference at 4:00 today.

Regards,
Nicole

Nicole Henderson (she, her, hers)
Partner
nicole.henderson@blakes.com
T. +1-416-863-2399

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9 ([Map](#))
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From: Ricci, Derek <dricci@dwpv.com>
Sent: Friday, October 14, 2022 2:03 PM
To: Henderson, Nicole <nicole.henderson@blakes.com>; Hirsh, Adam <AHirsh@osler.com>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNAudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Crawford Smith <csmith@lolg.ca>
Subject: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS

External Email | Courrier électronique externe

Nicole and Adam:

Thank you for the productive call that we just completed.

As discussed, we have received your Motion Materials that were served late yesterday, including the Affidavit affirmed by Mark Graham on October 13, 2022, as well as the Affidavit affirmed by Daniel Stern on October 13, 2022.

It is apparent from these Motion Materials that your clients have been labouring under a misapprehension concerning the documents Shaw seeks production of pursuant to its subpoenas in relation to the hearing that will be conducted by the Competition Tribunal commencing on November 7, 2022.

It is disappointing that we were unable to speak before these Motion Materials were served. You will no doubt recall that I wrote to you on a number of occasions to invite such a discussion, in an effort to avoid the very confusion that appears to have arisen.

My objective in doing so was to engage in a constructive discussion with you to clarify with precision the documents Shaw seeks production of. I wanted to ensure that Shaw receives documents it requires to proceed properly and fairly with the hearing of this matter without imposing on your client unnecessary or excessive burdens that can easily be avoided.

That said, we have reviewed your clients' Motion Materials carefully with a view to addressing on a timely basis the concerns they have raised.

In that regard, we have obtained fresh subpoenas that specify with precision and limits carefully the scope of documents Shaw seeks production of.

A copy of these fresh subpoenas are attached.

You will see that the enclosed subpoenas are addressed to each of Stephen Howe, Blaik Kirby and Mark Graham (in the case of Bell), and Nazim Benhadid, Charlie Casey and Daniel Stern (in the case of TELUS).

We are confident having regard to the contents of the Affidavits included in your clients' Motion Materials that Messrs. Stern and Graham will have readily available to them all of the documents in question, with the result that there will be no need for Bell or TELUS to search the records of multiple employees to respond properly and immediately to the enclosed subpoenas.

Please advise as soon as possible if you are authorized to accept service of the enclosed subpoenas on behalf of your respective clients. If you are not, we will make the necessary arrangements to have them served.

Shaw's original subpoenas served on Bell and TELUS dated October 5 are formally withdrawn.

Please be advised that in view of the position taken by Bell and TELUS in its Motion Materials served late yesterday that it is immunized from producing to Shaw documents it previously provided to the Competition Bureau, Shaw intends to bring a Cross-Motion against the Commissioner returnable at the same time as the motions of Bell and TELUS, in which Shaw will seek an Order compelling the production by the Commissioner of documents that fall within the scope of the enclosed subpoenas.

We wish to ensure that the demands for production made in the enclosed subpoenas are well understood by your clients and that those demands can easily be complied with if an Order dismissing your clients' Motions is made by the Tribunal.

Although we have made every effort to ensure that the enclosed subpoenas are carefully confined in scope, we would be happy to modify the wording of these subpoenas if doing so is necessary or appropriate to address remaining concerns your clients may have.

Best regards,

Derek

Derek Ricci

T 416.367.7471

dricci@dwpv.com

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

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DAVIES WARD PHILLIPS & VINEBERG LLP

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This is Exhibit "D" referred to in the Supplementary Affidavit of
Daniel Stern Affirmed October 17, 2022



Commissioner for Taking Affidavits (or as may be)

Danielle Chu
LSO #78576V

From: Hirsh, Adam <AHirsh@osler.com>
Sent: Friday, October 07, 2022 5:13 PM
To: Ricci, Derek; Crawford Smith
Cc: Jonathan Lisus; Matthew Law; Brad Vermeersch; Thomson, Kent; Frankel, Steven; Sethi, Chanakya; Tyhurst, John (CB/BC); Leschinsky, Derek (CB/BC); Henderson, Nicole; Hofley, Randall; McGrade, Joe; znaqi@lolg.ca; Naudie, Chris; Lally, Michelle; Kuzma, Kaeleigh
Subject: Rogers/Shaw ats Commissioner of Competition
Attachments: Letter to D. Ricci & Crawford Smith with enclosure (October 7, 2022).pdf

Good afternoon Derek, Crawford:

Please see our letter attached.

