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CT- 2022-002

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REGISTRAR / REGISTRAIRE

CT-2022-002

OTTAWA, ONT.

Doc. # 521

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
(RESPONSE TO CROSS-MOTION served OCTOBER 18, 2022)**

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TAB 1

CT-2022-002

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**ATTORNEY GENERAL OF ALBERTA AND
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Intervenors

**RESPONSE OF THE COMMISSIONER OF COMPETITION
(CROSS-MOTION served OCTOBER 18, 2022)**

THE GROUNDS ON WHICH THE COMMISSIONER OF COMPETITION OPPOSES THE RESPONDENT'S CROSS-MOTION ARE:

1. Shaw Communications Inc. (**Shaw**) moves for an order directing the Commissioner of Competition (**Commissioner**) to produce all documents responsive to any one of 11 “categories of documents” that Shaw has enumerated: the “categories” are crafted to capture certain documents that Shaw is seeking from BCE Inc. (**Bell**) and TELUS Communications Inc. (**TELUS**) by way of contested subpoenas *duces tecum*.
2. The Commissioner opposes the requested relief on the basis that: (i) Shaw has not met its evidentiary and legal burden establishing, among other things, the relevancy and/ or materiality of the sought-after documents; and (ii) Shaw has already received all relevant non-privileged documents that are in the Commissioner’s power, possession or control. If, however, the Tribunal were to revisit the Commissioner’s claims of privilege over certain documents, any resulting order should be limited to directing the production of fact(s) summaries.

(1) A Threshold Issue: the time for Shaw’s cross-motion has passed

3. Shaw brings this cross-motion nearly two months after the deadline for filing motions arising from examinations for discovery, answers to undertakings or refusals; and three months after the deadline for filing any motions arising from Affidavits of Documents and/ or productions, including challenges of privilege. The section 92 hearing is scheduled to commence in two weeks. The Commissioner’s submission is simple: the time for Shaw’s cross-motion has long since passed; the discovery phase is done.
4. On June 17, 2022, the Tribunal issued a Scheduling Order governing the pre-hearing steps in this proceeding. In issuing this Order, the Competition Tribunal (**Tribunal**) was satisfied that the timetable set out therein was appropriate under the circumstances, having regard to the resources that are being devoted to this proceeding, and the Parties’ request to have the matter expedited. The Tribunal was also satisfied that the Scheduling Order aligned with its *Practice Direction Regarding Timelines and Scheduling for Proceedings before the*

Tribunal, and Practice Direction Regarding an Expedited Proceeding Process Before the Tribunal.

5. The deadlines for completion of the discovery and pre-hearing disclosure steps of the Commissioner's application are unequivocal. Discovery was to have been completed on, or before, September 13, 2022— at the latest:

July 28, 2022: last date for filing any motions arising from Affidavits of Documents and/or productions, including motions challenging claims of privilege;

August 4, 2022: hearing of any motions arising from Affidavits of Documents, productions and/ or claims of privilege (if necessary);

August 15 to August 26, 2022: dates for oral examinations for discovery, with undertakings to be completed on the date of the undertaking plus 10 days;

September 7, 2022: deadline for filing any motions arising from examinations for discovery, answers to undertakings or refusals; and

September 13, 2022: deadline for hearing any motions arising from examinations for discovery, answers to undertakings or refusals.

6. In fact, Rogers Communications Inc (Rogers) and Shaw brought two unsuccessful motions challenging the Commissioner's litigation privilege.

July 22, 2022. Rogers brought a motion seeking production of "records to, from, or copying third parties outside the Commissioner and his staff, except for those communications specifically and solely concerning the preparation of affidavits sworn by such third parties in support of the Commissioner's s. 104 Application." This motion was eventually abandoned.

September 7, 2022. Shaw and Rogers jointly brought a motion arguing for a further and better affidavit of documents. The issue was argued and the Tribunal dismissed this motion.

7. With respect, Shaw has had ample time to raise any concerns it may have had with the sufficiency of the Commissioner’s disclosure. It cannot now look to circumvent the prescribed timelines (above) by way of a cross-motion brought against the Commissioner, on the back of motions by third-parties Bell and TELUS to quash subpoenas *duces tecum*. To allow otherwise renders impotent the Tribunal’s Scheduling Order and reopens the discovery phase of the proceedings.
8. Shaw’s response to the above critique is to focus on the procedural mechanism it is trying to employ to get at the additional discovery—the subpoena process. Subpoenas, they say, allow it to obtain the sought-after document production. That is to say, Shaw suggests that subpoenas are a complete answer to allegations that it is doing an “end-run around” the discovery process.
9. The jurisprudential support on which Shaw relies in support of its position is the Federal Court of Appeal’s decision in *Tseil-Wauthuth Nation v Canada (Attorney General)*.¹ With respect, its reliance on this case is misplaced. It is not difficult to see that *Tseil-Wauthuth Nation* is factually and legally different from the situation before the Tribunal.
10. In *Tseil-Wauthuth Nation*, the Court was faced with a challenge to the adequacy of the evidentiary record placed before the lower court in the context of fifteen applications for judicial review in which 27 parties sought to quash certain administrative decisions approving the Trans Mountain Expansion Project. Specifically, the Court was faced with considering how (and when) “exceptional evidence” (evidence not before the decision-maker at the time of the decision) might be placed before a court on an application for judicial review.

