

**FILED / PRODUIT**

Date: October 18, 2022

CT-2022-002

Sara Pelletier for / pour  
REGISTRAR / REGISTRAIRE

CT-2022-002

OTTAWA, ONT.

Doc. # 395

**THE COMPETITION TRIBUNAL**

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

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

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

**B E T W E E N :**

**COMMISSIONER OF COMPETITION**

**Applicant**

**- and -**

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

**Respondents**

**- and -**

**ATTORNEY GENERAL OF ALBERTA  
VIDÉOTRON LTD.**

**Intervenors**

---

**MOTION RECORD OF THE COMMISSIONER  
(Bell Motion to Quash Subpoenas against Blaik Kirby and Stephen Howe)**

---

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22nd Floor  
Gatineau, QC K1A 0C9  
Fax: 819.953.9267

PUBLIC

**Katherine Rydel**  
katherine.rydel@cb-bc.gc.ca

**Ryan Caron**  
ryan.caron@cb-bc.gc.ca

**Ellé Nekiar**  
elle.nekiar@cb-bc.gc.ca

**Counsel for the Commissioner**

**Table of Contents**

<b>Tab</b>	<b>Document</b>	<b>Page</b>
<b>1</b>	Response of the Commissioner dated October 17, 2022	5
<b>2</b>	Affidavit of Jessica Fiset affirmed October 17, 2022	14
<b>A</b>	Section 11 Order against Telus dated August 1, 2021	18
<b>B</b>	Section 11 Order against Bell dated August 1, 2021	44
<b>C</b>	Exhibit C: Sworn Certificate of Andrea Wood on behalf of Telus (November 29, 2021)	70
<b>D</b>	Exhibit D: Sworn Certificate of Robert Malcolmson on behalf of BCE (November 29, 2021)	74
<b>E</b>	Exhibit E: Letter from Alexander Gay to counsel for the Respondents dated October 1, 2022	77
<b>F</b>	Exhibit F: Exhibit E: Letter from Alexander Gay to counsel for the Respondents dated October 4, 2022	80
<b>3</b>	Scheduling Order dated June 17, 2022	85

# TAB 1

CT-2022-002

**THE COMPETITION TRIBUNAL**

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

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

**AND IN THE MATTER OF** an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*;

**B E T W E E N :**

**COMMISSIONER OF COMPETITION**

**Applicant**

**- and -**

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

**Respondents**

**- and -**

**ATTORNEY GENERAL OF ALBERTA AND  
VIDEOTRON LTD.**

**Intervenors**

---

**RESPONSE OF THE COMMISSIONER**  
**(Bell Motion to Quash Subpoenas against Blaik Kirby and Stephen Howe)**

---

**THE COMMISSIONER WILL RELY ON THE FOLLOWING GROUNDS** at the hearing of the motion:

**A. OVERVIEW**

1. BCE Inc. (“**Bell**”) has brought a motion seeking to quash subpoenas *duces tecum* (“**subpoena**”) issued against Blaik Kirby and Stephen Howe at the request of Rogers Communications Inc. (“**Rogers**”) and Shaw Communications Inc. (“**Shaw**”).
2. The Commissioner agrees with the relief sought at paragraph (b) of Bell’s Notice of Motion served on October 13, 2022.
3. The Commissioner agrees that the documentary production portion of the subpoenas sought by Rogers and Shaw ought to be quashed.

**B. ROGERS & SHAW HAVE ACCESS TO BROAD PRODUCTIONS**

4. The Commissioner commenced an application under section 92 of the *Competition Act* (the “**Act**”) against Rogers and Shaw (the “**Section 92 Application**”).
5. As part of the Section 92 Application, the Commissioner produced over 2.6 million documents to Rogers and Shaw in his Affidavit of Documents (“**AOD**”) served on July 15, 2022. The AOD contains 863,359 documents and large amounts of data received from Bell in response to a Section 11 Order, as well as 125 other documents involving Bell.
6. The Commissioner’s AOD also contains a Schedule B in which he originally listed as privileged 165 documents involving Bell. On August 8, 2022, the Commissioner waived privilege over, and produced, 42 further documents, leaving only 123 Bell documents listed in the Commissioner’s Schedule B.
7. Rogers and Shaw conducted examinations for discovery of the Commissioner’s representative on August 24 and 25, 2022.
8. In response to undertakings arising from the discoveries, the Commissioner produced 34 summaries of calls that took place with third parties. Of these, six were summaries of calls with Bell.
9. On September 21, 2022, the Commissioner served his Supplementary AOD, which included the production of 907 documents. Of these, two involved correspondence with Bell.

10. On October 4, 2022, the Commissioner provided the Respondents with a detailed summary of facts from a Bell presentation dated July 7, 2022, which included charts from the presentation.

### **C. ROGERS & SHAW HAD ACCESS TO BELL AFFIDAVIT IN S.104 APPLICATION**

11. On May 9, 2022, the Commissioner filed an application under section 104 of the *Act*.
12. The Commissioner's section 104 application record consisted of 448 exhibits appended to affidavits. Of those, 61 were documents received from Bell.
13. The Commissioner's section 104 application record also contained an affidavit from Bell's representative, Blaik Kirby, dated April 28, 2022.
14. Blaik Kirby is one of the recipients of the subpoenas served by Rogers and Shaw.

### **D. ROGERS & SHAW'S SUBPOENAS ARE AN ABUSE OF PROCESS**

#### **i. The documentary requests are overbroad and unduly burdensome**

15. The subpoenas sought by Rogers and Shaw are an abuse of process because Rogers and Shaw are engaging in a fishing expedition, which is highly problematic especially on the eve of trial.
16. It is not enough for Rogers and Shaw to allege the witness subject to the subpoena may have evidence that is relevant and material to the Section 92 Application. Rogers and Shaw must satisfy the Competition Tribunal (the "**Tribunal**") that there is a real basis for believing the documents sought are relevant and material.
17. Moreover, the subpoenas are overbroad and unnecessary.
18. Each subpoena requires the Bell witness to bring with him documents that are described in very broad terms. The subpoenas appear to request documents already in Rogers and Shaw's possession. Any responsive documents not already in Rogers and Shaw's possession are unlikely to be relevant and material to the issues the Tribunal must decide in the Section 92 Application.
19. The subpoenas describe documents in broad, sweeping terms and would only serve the

purpose of fishing in hopes of finding relevant information. The Tribunal should not allow subpoenas to be used as a fishing expedition. That is not a proper use of a subpoena.