Regards,

Adam

OSLER

Adam Hirsh
Partner
416.862.6635 | AHirsh@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

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OSLER

October 7, 2022

Christopher P. Naudie
Direct Dial: 416.862.6811
cnaudie@osler.com
Our Matter Number: 1220245

SENT BY E-MAIL

Crawford Smith
LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8
Email: csmith@lolg.ca

Derek Ricci
DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto, ON M5V 3J7
E-Mail: dricci@dwpv.com

Dear Counsel:

**Re: *Commissioner of Competition v. Rogers and Shaw*
(Competition Tribunal File #CT-2002-002)**

As you know, we act for TELUS Communications Inc. ("TELUS") and we are writing further to our letters of October 5 and 6, 2022, with respect to the subpoenas that have been issued in relation to Messrs. Benhadid and Casey (the "TELUS Subpoenas").

We have instructions to bring a motion to quash the TELUS Subpoenas as they relate to the production of documents listed therein. TELUS does not object to either Messrs. Benhadid or Casey attending at the hearing to be cross-examined on their witness statements.

As you are aware, the *Competition Tribunal Rules* provide for a specific process with respect to the production and discovery of documents, as well as the introduction of evidence at the hearing. Without prejudice to whatever additional arguments TELUS may make on the motion, our position is that the TELUS Subpoenas improperly seek to circumvent those Rules and are an abuse of the Tribunal's process and the subpoena power. As you will recall, a similar tactic was attempted by the respondents in the *Canada Pipe* case, and thoroughly rejected by the Tribunal.

Moreover, the TELUS Subpoenas are framed in extremely broad terms, and effectively amount to a fishing expedition. They purport to require TELUS to produce a voluminous quantity of documents, responding to 10 sweeping categories. Many of the documents requested were already produced by TELUS in response to the Commissioner's s. 11 order, and we understand were included by the Commissioner in his affidavit of documents. The

balance of the demand would nonetheless require TELUS to collect a significant volume of confidential and highly commercially sensitive documents from dozens of custodians. It would require several months for TELUS to collect, review and produce these documents (assuming the Respondents were otherwise entitled to them, which they are not).

Finally, even if the TELUS Subpoenas were proper (which they are not), there is no basis for your position that the documents be produced to the Respondents in advance of the hearing, let alone by the arbitrary deadline that you have selected.

We intend to write to the Tribunal on October 11th to request a case management conference for the purpose of scheduling TELUS's motion, and understand that Bell will be making a similar request. A copy of our draft letter is enclosed. Please let us know if you wish to discuss this matter further in advance of the case conference.

Yours very truly,



Christopher P. Naudie
CPN:apc

c: Jonathan Lissus, Matthew Law, Brad Vermeersch,
Zain Naqui (*Lax O'Sullivan Lissus Gottlieb LLP*)

Kent Thompson, Steven Frankel, Chanakya Sethi
(*Davies Ward Phillips & Vineberg LLP*)

John Tyhurst, Derek Leschinsky (*Competition Bureau Legal Services*)

Adam Hirsh, Michelle Lally, Kaeleigh Kuzma (*Osler, Hoskin & Harcourt LLP*)

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
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416.862.6666 FACSIMILE

OSLER

October 11, 2022

Christopher P. Naudie
Direct Dial: 416.862.6811
cnaudie@osler.com
Our Matter Number: 1220245

SENT BY E-MAIL

Annie Ruhlmann – Acting Deputy Registrar
COMPETITION TRIBUNAL OF CANADA
Thomas D’Arcy McGee Building
90 Sparks Street
Suite 600
Ottawa, ON K1P 5B4

Dear Madam Registrar:

Re: *Commissioner v. Rogers and Shaw*
(Competition Tribunal File #CT-2002-002)

We are counsel to TELUS Communications Inc. (“TELUS”). We are writing with respect to two subpoenas duces tecum issued by the Tribunal at the request of the Respondents, and served on our client effective October 3 and 5, 2022 (the “TELUS Subpoenas”). We would appreciate if you would please bring this letter to the attention of the case management judge at the earliest opportunity.