¹ *Tseil-Wauthuth Nation v Canada (Attorney General)*, [2017 FCA 128](#) (CanLII).

11. In its reasons, the Court recognized the unique nature of judicial review applications, and the general rule that a limited evidentiary record is to be put before the reviewing court. Faced with this, the Court took to considering different ways/ procedural mechanisms in which parties might be able to place “exceptional evidence” before the reviewing court. One way was to have the judicial review “treated and proceeded with as an action, thereby allowing for discovery and live witnesses.”² Another, albeit in rare cases, is *via* subpoena.
12. The decision in *Tseil-Wauthuth Nation* does not advance Shaw’s argument. It is, at best, a recognition by the Federal Court of Appeal that in rare cases subpoenas are an option for placing a particular type of evidence (i.e., “exceptional evidence”) before a reviewing court in judicial review applications.

(2) Shaw has not met its evidentiary or legal burdens

13. By way of the cross-motion, Shaw implies that the Commissioner is in possession, power or control of documents responsive to one of the 11 categories of documents that it enumerates. To the extent the Commissioner claims privilege over any such documents, Shaw simply states that there is no valid basis on which the Commissioner could make such a claim.
14. If the Tribunal is satisfied that the cross-motion is properly contemplated by the Scheduling Order and/ or otherwise in-line with this proceedings timetables, Shaw must still convince the Tribunal that the Commissioner is in possession, power or control over non-privileged documents that are relevant and material to the Commissioner’s section 92 application.
15. On the issue of relevance and materiality, Shaw leaves this Court with little to no evidence as to how documents caught by one of the categories might be relevant and material to the Commissioner’s section 92 application. It is not enough, for example, simply to assert relevance and materiality. That is to say, the evidentiary burden cannot be discharged through speculation and unsupported assertions, there must be some grounding in evidence.

² *Ibid* at [para 104](#).

For whatever reason, Shaw has provided the Tribunal with little or no evidence from which it could conclude that the categories relate to relevant and material matters.

16. The same argument applies with respect to Shaw's claim that the Commissioner has no valid claims for privilege over documents responsive to the enumerated categories. To be sure, the Commissioner recognizes that the burden of establishing privilege typically rests on the party claiming it. However, the Commissioner submits that before it is required to meet any such legal burden, the challenging party must put some minimal evidence (or argument) before the Court in support of its challenge. Again, it is not enough, for example, simply to assert that the Commissioner cannot claim privilege over any document. In the instant case, this is what Shaw does. It makes a blanket claim that the Commissioner could never substantiate a privilege claim over a document that is responsive to the categories.

(3) Shaw has been provided with all relevant, non-privileged, documents

17. The Shaw cross-motion identifies 11 categories of documents for which it seeks production. On review of these categories, and at the outset, the Commissioner has no documents in his power, possession or control responsive to six of the categories:

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

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

(a)(vi). Written submissions dated on or after July 1, 2020 provided by or on behalf of Bell to representatives of ISED concerning Bell's proposed plans to acquire Shaw;

(b)(ii). Written submissions dated on or after March 15, 2021 provided by or on behalf of TELUS to representatives of ISED concerning the proposed transaction involving Shaw and Rogers;

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

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

18. All told, the Commissioner has identified 10 unproduced documents that might be responsive to the remaining categories of documents. That said, these documents are either publicly available, were previously identified for Shaw in Schedule B of the Commissioner's Affidavit of Documents (**Commissioner's AoD**), and/ or are privileged. Specifically,
- i. one document, responsive to category "(a)(v)" is publicly available;³
 - ii. three documents, responsive to categories "(a)(i)", "(a)(ii)", and "(b)(i)" were identified in Schedule B to the Commissioner's AoD;⁴ and

³ Category "(a)(v)" contemplates, "Written submissions dated on or after July 1, 2020 provided by or on behalf of Bell to representatives of the Competition Bureau concerning Bell's proposed plans to acquire Shaw."

⁴ Category "(a)(i)" contemplates, "Written submissions dated on or after March 15, 2021 provided by or on behalf of BCE Inc. and/or its various subsidiaries and affiliates to representatives of the Competition Bureau concerning the proposed transaction involving Shaw and Rogers Communications Inc., including written submissions provided to representatives of the Competition Bureau on [REDACTED]" Category "(a)(ii)" contemplates, "Written submissions dated on or after March 15, 2021 provided by or on behalf of Bell to Industry, Science and Economic Development Canada concerning the proposed transaction involving Shaw and Rogers." Category "(b)(i)" contemplates, "Written submissions dated on or after March 15, 2021 provided by or on behalf of TELUS Communications Inc. and/or its various subsidiaries and affiliates to representatives of the Competition Bureau concerning the proposed transaction involving Shaw and Rogers, including any written submission provided to

- iii. two emails with attachments, and two separate documents were (inadvertently) not listed in Schedule B, but are nonetheless litigation privileged.⁵
19. The documents identified in Schedule B and those inadvertently not listed in Schedule B, are properly subject to litigation privilege and therefore not disclosable. All of the documents were provided to the Commissioner by third-parties, and in contemplation of litigation.
20. While certain of the documents over which litigation privilege is claimed are (in part) publicly available, they are nonetheless privileged if provided to the Commissioner by a third-party and reflect the Commissioner's applied knowledge, skill and thought such that it reveals the Commissioner's litigation strategy and preparations for litigation.⁶
21. The subpoena process is not an avenue by which parties are able to circumvent claims of privilege. It is not a tool that parties can use to access privileged documents and/ or challenge privilege claims.
22. To the extent Shaw takes issue with documents over which the Commissioner claims privilege, it had the opportunity to bring corresponding motions pursuant to the timelines set out in the Scheduling Order.