20. The subpoenas are also unduly burdensome.
21. Bell has already produced a substantial number of documents in relation to Section 92 Application. Through the discovery process Rogers and Shaw have access to broad production from the Commissioner, which includes the productions from Bell. Requiring Bell to produce further documents is unduly burdensome.
22. The Tribunal must carefully supervise the use of subpoenas *duces tucem* so that abuses of process by respondents in the issuance of them do not deter market participants from participating in Tribunal proceedings.

**ii. A subpoena cannot be used as a discovery tool**

23. Rogers and Shaw's subpoenas are an attempt to circumvent the discovery channels set out in the *Competition Tribunal Rules* (the "**Tribunal Rules**").
24. A subpoena is a process that requires a witness to produce and/or bring documents with him or her to a hearing. It does not allow for discovery of the witness.
25. Rogers and Shaw cannot use a subpoena as an end-run around the discovery process set out under the Tribunal Rules. They cannot use a subpoena as a tool for further discovery.
26. To the extent any documents sought are subject to litigation privilege, Rogers and Shaw could have brought a motion seeking waiver of privilege within the time limits set out by the Tribunal in its Scheduling Order dated June 17, 2022. Rogers and Shaw cannot use a subpoena to circumvent the judicial process.
27. The discovery process has already concluded. AODs have been exchanged, examinations for discovery have taken place, and various motions have been brought and resolved in connection with the discovery process.
28. The Tribunal Rules do not specifically provide for third party discovery as of right. Rogers and Shaw did not bring a motion seeking discovery of Bell or any other third party.
29. The deadline to bring motions arising out of examinations for discovery, undertakings and refusals was September 7, 2022. Rogers and Shaw are out of time to bring a motion relating to



discovery.

30. Rogers and Shaw cannot bypass judicial oversight involved in a motion for third party discovery by serving a subpoena. Rogers and Shaw's attempt at an end-run around the judicial oversight over third party production is an abuse of process.
31. Upholding the subpoenas will undermine the Tribunal's authority to oversee the evidentiary basis upon which its proceedings are conducted and would improperly extend the period of disclosure beyond the standard established by the Tribunal Rules.

**iii. A subpoena compels a witness to bring listed documents to the hearing**

32. The subpoenas were issued under Rule 7 of the Tribunal Rules.
33. Rule 7 requires a witness to bring and/or produce documents on the date of attendance at the hearing. The Tribunal Rules do not compel witnesses to produce documents prior to their attendance at a hearing.

**iv. The subpoenas were served on the eve of trial**

34. The hearing of the Section 92 Application commences on November 7, 2022. The subpoenas were originally issued on October 3, 2022 and October 5, 2022. The documentary production requests are therefore made on the eve of trial.
35. Given the scope and timing of the subpoenas, documentary production by Bell will likely interfere with the orderly and efficient management of the hearing. It may also result in a delay in the hearing of the section 92 application.
36. The Tribunal ought to quash the documentary requests made in Rogers and Shaw's subpoenas.
37. Sections 92, 93 and 96 of the *Competition Act*, R.S.C., 1985, c. C-34.
38. Sections 8 and 8.1 of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2<sup>nd</sup> Supp.).
39. Rules 2, 7, 34, 60- 64, 68-70 and 82-88 of the *Competition Tribunal Rules*, SOR/2008-141.
40. Rules 3 and 4 of the *Federal Courts Rules*, SOR/98-106.
41. Such further or other grounds as counsel may advise and the Tribunal may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Affidavit of Jessica Fiset affirmed October 17, 2022;
2. Scheduling Order issued by Justice Little dated June 17, 2022; and
3. Such further or other documents as counsel may advise and the Tribunal may permit.

**DATED AT OTTAWA, ONTARIO, this 17th day of October, 2022.**



---

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22nd Floor  
Gatineau, QC K1A 0C9  
Fax: 819.953.9267