The TELUS Subpoenas are addressed to Messrs. Benhadid and Casey, who have sworn witness statements in connection with this application. We have enclosed a copy of the TELUS Subpoenas for the Tribunal’s reference.

The TELUS Subpoenas purport to require Messrs. Benhadid and Casey to bring a large volume of documents with them to the hearing, responding to 10 specific categories set out in the Subpoenas. Counsel for the Respondents have also demanded that TELUS produce these documents to them, by no later than October 14, 2022.

TELUS intends to bring a motion to quash the TELUS Subpoenas, to the extent they require production of documents. TELUS does not object to Messrs. Benhadid and Casey attending at the hearing to be cross-examined on their witness statements. However, among other grounds, our client’s position is that the Subpoenas (to the extent they require production of documents) circumvent the existing discovery process under the Rules and are an abuse of the Tribunal’s process.

We respectfully request a case management conference during the week of October 11, 2022 to discuss the schedule for TELUS’s intended motion. We are available on any day during the week for the case management conference.

Thank you for considering this request.

Yours very truly,



Christopher P. Naudie
CPN:apc

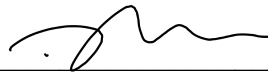
c: Crawford Smith, Jonathan Lisus, Matthew Law, Brad Vermeersch,
Zain Naqui (*Lax O'Sullivan Lisus Gottlieb LLP*)

Kent Thompson, Derek Ricci, Steven Frankel, Chanakya Sethi
(*Davies Ward Phillips & Vineberg LLP*)

John Tyhurst, Derek Leschinsky (*Competition Bureau Legal Services*)

Adam Hirsh, Michelle Lally, Kaeleigh Kuzma (*Osler, Hoskin & Harcourt LLP*)

This is Exhibit “E ” referred to in the Supplementary Affidavit of
Daniel Stern Affirmed October 17, 2022



Commissioner for Taking Affidavits (or as may be)

Danielle Chu
LSO #78576V

From: Ricci, Derek <dricci@dwpv.com>
Sent: Friday, October 07, 2022 6:26 PM
To: Hirsh, Adam; Crawford Smith
Cc: Jonathan Lisus; Matthew Law; Brad Vermeersch; Thomson, Kent; Frankel, Steven; Sethi, Chanakya; Tyhurst, John (CB/BC); Leschinsky, Derek (CB/BC); Henderson, Nicole; Hofley, Randall; McGrade, Joe; znaqi@lolg.ca; Naudie, Chris; Lally, Michelle; Kuzma, Kaeleigh
Subject: RE: Rogers/Shaw ats Commissioner of Competition

Adam:

Thank you for your letter, which we received a few minutes ago on behalf of your client, TELUS.

We strongly disagree with your client's proposed bases for seeking to quash the subpoenas, including the suggestion that the subpoenas are "framed in extremely broad terms" that require responses by TELUS to "sweeping categories" of documents. To the contrary, the requests are highly focused both in terms of their subject matter and time frame.

You will, by now, have seen my email to Ms. Henderson sent at 5:03 pm today concerning the virtually identical position being taken by her client, Bell, concerning the two summonses. As I indicated in my email to Ms. Henderson, the parties were advised today during a Case Conference with Chief Justice Crampton that the Chief Justice is available on Friday, October 14 to hear motions such as your client's proposed motion. If this motion is going to proceed on October 14, we will require your client's motion materials by no later than Tuesday, October 11.

We would be happy to discuss the subpoenas and scheduling with you over the weekend or on Monday.

Regards,

Derek.

Derek Ricci
T 416.367.7471
dricci@dwpv.com
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DAVIES WARD PHILLIPS & VINEBERG LLP

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From: Hirsh, Adam <AHirsh@osler.com>
Sent: October 7, 2022 5:13 PM
To: Ricci, Derek <dricci@dwpv.com>; Crawford Smith <csmith@lolg.ca>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC)

<derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>
Subject: Rogers/Shaw ats Commissioner of Competition

External Email / Courriel externe

Good afternoon Derek, Crawford:

Please see our letter attached.