(4) The Commissioner has provided Shaw with broad disclosure

23. On May 9, 2022, the Commissioner of Competition filed concurrently an application under section 92 of the *Competition Act* contesting a proposed merger between Rogers Communications Inc and Shaw Communications Inc., and an application under section 104

representatives of the Competition Bureau on [REDACTED]

⁵ The parties Discovery Plan contemplates not updating their respective Affidavits of Documents Schedule B in instances where additional privileged documents are subsequently discovered and/or created.

⁶ See *Blank v Canada (Minister of Justice)*, 2006 SCC 39 at [paras 62-64](#).

seeking an interim order for an interlocutory injunction to maintain the status quo pending the outcome of the section 92 proceeding.

24. In line with the above, the Commissioner of Competition provided Shaw Communications Inc. with hundreds of thousands of documents (including dozens of summaries of privileged communications, as well as several privileged documents over which the Commissioner voluntarily waived privilege) and made Ms Kristen McLean, his representative, available for three days of oral discovery.
25. Despite the foregoing, Shaw takes the view that it's entitled to more disclosure. Specifically, Shaw brings this cross-motion (two weeks before trial) seeking the production of an additional 11 categories of information.

(5) Any order favouring Shaw should be limited to summaries of fact

26. If the Tribunal were inclined to revisit the Commissioner's claims of privilege over certain documents, any resulting order should be limited to directing the production of fact(s) summaries. Namely, Shaw cannot be entitled to more than what they would otherwise have been during the discovery phase— the underlying facts in respect of privileged communications.
27. This approach is consistent not only with the process that governed the discovery phase, but is also consistent with Shaw's own requests of the Commissioner wherein Shaw has asked that the Commissioner provide certain summaries of documents over which privilege is claimed. It is also consistent with past Tribunal practice in other cases.⁷

⁷ See *Director of Investigation and Research v AC Nielsen Company of Canada Limited*, 1994 CanLII 1901 (CT), at [12](#), *Director of Investigation and Research v Canadian Pacific*, 1997 CanLII 3738 (CT), at [5](#), *Director of Investigation and Research v Southam Inc*, 1991 CanLII 2396 (CT), at [37](#).

(6) The Cross-Motion should be dismissed, with costs to follow the event

28. Since its inception, the Tribunal has been challenged to find an appropriate balance between efficiency, expediency and procedural fairness. The *Competition Tribunal Rules*, which govern the Tribunal practice and procedures, were amended in 2002 in response to criticisms that Tribunal proceedings had become overly judicialized and cumbersome.⁸ For instance, interlocutory wrangling surrounding the disclosure rules prolonged proceedings such that little progress was made towards the Tribunal's expediency objective.
29. As a result, the Tribunal has undertaken to amend its Rules and processes to address these concerns and to attempt to strike a better balance between fairness to all parties, on the one hand, and efficiency and expediency of proceedings on the other. Special attention has been paid to the discovery process.
30. In its January 2019 Practice Direction regarding an "Expedited Proceeding Process before the Tribunal" the Tribunal notes its view that "the best way to expedite its proceedings is to apply certain parameters and limitations on the discovery process."⁹ In fact, parameters and limitations on the discovery process in this proceeding were put into place and discovery was to have been completed on, or before, September 13, 2022— at the latest.
31. Shaw's cross-motion undermines the Tribunal's Scheduling Order, as well as frustrates and disrupts the proceeding. It is reminiscent of the types of interlocutory matters that historically led to drawn-out and protracted litigation before the Tribunal. It would be appropriate in the instant case to deny Shaw its cross-motion and have the parties proceed with moving forward towards the hearing date.

⁸ *Competition Tribunal Rules*, SOR/2008-141, [Rule 2](#) permits the Tribunal to dispense with, vary or supplement the application of any of the Tribunals rules of procedure in a particular case in order to deal with the matter as informally and expeditiously as the circumstances and considerations of fairness permit.

⁹ *Practice Direction Regarding an Expedited Proceeding Process Before the Tribunal*, Ottawa, [January 2019](#).

The following provisions and documentary evidence will be used at the hearing of the cross-motion:

32. Sections 92, 93 and 96 of the *Competition Act*, R.S.C., 1985, c. C-34.
33. Sections 8 and 8.1 of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.).
34. Rules 2, 7, 34, 60-64, 68-70 and 82-88 of the *Competition Tribunal Rules*, SOR/2008-141.
35. Rules 3 and 4 of the *Federal Courts Rules*, SOR/98-106.
36. Affidavit of Jessica Fiset affirmed October 17, 2022;
37. Scheduling Order issued by Justice Little dated June 17, 2022;
38. Discovery Plan dated June 28, 2022; and
39. such further or other grounds or documents as counsel may raise and the Tribunal may permit.