**Katherine Rydel**

katherine.rydel@cb-bc.gc.ca

**Ryan Caron**

ryan.caron@cb-bc.gc.ca

**Ellé Nekiar**

elle.nekiar@cb-bc.gc.ca

**Counsel for the Commissioner**

**TO: Blake, Cassels & Graydon LLP**  
199 Bay Street, Suite 4000  
Toronto ON M5L 1A9

**Joe McGrade**  
Email: joe.mcgrade@blakes.com

**Randall Hofley**

E-mail: randall.hofley@blakes.com

**Nicole Henderson**

Email: nicole.henderson@blakes.com

**Counsel for the Applicant of this motion, BCE Inc.****AND TO: LAX O'SULLIVAN LISUS GOTTLIEB LLP**

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

**Jonathan Lisus (LSO# 32952H)**

Tel: 416.59878736

Email: jlisus@lolg.ca

**Crawford Smith (LSO# 42131S)**

Tel: 416.598.8648

Email: csmith@lolg.ca

**Matthew Law (LSO# 59856A)**

Tel: 416.849.9050

Email: mlaw@lolg.ca

**Bradley Vermeersch (LSO# 69004K)**

Tel: 416.646.7997

Email: bvermeersch@lolg.ca

**Counsel for the Respondent, Rogers Communications Inc.****AND TO: DAVIES WARD PHILLIPS & VINEBERG LLP**

155 Wellington Street West  
Toronto, ON M5V 3J7

**Kent E. Thomson (LSO# 24264J)**

Tel: 416.863.5566

Email: kentthomson@dwpv.com

**Derek D. Ricci (LSO# 52366N)**

Tel: 416.367.7471

Email: dricci@dwpv.com

**Steven Frankel (LSO# 58892E)**

Tel: 416.367.7441

Email: sfrankel@dwpv.com

**Chanakya A. Sethi (LSO# 63492T)**

Tel: 416.863.5516

Email: csethi@dwpv.com

**Counsel for the Respondent, Shaw Communications Inc.**

# TAB 2

CT-2022-002

**THE COMPETITION TRIBUNAL**

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

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

**AND IN THE MATTER OF** an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*;

**B E T W E E N :**

**COMMISSIONER OF COMPETITION**

**Applicant**

**- and -**

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

**Respondents**

**- and -**

**ATTORNEY GENERAL OF ALBERTA AND  
VIDEOTRON LTD.**

**Intervenors**

---

**AFFIDAVIT OF JESSICA Fiset**  
**(Affirmed on October 17, 2022)**

---

I, **JESSICA FISET**, a Paralegal with the Competition Bureau (“**Bureau**”), of the City of Gatineau, in the Province of Quebec, AFFIRM THAT:

1. In July and August 2021, the Commissioner obtained orders under section 11 of the *Competition Act* (“the *Act*”) for the production of records and written returns of information from Quebecor Inc., Xplornet Communications Inc., Xplore Mobile Inc., TELUS Corporation Inc. (“**Telus**”) and BCE Inc. (“**Bell**”). The s. 11 orders issued to Telus and Bell are attached as **Exhibits A** and **B**, respectively.<sup>1</sup>
2. Telus and Bell produced documents to the Commissioner in response to the s. 11 orders between August and November 2021. The certificates provided from Telus and Bell arising from the s. 11 orders are attached as **Exhibits C** and **D**.<sup>2</sup>
3. On May 9, 2022, the Commissioner filed an application under s. 104 of the *Act*. Both Telus and Bell provided affidavits which the Commissioner relied upon in support of his application.<sup>3</sup>
4. In total, the Commissioner’s Application Record consisted of 448 exhibits appended to affidavits. Of those, 19 were Telus documents indicated with the TELUS document ID pre-fix, and 61 were Bell documents indicated by the Bell document ID pre-fix.
5. On July 15, 2022, the Commissioner served his Affidavit of Documents on the Respondents, which included the production of over 2.6 million documents. Of those:
  - a. 487,787 documents were documents received from Telus in response to the s. 11 order attached as **Exhibit C**;
  - b. 135 are documents in the Bureau’s possession that involve Telus;
  - c. 863,359 are documents received from Bell in response to the s. 11 order attached as **Exhibit D**;
  - d. 125 are documents in the Bureau’s possession that involve Bell.
6. In addition, the hard drive containing the Commissioner’s production of documents included a set of folders composed of large amounts of data received from both Telus and Bell in compliance with the respective s. 11 orders.
7. The Commissioner listed in Schedule B to his July 15, 2022 Affidavit of Documents, 747 documents for which privilege is claimed. Of these, 36 are documents in the Bureau’s possession involving Telus, and 165 documents are documents in the Bureau’s possession

---

<sup>1</sup> **Exhibit A**: Section 11 Order against Telus dated August 1, 2021; **Exhibit B**: Section 11 Order against Bell dated August 1, 2021.

<sup>2</sup> **Exhibit C**: Sworn Certificate of Andrea Wood on behalf of Telus (November 29, 2021); **Exhibit D**: Sworn Certificate of Robert Malcolmson on behalf of BCE (November 29, 2021).

<sup>3</sup> The Affidavit of James Senko, affirmed March 3, 2022; The Affidavit of Blaik Kirby, affirmed April 28, 2022.

involving Bell.

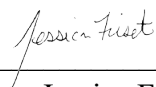
- 8. On August 8, 2022, the Commissioner produced 125 documents that were previously included on in Schedule B to his July 15, 2022 Affidavit of Documents. Of the original 36 documents that the Commissioner claimed privilege over that involved Telus, 15 documents were produced and 21 remained privileged. Of the original 165 documents that the Commissioner claimed privilege over that involved Bell, 42 documents were produced and 123 remained privileged.
- 9. On August 24-25, 2022, the Respondents conducted examinations for discovery of the Bureau’s representative and lead officer, Ms. Kristen McLean. In response to undertakings arising from such discoveries, on September 6, 2022, the Commissioner produced 33 summaries of calls that took place with third parties between May 5, 2021 and July 7, 2022. Of these, four of these documents were summaries of calls with Telus, and five were summaries of calls with Bell.
- 10. On September 20, 2022, the Commissioner provided an additional two documents in response to undertakings relating to summaries of facts – one of which was a summary of a call with Bell.
- 11. On September 21, 2022, the Commissioner served his Supplementary Affidavit of Documents on the Respondents, which included the production of 907 documents. Of these, two are documents in the Bureau’s possession that involve correspondence with Bell.
- 12. On October 1, 2022, the Commissioner provided the Respondents with a summary of facts from the Bell presentation dated July 7, 2022, as well as a summary of facts from calls with various other third parties. Attached as **Exhibit E** is a letter from Alexander Gay to counsel for Rogers Communications Inc. and Shaw Communications Inc. dated October 1, 2022.
- 13. On October 4, 2022, the Commissioner provided the Respondents with a further detailed summary of facts from the Bell presentation dated July 7, 2022, which included charts from the presentation. Attached as **Exhibit F** is a letter from Alexander Gay to counsel for Rogers Communications Inc. and Shaw Communications Inc. dated October 4, 2022.

Affirmed remotely by Jessica Fiset stated )  
 as being located at the City of Gatineau in the )  
 Province of Quebec, before me, in the City of )  
 Gatineau in the Province of Quebec on October )  
 17, 2022 in accordance with O. Reg. 431/20, )  
 Administering Oath or Declaration Remotely. )



Commissioner of Oaths etc.

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



Jessica Fiset



This is **Exhibit “A”** to the affidavit of Jessica Fiset, affirmed remotely and stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on October 17, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



---

Commissioner of Oaths etc.