Regards,

Adam



Adam Hirsh
Partner
416.862.6635 | AHirsh@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

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Daniel Stern Affirmed October 17, 2022



Commissioner for Taking Affidavits (or as may be)

Danielle Chu
LSO #78576V

From: Hirsh, Adam <AHirsh@osler.com>

Sent: October 11, 2022 9:28 AM

To: Ricci, Derek <dricci@dwpv.com>; Crawford Smith <csmith@lolg.ca>

Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mLaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sFrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>

Subject: RE: Rogers/Shaw ats Commissioner of Competition

External Email / Courriel externe

Good morning Derek, Crawford,

We hope you enjoyed the long weekend.

Neither we nor Bell will be in a position to argue these motions on Friday. However, we've conferred with Blakes over the weekend and would propose the following expedited schedule, which we also intend to propose to Tribunal. We'd be pleased to discuss this with you in advance of any case conference.

1. Moving parties' records (notice of motion & affidavits): Thursday October 13 by 5 pm
2. Responding parties' record (if any): Monday October 17 by 5 pm
3. Reply evidence (if any): Tuesday, October 18 by 5 pm
4. Cross examination (if any): Wednesday Oct. 19 (Telus witness) & Thursday Oct. 20 (Bell witness); Respondents' witness(s) TBD.
5. Moving parties' factums: Friday October 21
6. Responding parties' factums: Monday October 24
7. Reply factum: Wednesday October 26 by noon
8. Hearing: Thursday October 27 or Friday October 28

Regards,

Adam

OSLER

Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Ricci, Derek <dricci@dwpv.com>

Sent: Friday, October 07, 2022 6:26 PM

To: Hirsh, Adam <AHirsh@osler.com>; Crawford Smith <csmith@lolg.ca>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mLaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>
Subject: RE: Rogers/Shaw ats Commissioner of Competition

Adam:

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We would be happy to discuss the subpoenas and scheduling with you over the weekend or on Monday.

Regards,

Derek.

Derek Ricci
T 416.367.7471
dricci@dwpv.com
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DAVIES WARD PHILLIPS & VINEBERG LLP

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Sent: October 7, 2022 5:13 PM
To: Ricci, Derek <dricci@dwpv.com>; Crawford Smith <csmith@lolg.ca>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mLaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris

<CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>

Subject: Rogers/Shaw ats Commissioner of Competition

External Email / Courriel externe

Good afternoon Derek, Crawford:

Please see our letter attached.

Regards,

Adam

OSLER

Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

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Daniel Stern Affirmed October 17, 2022



Commissioner for Taking Affidavits (or as may be)

Danielle Chu
LSO #78576V

From: Ricci, Derek <dricci@dwpv.com>
Sent: Tuesday, October 11, 2022 10:37 AM
To: Hirsh, Adam; Crawford Smith
Cc: Jonathan Lisus; Matthew Law; Brad Vermeersch; Thomson, Kent; Frankel, Steven; Sethi, Chanakya; Tyhurst, John (CB/BC); Leschinsky, Derek (CB/BC); Henderson, Nicole; Hofley, Randall; McGrade, Joe; znaqi@lolg.ca; Naudie, Chris; Lally, Michelle; Kuzma, Kaeleigh; Emrys Davis; John Rook
Subject: RE: Rogers/Shaw ats Commissioner of Competition

Adam and Nicole:

Thank you for coordinating on the proposed schedule set out in Adam's email below. We have concerns with the proposed schedule, but will confer and come back to you as soon as possible with specific comments.

As you know, the subpoenas served on your respective clients, Bell and TELUS, pertain to the production of documents in connection with the trial in this matter, which is scheduled to begin on November 7. Given that the subpoenas pertain to the trial, it is most appropriate for any motions seeking to quash the subpoenas to be heard by Chief Justice Crampton, who is the Chair of the Tribunal and who will be presiding over the trial. The Chief Justice has already set aside time this Friday, October 14, to address possible issues with the subpoenas, as I mentioned in my emails to each of you last week. Accordingly, we will write to the Tribunal today to request that the parties discuss the proposed motions with the Chief Justice Crampton on Friday at the latest, or sooner if he is available.