DATED AT OTTAWA, ONTARIO, this 21st day of October, 2022.



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TAB 2

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B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
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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.¹
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**.²
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.³
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 prefix, 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

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

² **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).

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

involving Bell.

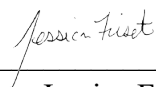
- 8. On August 8, 2022, the Commissioner produced 125 documents that were previously included on in Schedule B to his July 15, 2022 Affidavit of Documents. Of the original 36 documents that the Commissioner claimed privilege over that involved Telus, 15 documents were produced and 21 remained privileged. 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 Mohammed
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.

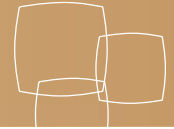
**SCHEDULE III
E-PRODUCTION GUIDELINES**



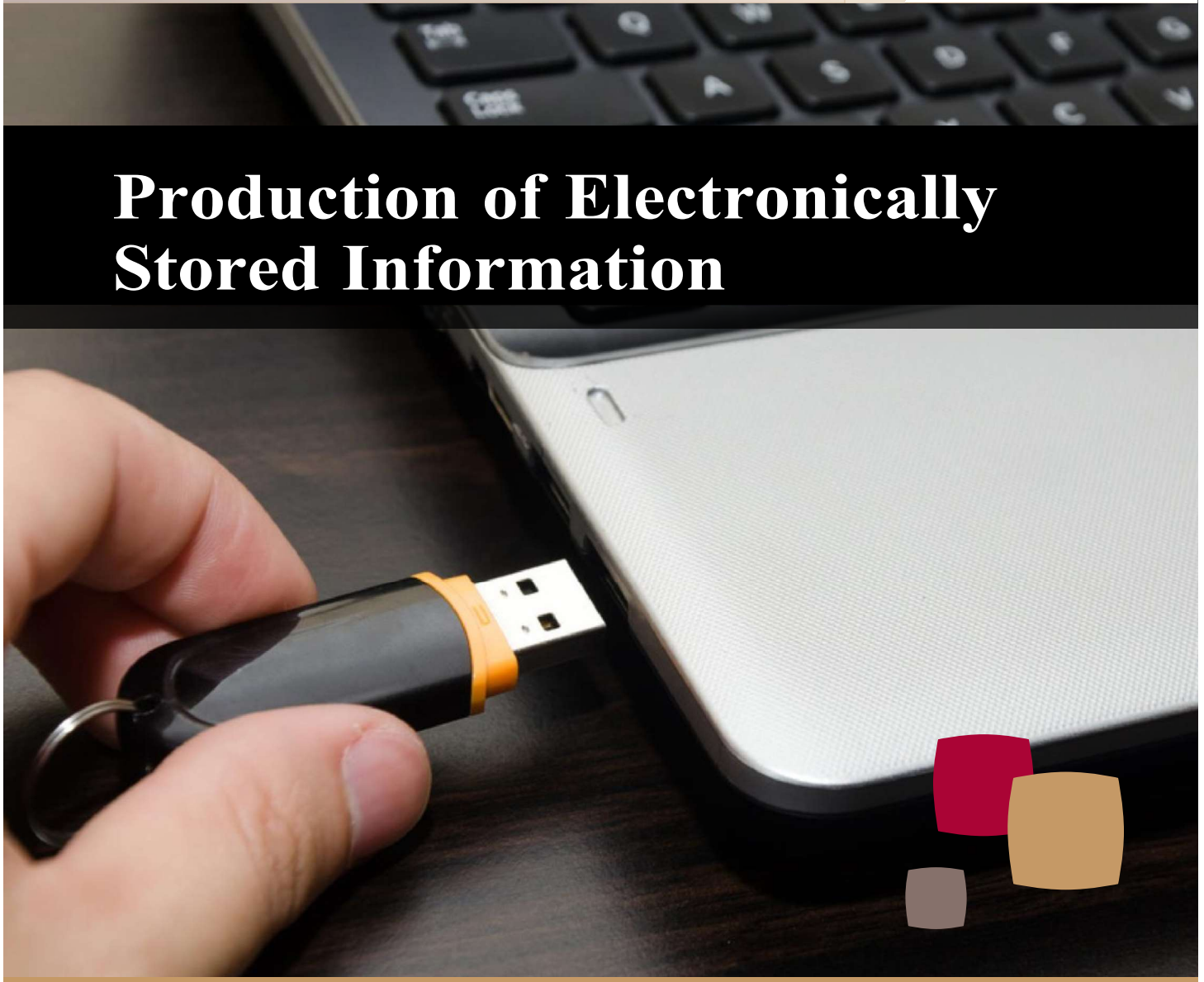
Competition Bureau
Canada

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Canada

Enforcement Guidelines



**Production of Electronically
Stored Information**



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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

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A.

**1. INTRODUCTION**

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

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

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

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

B.

**2. APPLICABILITY OF THE GUIDELINES**

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

- responding to a supplementary information request issued under subsection 114(2) of the Act;

- submitting a production pursuant to participation in the Bureau's Immunity or Leniency Programs; and
- submitting information voluntarily.

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

C.

(1) *3. ONGOING COMMUNICATION*

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

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

D.