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

Federal Court



Cour fédérale

Date: 20210801

Docket: T-1159-21

Ottawa, Ontario, August 1, 2021

PRESENT: Justice Andrew D. Little

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

and

TELUS CORPORATION

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, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, shall comply with the following requirements:
  - a. the Respondent, TELUS Corporation, shall produce records, other things and information in its possession, control or power;

- b. the Respondent, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, shall certify by affidavit the copy is a true copy of the original record;
- f. a duly authorized representative of the Respondent, TELUS Corporation, shall certify by affidavit that all electronic records produced by the Respondent, TELUS Corporation, 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, TELUS Corporation, shall be sworn or solemnly affirmed by a duly authorized representative of the Respondent, TELUS Corporation, 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, TELUS Corporation, claims is privileged, the Respondent, TELUS Corporation, shall produce the record with the privileged information redacted and in accordance with paragraph 6 of this Order;
- i. the Respondent, TELUS Corporation, 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, TELUS Corporation, uses in its financial statements. where the Respondent, TELUS Corporation, produces a record or makes and delivers a written return of information using accounting principles other than GAAP or IFRS, the Respondent, TELUS Corporation, shall explain the meaning of all such accounting terms;
- j. the Respondent, TELUS Corporation, shall define, explain, interpret or clarify any record or written return of information whose meaning is not self-evident;
- k. the Respondent, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, will comply with the E-Production Guidelines. The Respondent, TELUS Corporation, 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, TELUS Corporation, shall make and deliver, in a written return of information, an index in which the Respondent, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation asserts a legal privilege in respect of all or part of a record, the Respondent, TELUS Corporation, 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.

- c. Without restricting any other remedy he may seek, the Commissioner may, by written notice to the Respondent, TELUS Corporation, at any time require the Respondent, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, or in the possession of an officer, agent, servant, employee or representative of the Respondent, TELUS Corporation. If a record or thing produced by the Respondent, TELUS Corporation, pursuant to this Order does not meet the above conditions, the Respondent, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, and that the record, thing, type of record or type of thing would be responsive to a Specification of this Order if the Respondent, TELUS Corporation, had continued to have possession, control or power over the record, thing, type of record or type of thing. The Respondent, TELUS Corporation, shall state in this written return of information (a) when and how the Respondent, TELUS Corporation, lost possession, control and power over a record, thing, type of record or type of thing; and (b) the Respondent's, TELUS Corporation'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, TELUS Corporation, 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, TELUS Corporation, possessed the record, thing, type of record or type of thing. The Respondent, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, previously produced a record or thing to the Commissioner the Respondent, TELUS Corporation, is not required to produce an additional copy of the record or thing provided that the Respondent, TELUS Corporation: (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, TELUS Corporation, on premises used or occupied by the Respondent, TELUS Corporation, or was in the possession of an officer, agent, servant, employee or representative of the Respondent, TELUS Corporation; and where this is not the case, the Respondent, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation, 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, TELUS Corporation;
  - 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, TELUS Corporation;
  - d. appropriate enquiries of the Respondent's, TELUS Corporation'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 16 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, TELUS Corporation, 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

**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 any current training materials provided to Company's sales staff and customer service representatives relating to Wireless Services in the Relevant Area.
5. 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.
6. 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.
7. 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.
8. 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**

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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.
17. 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.
18. 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.
19. 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. TELUS, Koodo, Public Mobile);
  - (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).
20. Provide any third party local number portability data available to Company, including all relevant Data Dictionaries, related to the supply of Wireless Services in the Relevant Area during the Relevant Period in the most disaggregated form available.



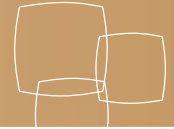
**SCHEDULE III  
E-PRODUCTION GUIDELINES**