In the interim, it is imperative that the issues between our respective clients pertaining to the subpoenas not interfere with the timely and efficient hearing of this matter. Chief Justice Crampton has repeatedly urged the parties to cooperate in every way possible to ensure that this matter proceeds to trial as scheduled and is concluded as soon as possible in 2022, and within the timeframes contemplated in the Scheduling Order dated May 18, 2022. Accordingly, please ensure that your clients, Bell and TELUS, are both immediately taking the steps necessary to collect and prepare for timely production the documents requested in the subpoenas. Bell and TELUS are both multi-billion companies with substantial resources at their disposal. They have both elected to provide multiple witness statements in support of the Commissioner's case in this matter, with full knowledge of the expedited nature of the proceeding. They are both most assuredly in a position to comply with the subpoenas in the event that the proposed motions are unsuccessful, and should not be waiting for the resolution of the proposed motions to begin taking the steps necessary to ensure compliance with the subpoenas.

As indicated in my emails to each of you on Friday, we would be happy to discuss any specific concerns your clients may have regarding the scope of the subpoenas with a goal of narrowing the scope of any dispute that must be resolved by the Chief Justice.

Regards,

Derek.

From: Hirsh, Adam <AHirsh@osler.com>
Sent: October 11, 2022 9:28 AM
To: Ricci, Derek <dricci@dwpv.com>; Crawford Smith <csmith@lolg.ca>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <frankel@dwpv.com>; Sethi, Chanakya

<CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>
Subject: RE: Rogers/Shaw ats Commissioner of Competition

External Email / Courriel externe

Good morning Derek, Crawford,

We hope you enjoyed the long weekend.

Neither we nor Bell will be in a position to argue these motions on Friday. However, we've conferred with Blakes over the weekend and would propose the following expedited schedule, which we also intend to propose to Tribunal. We'd be pleased to discuss this with you in advance of any case conference.

1. Moving parties' records (notice of motion & affidavits): Thursday October 13 by 5 pm
2. Responding parties' record (if any): Monday October 17 by 5 pm
3. Reply evidence (if any): Tuesday, October 18 by 5 pm
4. Cross examination (if any): Wednesday Oct. 19 (Telus witness) & Thursday Oct. 20 (Bell witness); Respondents' witness(s) TBD.
5. Moving parties' factums: Friday October 21
6. Responding parties' factums: Monday October 24
7. Reply factum: Wednesday October 26 by noon
8. Hearing: Thursday October 27 or Friday October 28

Regards,

Adam

OSLER

Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Ricci, Derek <dricci@dwpv.com>

Sent: Friday, October 07, 2022 6:26 PM

To: Hirsh, Adam <AHirsh@osler.com>; Crawford Smith <csmith@lolg.ca>

Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>;

Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya

<CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC)

<derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall

<randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris

<CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>

Subject: RE: Rogers/Shaw ats Commissioner of Competition

Adam:

Thank you for your letter, which we received a few minutes ago on behalf of your client, TELUS.

We strongly disagree with your client's proposed bases for seeking to quash the subpoenas, including the suggestion that the subpoenas are "framed in extremely broad terms" that require responses by TELUS to "sweeping categories" of documents. To the contrary, the requests are highly focused both in terms of their subject matter and time frame.

You will, by now, have seen my email to Ms. Henderson sent at 5:03 pm today concerning the virtually identical position being taken by her client, Bell, concerning the two summonses. As I indicated in my email to Ms. Henderson, the parties were advised today during a Case Conference with Chief Justice Crampton that the Chief Justice is available on Friday, October 14 to hear motions such as your client's proposed motion. If this motion is going to proceed on October 14, we will require your client's motion materials by no later than Tuesday, October 11.

We would be happy to discuss the subpoenas and scheduling with you over the weekend or on Monday.

Regards,

Derek.

Derek Ricci
T 416.367.7471
dricci@dwpv.com
[Bio](#) | [vCard](#)

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DAVIES WARD PHILLIPS & VINEBERG LLP

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From: Hirsh, Adam <AHirsh@osler.com>
Sent: October 7, 2022 5:13 PM
To: Ricci, Derek <dricci@dwpv.com>; Crawford Smith <csmith@lolg.ca>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>
Subject: Rogers/Shaw ats Commissioner of Competition

External Email / Courriel externe

Good afternoon Derek, Crawford:

Please see our letter attached.

Regards,

Adam



Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

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