4. TECHNICAL INSTRUCTIONS

- 4.1 All ESI (i.e., information readable in a computer system) should be produced free of computer viruses or malware, be accessible, readable and printable, and be devoid of passwords or encryption.
- 4.2 All ESI should be produced in its original electronic format (i.e., native format), except where near-native format is required by subsections 4.3.2 or 4.6 or where an image production is produced as per subsection 4.8. Detailed instructions are set out in Schedule A for production using computer systems without application export capabilities and in Schedule B for production using litigation application exports. The Bureau's preference is to receive ESI in accordance with Schedule B.
- 4.3 Where a record being produced is part of a family, all parent and child records should be produced and the parent/child relationship should be preserved. A

family is a collection of pages or files produced manually or by a software application, constituting a logical single communication of information, but consisting of more than one single stand-alone record. Examples include:

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

4.3.2 email repositories (e.g., Outlook .PST, Lotus .NSF) can contain a variety of records, including messages, calendars, contacts, and tasks. For purposes of production, all parent records, both native (e.g., documents, spreadsheets, presentations) and near-native email, calendar, contacts, tasks, notes and child records (e.g., object linking and embedding items and attachments of files to emails or to other parent records) should be produced, with the parent/child relationship preserved. Similar items found and collected outside an email repository (e.g., .MSG, .EML, .HTM, .MHT) should be produced in the same manner; and

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

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

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

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

- 4.5 The records produced should be indexed as being responsive to the applicable paragraphs or subparagraphs in the [Order/Request].
- 4.6 Each database record submitted in response to a paragraph or subparagraph of the [Order/Request]:
 - 4.6.1 should be produced whole, in a flat file, in a non-relational format and exported as a delimited text file where fields are separated by the pipe character (|) and a caret (^) is used as the text qualifier (e.g. ^Field1|^|Field2|^|Field3^ etc.); and
 - 4.6.2 should include a list of field names; a definition for each field as it is used by the producing party, including the meanings of all codes that can appear as field values; the format, including variable type and length, of each field; and the primary key in a given table that defines a unique observation.
- 4.7 With regard to de-duplication:
 - 4.7.1 for investigations relating to Part VI of the Act, all copies of records should be provided; and
 - 4.7.2 for investigations relating to Parts VII.1 and VIII of the Act, the producing party may use de-duplication or email threading software if the producing party provides the Bureau with a written description of the proposed process to be used, including what is considered a duplicate, and the Bureau confirms that the deployment of such process permits the producing party to comply fully with the [Order/Request].
- 4.8 Documents requiring redaction pursuant to any claim of privilege should be produced as single-page TIFF or multi-page PDF images and designated “Redacted” in the field as described in Schedule B. Appropriately redacted searchable text (OCR of the redacted images is acceptable), metadata, and bibliographic information must also be provided. All documents that are part of a document family that includes a document withheld pursuant to any claim of privilege will be designated “Family Member of Privileged Doc” in the field as described in Schedule B for all other documents in its family. Placeholder images with BEGDOC#, FILENAME, FILEPATH and reason withheld (e.g., “Privileged”) should be provided in place of the document images of the privileged document.

- 4.9 All ESI should be provided on portable storage media appropriate to the volume of data (e.g., USB/flash drive, CD, DVD, hard drive) and should be identified with a label setting out the matter name, the contents and the date of production. Each medium should contain no more than 250,000 files (e.g., native ESI or images or a combination of both).
- 4.10 In the event that ESI is delivered in a format that is not one of the formats set out in Schedule A or Schedule B, the ESI should be provided along with all available instructions and other materials, including software, as necessary for the retrieval and use of the ESI (subject to any software licensing restrictions, which the producing party and the Bureau should discuss in advance of production).

E.



HOW TO CONTACT THE COMPETITION BUREAU

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

Website [

www.competitionbureau.gc.ca

Address

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

Telephone

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

Facsimile

[819-997-0324

F.



SCHEDULE A

Computer Systems with No Application Export Capabilities

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

G.



SCHEDULE B

Litigation Application Exports

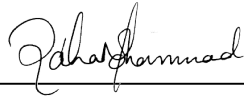
1. A load file (e.g., Opticon (OPT), IPRO (LFP), Summation (DII) or Ringtail (MDB)) and all related ESI should be produced in native format except where near-native format is required by subsections 4.3.2 and 4.6.
2. Within the delimited metadata file where fields are separated by the pipe character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

DOCID
BEGDOC
ENDDOC
BEGATTACH
ENDATTACH
FILEPATH
PARENTBATES (bates number of parent record)
CHILDBATES (bates number(s) of any child records)
MD5HASH (MD5HASH of the native format ESI)
TEXTPATH (link to extracted text on the production media for tiffs only)
NATIVEPATH (link to any files produced in native or near-native format on the production media)
CUSTODIAN
ALLCUSTODIAN
TO

FROM
AUTHOR
CC
BCC
SUBJECT/TITLE
FILENAME
DOCDATE
DATESENT
TIMESENT
DATECREATED
TIMECREATED
DATELASTMOD
TIMELASTMOD
DATEACCESSED
TIMEACCESSED
SPECIFICATION
FILEEXTENSION
REDACTED
FAMILYMEMBERPRIVILEGEDDOC

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

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 5th generation technology;

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

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

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

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

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

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

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

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

“**RAN**” means radio access network;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