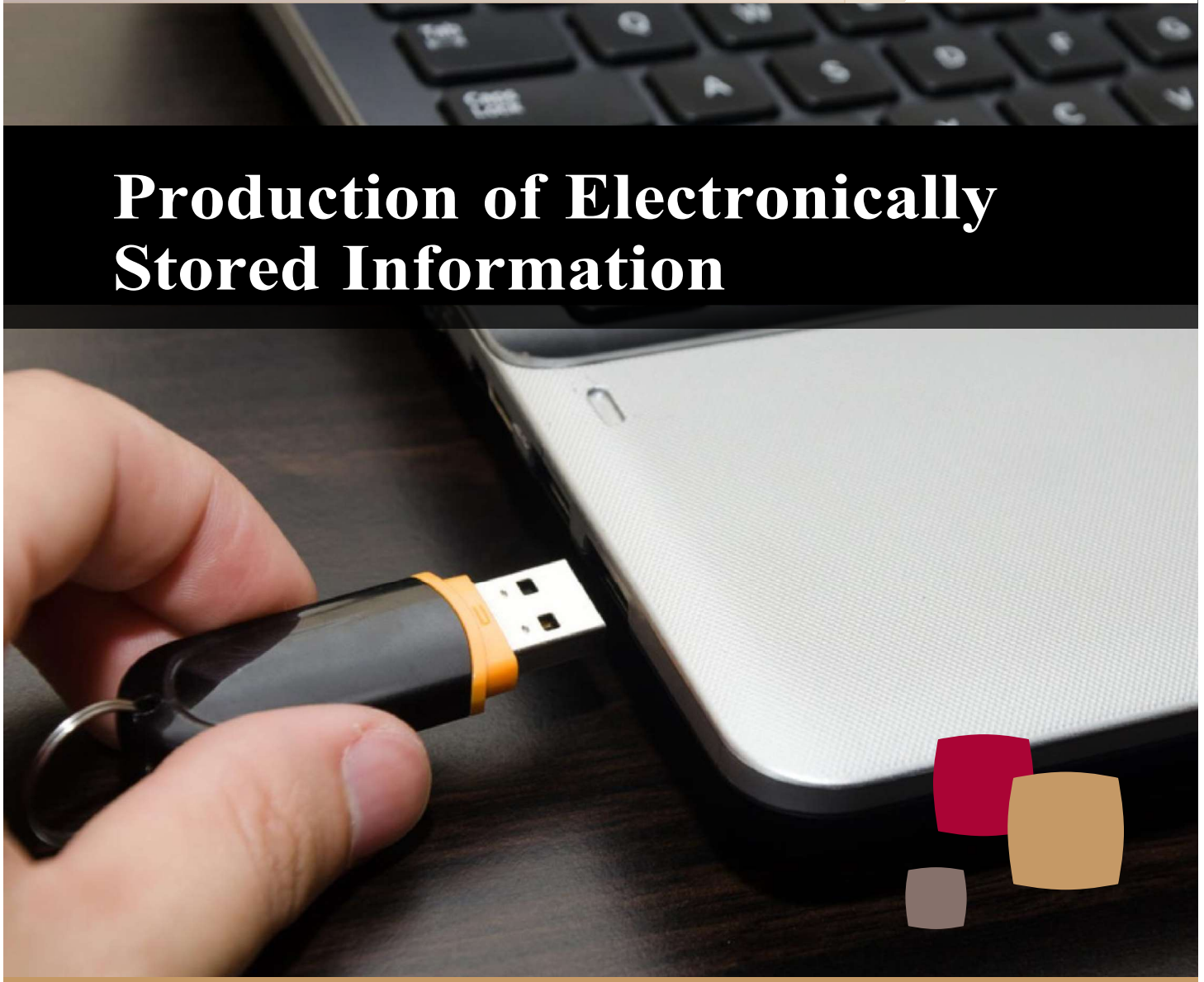
Competition Bureau  
Canada

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](http://www.competitionbureau.gc.ca)

This publication can be made available in alternative formats upon request. Contact the Competition Bureau's Information Centre at the numbers listed above.

**This publication is also available online in HTML at:** [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03907.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03907.html)

**Permission to reproduce**

Except as otherwise specifically noted, the information in this publication may be reproduced, in part or in whole and by any means, without charge or further permission from the Competition Bureau provided due diligence is exercised in ensuring the accuracy of the information reproduced; that the Competition Bureau is identified as the source institution; and that the reproduction is not represented as an official version of the information reproduced, nor as having been made in affiliation with, or with the endorsement of the Competition Bureau. For permission to reproduce the information in this publication for commercial redistribution, please [Apply for Crown Copyright Clearance](#) or write to:

Communications and Marketing Branch  
Industry Canada  
C.D. Howe Building  
235 Queen Street  
Ottawa, ON K1A 0H5  
Email: [info@ic.gc.ca](mailto:info@ic.gc.ca)

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
<b>SCHEDULES</b>	
■ 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](http://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

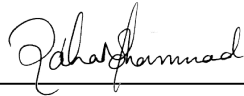
1. A load file (e.g., Opticon (OPT), IPRO (LFP), Summation (DII) or Ringtail (MDB)) and all related ESI should be produced in native format except where near-native format is required by subsections 4.3.2 and 4.6.
2. Within the delimited metadata file where fields are separated by the pipe character (|) 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.).

This is **Exhibit “B”** to the affidavit of Jessica Fiset, affirmed remotely and stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on October 17, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



---

Commissioner of Oaths etc.

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

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 5<sup>th</sup> 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;<sup>1</sup>

“**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.

---

<sup>1</sup> 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).

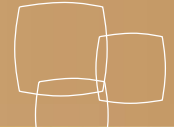
**SCHEDULE III  
E-PRODUCTION GUIDELINES**