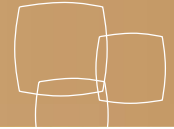
**SCHEDULE III
E-PRODUCTION GUIDELINES**



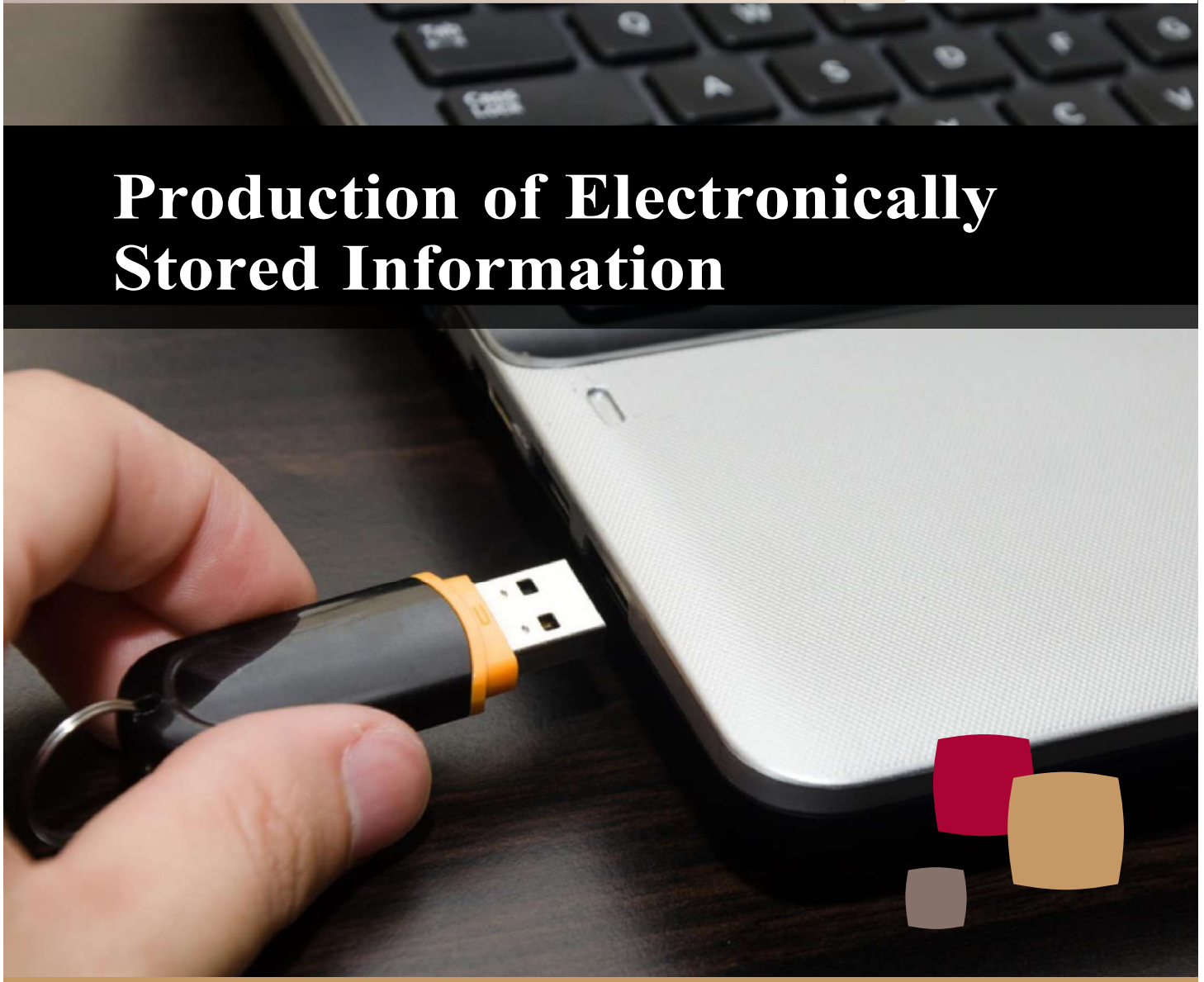
Competition Bureau
Canada

Bureau de la concurrence
Canada

Enforcement Guidelines



**Production of Electronically
Stored Information**



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

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

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

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

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

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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

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A.  **1. INTRODUCTION**

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

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

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

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

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

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

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

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

C.



(1) *3. ONGOING COMMUNICATION*

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

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

D.



4. TECHNICAL INSTRUCTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E.



HOW TO CONTACT THE COMPETITION BUREAU

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

Website [

www.competitionbureau.gc.ca

Address

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

Telephone

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

Facsimile

[819-997-0324

F.

**SCHEDULE A****Computer Systems with No Application Export Capabilities**

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

G.

**SCHEDULE B****Litigation Application Exports**

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

DOCID
BEGDOC

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

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

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.