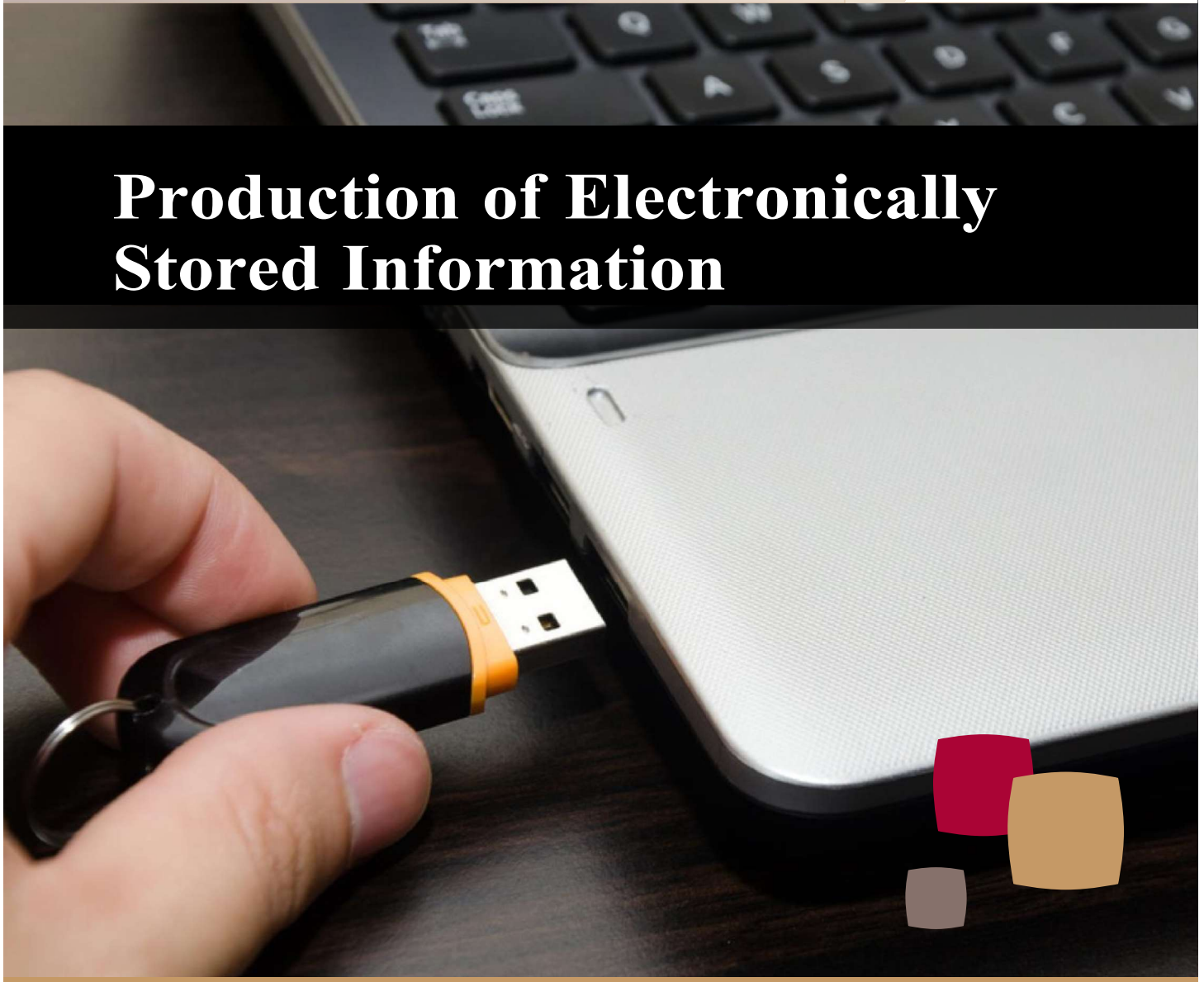
Competition Bureau  
Canada

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](http://www.competitionbureau.gc.ca)

This publication can be made available in alternative formats upon request. Contact the Competition Bureau's Information Centre at the numbers listed above.

**This publication is also available online in HTML at:** [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03907.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03907.html)

**Permission to reproduce**

Except as otherwise specifically noted, the information in this publication may be reproduced, in part or in whole and by any means, without charge or further permission from the Competition Bureau provided due diligence is exercised in ensuring the accuracy of the information reproduced; that the Competition Bureau is identified as the source institution; and that the reproduction is not represented as an official version of the information reproduced, nor as having been made in affiliation with, or with the endorsement of the Competition Bureau. For permission to reproduce the information in this publication for commercial redistribution, please [Apply for Crown Copyright Clearance](#) or write to:

Communications and Marketing Branch  
Industry Canada  
C.D. Howe Building  
235 Queen Street  
Ottawa, ON K1A 0H5  
Email: [info@ic.gc.ca](mailto:info@ic.gc.ca)

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
<b>SCHEDULES</b>	
■ 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](http://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.).

This is **Exhibit “C”** to the affidavit of Jessica Fiset, affirmed remotely and stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on October 17, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



---

Commissioner of Oaths etc.

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









This is **Exhibit “D”** to the affidavit of Jessica Fiset, affirmed remotely and stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on October 17, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



---

Commissioner of Oaths etc.

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





This is **Exhibit “E”** to the affidavit of Jessica Fiset, affirmed remotely and stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on October 17, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



---

Commissioner of Oaths etc.

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



Ministère de la Justice  
Canada

Department of Justice  
Canada

Région de la Capitale nationale  
Secteur national du contentieux  
50, rue O'Connor, bureau 500  
Ottawa (ON) K1A 0H8

National Capital Region  
National Litigation Sector  
50 O'Connor Street, Suite 500  
Ottawa, ON K1A 0H8

Téléphone/Telephone  
613-296-4770

Télécopieur/Fax  
613-954-1920

**BY EMAIL**

October 1, 2022

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
145 King Street West  
Suite 2750  
Toronto, ON M5H 1J8

**Attn: Crawford Smith**

Dear Mr. Smith:

**Re: Commissioner of Competition v. Rogers Communications Inc. and Shaw Communications Inc.,  
Tribunal File No. CT-2022-002**

This is in response to your two letters where you request (a) a summary of the facts of all calls that were held between the Bureau and third parties and (b) a copy of the Bell presentation that was referenced in the summary of facts of a Bell call that was provided to you on September 20, 2022.

As it relates to market calls, we continue to take the position that they are subject to litigation privilege. We are therefore refusing to produce the documents.

However, in the interest of trying to move this matter forward, we are prepared to provide a summary of the facts contained in the Bell presentation as well as a summary of facts of the various calls that were held with third parties.

Attached are copies of these summaries.

Kindly advise whether this satisfies your requests.

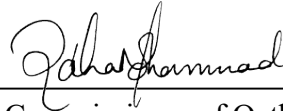
Yours truly,

*Alexander M. Gay*

Alexander Gay

cc Jonathan Lisus, Matthew Law, Brad Vermeersch, Ronke Akinyemi, Zain Naqi, *Lax O'Sullivan  
Gottlieb LLP*  
Kent Thomson, Derek Ricci, Steven Frankel, Chanakya Sethi, *Davies Ward Phillips & Vineberg  
LLP*

This is **Exhibit “F”** to the affidavit of Jessica Fiset, affirmed remotely and stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on October 17, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



---

Commissioner of Oaths etc.

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





Ministère de la Justice  
Canada

Department of Justice  
Canada

Région de la Capitale nationale  
Secteur national du contentieux  
50, rue O'Connor, bureau 500  
Ottawa (ON) K1A 0H8

National Capital Region  
National Litigation Sector  
50 O'Connor Street, Suite 500  
Ottawa, ON K1A 0H8

Téléphone/Telephone  
613-296-4770

Télécopieur/Fax  
613-954-1920

**BY EMAIL**

October 4, 2022

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

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

**Attn: Crawford Smith**

Dear Mr. Smith:

**Re: Commissioner of Competition v. Rogers Communications Inc. and Shaw Communications Inc.,  
Tribunal File No. CT-2022-002**

This is in response to your letter of today's date.

As it relates to market calls with third parties, we continue to take the position that they are subject to litigation privilege, all of which are properly described in Schedule B of the Affidavit of Documents. No challenge has been brought to this schedule.

As it relates to the Bell presentation, we provided a summary of the facts described in the narratives on October 2 2022. The said summary, however, did not include charts that formed the largest part of the said Bell presentation. In the interest of moving this matter forward, we attach a revised copy of the summary of facts document, with charts.

Kindly advise whether this satisfies your requests.

Yours truly,

*Alexander M. Gay*

Alexander Gay

cc Jonathan Lisus, Matthew Law, Brad Vermeersch, Ronke Akinyemi, Zain Naqi, *Lax O'Sullivan  
Gottlieb LLP*

Kent Thomson, Derek Ricci, Steven Frankel, Chanakya Sethi, *Davies Ward Phillips & Vineberg LLP*

**CT-2022-002**

**THE COMPETITION TRIBUNAL**

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

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

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

**B E T W E E N :**

**COMMISSIONER OF COMPETITION**

**Applicant**

- and -

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

**Respondents**

- and -

**ATTORNEY GENERAL OF ALBERTA AND  
VIDEOTRON LTD.**

**Intervenors**

---

**AFFIDAVIT OF JESSICA FISET  
(Affirmed October 17, 2022)**

---

# TAB 3

Competition Tribunal



Tribunal de la concurrence

Citation: *Canada (Commissioner of Competition) v Rogers Communications Inc. and Shaw Communications Inc.*, 2022 Comp Trib 06

File No.: CT-2022-002

Registry Document No.: 51

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

BETWEEN:

**Commissioner of Competition**  
(applicant)

and

**Rogers Communications Inc. and  
Shaw Communications Inc.**  
(respondents)



Date of case management conference: June 14, 2022

Before: Mr. Justice Andrew D. Little (Chairperson)

Date of Order: June 17, 2022

**SCHEDULING ORDER (Application under section 92)**

[1] **FURTHER TO** an application filed by the Commissioner of Competition (the “**Applicant**” or the “**Commissioner**”) on May 9, 2022 against Rogers Communications Inc. and Shaw Communications Inc. (the “**Respondents**”) (collectively, the “**Parties**”) under section 92 of the *Competition Act*, RSC, 1985, c C-34 (the “**Application**”);

[2] **AND CONSIDERING** the Tribunal’s *Practice Direction Regarding Timelines and Scheduling for Proceedings before the Tribunal*, and having regard to certain, but not all, aspects of the Tribunal’s *Practice Direction Regarding An Expedited Proceeding Process Before The Tribunal* (January 2019) that have been considered by the Parties and the Tribunal in preparing the schedule in this Order;

[3] **AND CONSIDERING** the discussions at a Case Management Conference (“**CMC**”) held on May 17, 2022; the Parties’ proposed schedules for the pre-hearing steps and the hearing of the Applicant’s section 92 application as submitted by the Parties in a side-by-side comparison on May 24, 2022; the discussions with and representations made by the Parties at a CMC held on May 24, 2022; a revised draft schedule prepared by the Tribunal after the CMC and circulated to the Parties on May 26, 2022; the Parties’ respective responses and proposed revisions to that revised draft schedule, as provided on June 10 and 14, 2022; and the Parties’ representations made at a CMC held on June 14, 2022;

[4] **AND BEING SATISFIED** that the schedule in this Order is appropriate for this particular proceeding, considering (*inter alia*): the merger review process in the *Competition Act* and the steps taken prior to the commencement of the Application (as identified by the Parties and in materials filed in the application under section 104 filed on May 9, 2022); the resources that are being and are anticipated to be devoted to this proceeding by all Parties; the Parties’ requests that this matter proceed to a hearing as soon as practicable; and the process used to arrive at the terms of this Order (described above). The Tribunal is also satisfied that the schedule respects the principles found in subsection 9(2) of the *Competition Tribunal Act*, RSC 1985, c 19 (2<sup>nd</sup> Supp), which direct the Tribunal to deal with all matters as informally and expeditiously as the circumstances and considerations of fairness permit;

[5] **AND CONSIDERING** that an earlier date to commence the hearing is not practicable in this proceeding, having regard to its scope, the matters discussed with the Parties prior to this Order, all of the steps contemplated by this Order, the principles in subsection 9(2) of the *Competition Tribunal Act* and the overall objective of a just resolution of the issues raised;

**THE TRIBUNAL ORDERS THAT:**

[6] The schedule for the discovery and pre-hearing disclosure steps of the Application shall be as follows:

**June 23, 2022** Parties to advise the Tribunal Registry whether they intend to seek mediation in the first scheduled time period

**June 28, 2022** Deadline for Parties to exchange Mediation Briefs and for delivery to the Mediator via the Tribunal Registry (if applicable)

<b>June 28, 2022</b>	Deadline for Parties to approve Discovery Plans
<b>July 4-5, 2022</b>	Mediation (if applicable)
<b>July 7, 2022</b>	Deadline for filing Motions for Leave to Intervene
<b>July 15, 2022</b>	Deadline to serve Affidavits of Documents and production of documents by all Parties
<b>July 21, 2022</b>	Last date to file Responses to Motions to Intervene
<b>July 22, 2022</b>	Deadline for service of Requests to Admit
<b>July 25, 2022</b>	Case Management Conference
<b>July 28, 2022</b>	Last date to file Replies on Motions to Intervene
	Deadline for filing any motions arising from Affidavits of Documents and/or productions, including motions challenging claims of privilege
<b>August 4, 2022</b>	Hearing of any motions arising from Affidavits of Documents, productions and/or claims of privilege (if necessary)
<b>August 5, 2022</b>	Deadline for service of answers to Requests to Admit
<b>August 8, 9 and/or 10, 2022</b>	Hearing of any Motions for Leave to Intervene (if necessary; specific date(s) to be confirmed)
<b>Week of August 8, 2022</b>	Deadline for delivery of any additional productions resulting from any Affidavits of Documents, productions and/or claims of privilege motions
	Case Management Conference
<b>August 15 to August 26, 2022</b>	Oral Examinations for discovery (schedule to be settled amongst counsel)
	The Tribunal will have a judicial member available (on dates to be agreed with counsel) to rule on objections arising during oral examinations for discovery
	Deadline for answers to undertakings made at oral examinations for discovery is the date of the undertaking plus 10 days