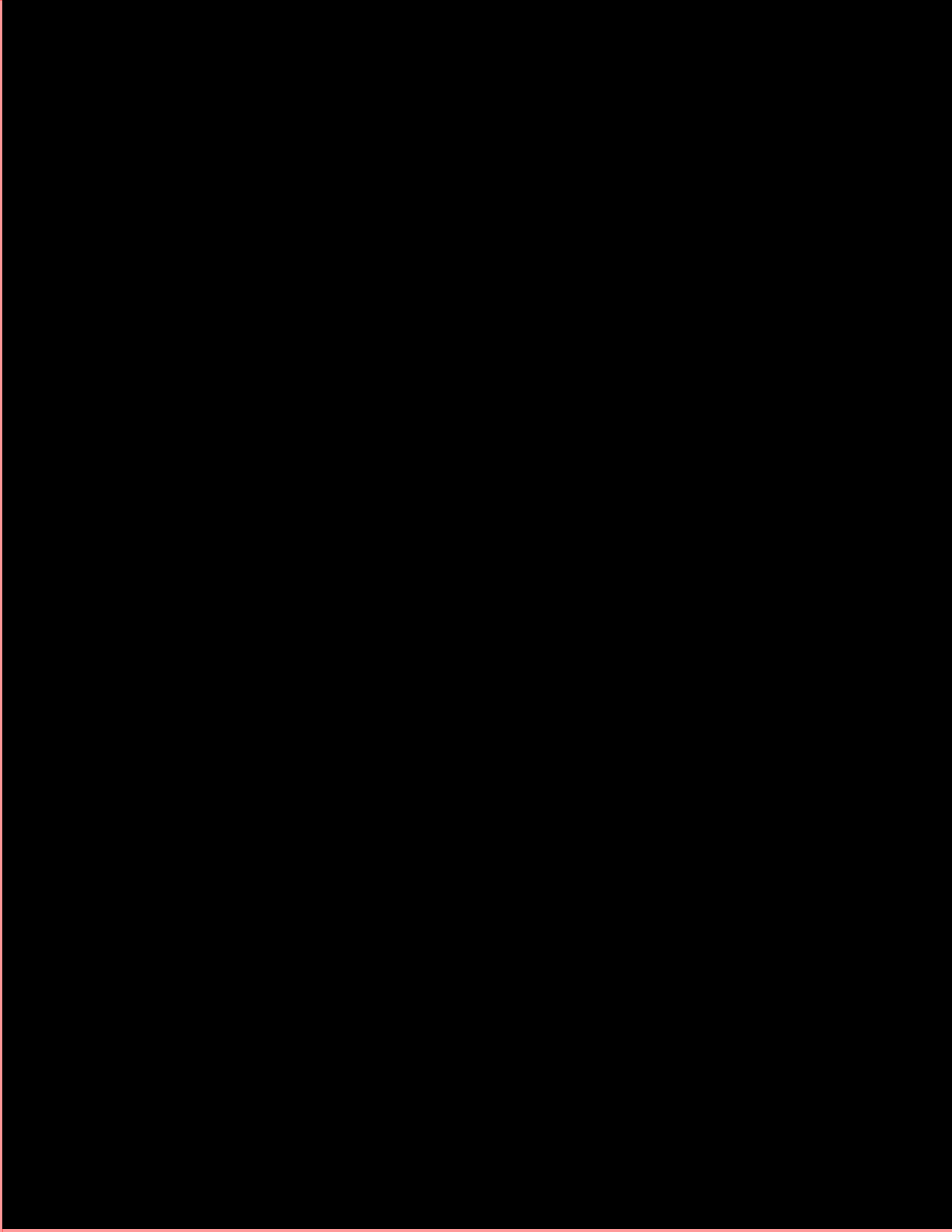
Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