<b>September 7, 2022</b>	Deadline for filing any motions arising from examinations for discovery, answers to undertakings or refusals
<b>September 9, 2022</b>	Case Management Conference  Parties to exchange proposed Agreed Statements of Fact
<b>September 13, 2022</b>	Hearing of any motions arising from examinations for discovery, answers to undertakings or refusals
<b>September 16, 2022</b>	Last day for follow-up examinations for discovery
<b>September 19, 2022</b>	Deadline to agree upon Agreed Statement of Fact
<b>September 23, 2022</b>	All Parties serve lists of documents relied upon and the documents, and witness statements  All Parties serve and file expert report(s), including Respondents' expert report(s) on efficiencies, and short written statements as to the area(s) of expertise for each expert  Applicant serves list of documents proposed to be admitted without further proof  All documents to include confidentiality designations
<b>September 28, 2022</b>	Case Management Conference
<b>October 5, 2022</b>	Deadline for filing any motions relating to challenges to confidentiality designations  Deadline for raising objections to the experts, including qualifications and areas in which the experts are proposed to be qualified  Deadline for Respondents to advise any objections to the Applicant's list of documents proposed to be admitted without further proof
<b>October 11, 2022</b>	All Parties to file read-ins from examinations for discovery
<b>October 12, 2022</b>	Hearing of any motions relating to challenges to confidentiality designations, objections to Applicant's list of documents proposed to be admitted without further proof and objections to the experts



Parties to advise Tribunal Registry whether they intend to seek Mediation in the second scheduled time period

**October 20, 2022**

All Parties to serve additional documents relied upon and responding witness statements

All Parties to serve and file responding expert report(s), including Applicant's responding expert report(s) on efficiencies, and short written statements as to the area(s) of expertise for each new responding expert

**October 21, 2022**

Deadline for Parties to exchange Mediation Briefs and to deliver them to the Mediator via the Tribunal Registry (if applicable)

**October 24, 2022**

Parties to file Joint Statement of Issues

Parties to file a joint list of witnesses for the hearing, including the order, date and duration of each witness

**October 26, 2022**

Case Management Conference

**October 27, 2022**

Deadline to file motions related to the proposed hearing evidence (documents relied upon, witness statements, objections to the responding experts, and expert reports)

**October 27-28, 2022**

Mediation (if applicable)

**October 31, 2022**

Parties to file written Opening Statements

Hearing of motions, if any, related to the proposed hearing evidence (documents relied upon, witness statements and expert reports)

**November 1, 2022**

Pre-hearing Case Management Conference

[7] The hearing format for motions and CMCs contemplated in paragraph 6 will be by videoconference. However, should the Tribunal decide to modify the conduct of its regular operations and to resume holding in-person hearings, the hearing format could be modified to be in-person in the Hearing Room of the Tribunal located at 600-90 Sparks Street, Ottawa, after consultations with the Parties.

[8] The evidentiary portion of the hearing of the Application shall commence at 10 a.m. on November 7, 2022, and is currently expected to be held by videoconference. However, should the Tribunal decide to modify the conduct of its regular operations and to resume holding in-person hearings, the hearing format could be modified to be in-person in the Hearing Room of the Tribunal

located at 600-90 Sparks Street, Ottawa, after consultations with the Parties. The hearing schedule is as follows:

<b>November 7, 2022 – November 10, 2022</b>	First week of hearing (4 days)
<b>November 14, 2022 – November 17, 2022</b>	Second week of hearing (4 days)
<b>November 21, 2022 – November 24, 2022</b>	Third week of hearing (4 days)
<b>November 28, 2022 – December 1, 2022</b>	Fourth week of hearing (4 days)
<b>December 5, 2022 – December 8, 2022</b>	Fifth week of hearing (4 days) (if needed)

[9] The Tribunal directs the delivery of written arguments from each Party (including a compendium of key documents) and will hear oral arguments after the completion of the evidentiary portion of the hearing. The oral argument portion of the hearing is also expected to be held by videoconference.

[10] If the evidentiary portion of the hearing is completed in four weeks, then the argument will occur as follows:

<b>December 8, 2022</b>	Written Arguments and Document Compendia Filed
<b>December 13-14, 2022</b>	Oral Arguments

[11] If the evidentiary portion of the hearing takes more (or less) than four weeks, the written and oral argument will take place after the completion of the evidence on a schedule to be determined by the Tribunal, having regard to the following:

<b>Date to be confirmed</b>	Written Arguments and Document Compendia Filed (end of hearing + 7 days)
<b>Date to be confirmed</b>	Oral Arguments (end of hearing + 12 days)

DATED at Toronto, this 17<sup>th</sup> day of June 2022.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Andrew D. Little

**COUNSEL OF RECORD:**

For the applicant:

Commissioner of Competition

John S. Tyhurst  
Derek Leschinsky  
Katherine Rydel  
Ryan Caron  
Suzanie Chua  
Marie-Hélène Gay  
Kevin Hong

For the respondent:

Rogers Communications Inc.

Jonathan Lisus  
Crawford Smith  
Matthew R. Law  
Bradley Vermeersch

For the respondent:

Shaw Communications Inc.

Kent E. Thomson  
Derek D. Ricci  
Steven G. Frankel

CT-2022-002

**THE COMPETITION TRIBUNAL**

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

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

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

**B E T W E E N :**

**COMMISSIONER OF COMPETITION**

**Applicant**

**- and -**

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

**Respondents**

**- and -**

**ATTORNEY GENERAL OF ALBERTA AND  
VIDÉOTRON LTD.**

**Intervenors**

---

**MOTION RECORD OF THE COMMISSIONER  
(Bell Motion to Quash Subpoenas against Blaik Kirby  
and Stephen Howe)**

---

**ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22nd Floor  
Gatineau, QC K1A 0C9  
Fax: 819.953.9267

**Katherine Rydel**

katherine.rydel@cb-bc.gc.ca

**Ryan Caron**

ryan.caron@cb-bc.gc.ca

**Ellé Nekiari**

elle.nekiari@cb-bc.gc.ca

**Counsel for the Commissioner**