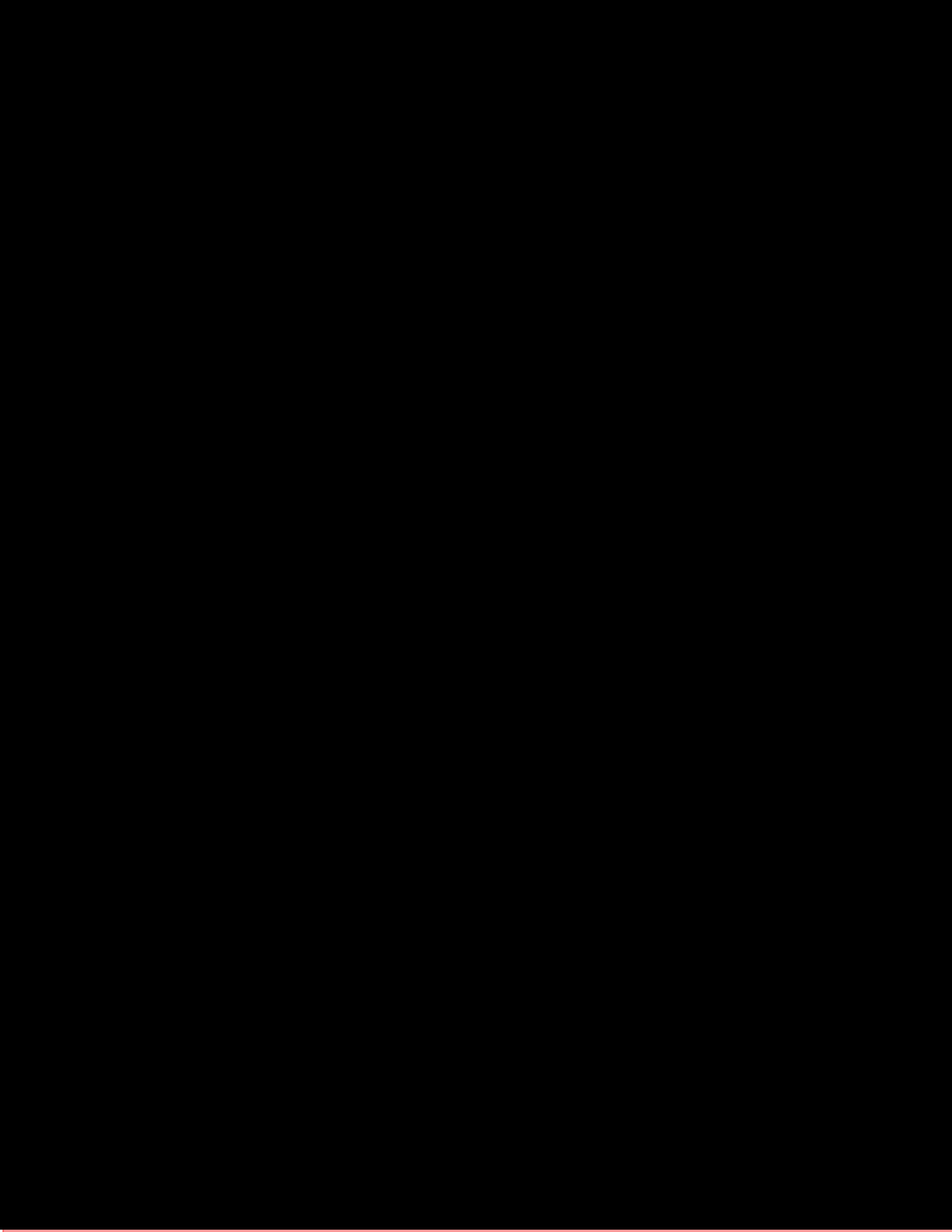
This is **Exhibit “D”** to the affidavit of Jessica Fiset, affirmed remotely and stated as being located in the city of Gatineau in the province of Quebec, before me at the city of Gatineau in the province of Quebec, on October 17, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration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

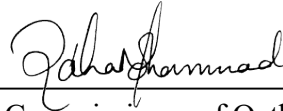
Yours truly,

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
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Ottawa (ON) K1A 0H8

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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 (2nd 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)

June 28, 2022	Deadline for Parties to approve Discovery Plans
July 4-5, 2022	Mediation (if applicable)
July 7, 2022	Deadline for filing Motions for Leave to Intervene
July 15, 2022	Deadline to serve Affidavits of Documents and production of documents by all Parties
July 21, 2022	Last date to file Responses to Motions to Intervene
July 22, 2022	Deadline for service of Requests to Admit
July 25, 2022	Case Management Conference
July 28, 2022	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
August 4, 2022	Hearing of any motions arising from Affidavits of Documents, productions and/or claims of privilege (if necessary)
August 5, 2022	Deadline for service of answers to Requests to Admit
August 8, 9 and/or 10, 2022	Hearing of any Motions for Leave to Intervene (if necessary; specific date(s) to be confirmed)
Week of August 8, 2022	Deadline for delivery of any additional productions resulting from any Affidavits of Documents, productions and/or claims of privilege motions
	Case Management Conference
August 15 to August 26, 2022	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

September 7, 2022	Deadline for filing any motions arising from examinations for discovery, answers to undertakings or refusals
September 9, 2022	Case Management Conference Parties to exchange proposed Agreed Statements of Fact
September 13, 2022	Hearing of any motions arising from examinations for discovery, answers to undertakings or refusals
September 16, 2022	Last day for follow-up examinations for discovery
September 19, 2022	Deadline to agree upon Agreed Statement of Fact
September 23, 2022	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
September 28, 2022	Case Management Conference
October 5, 2022	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
October 11, 2022	All Parties to file read-ins from examinations for discovery
October 12, 2022	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:

November 7, 2022 – November 10, 2022	First week of hearing (4 days)
November 14, 2022 – November 17, 2022	Second week of hearing (4 days)
November 21, 2022 – November 24, 2022	Third week of hearing (4 days)
November 28, 2022 – December 1, 2022	Fourth week of hearing (4 days)
December 5, 2022 – December 8, 2022	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:

December 8, 2022	Written Arguments and Document Compendia Filed
December 13-14, 2022	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:

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

DATED at Toronto, this 17th 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

TAB 4

CT-2022-002

THE COMPETITION TRIBUNAL

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

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

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

Discovery Plan

(June 28, 2022)

A. GENERAL

1. The parties to this Discovery Plan (the “**Discovery Plan**”) are the Applicant, the Commissioner of Competition (the “**Commissioner**”), and the Respondents, Rogers Communications Inc. (“**Rogers**”) and Shaw Communications Inc. (“**Shaw**”).
2. This Plan sets out the agreement reached by the Commissioner, Rogers and Shaw (the “**Parties**”, and each individually a “**Party**”) concerning certain matters relating to documentary discovery and oral discovery for the purposes of this proceeding.

3. Except as provided herein, nothing in this Discovery Plan derogates from: (i) the legal rights of the Parties with respect to documentary and oral discovery in this proceeding; or (i) the right of any Party to move before the Competition Tribunal for enforcement of those rights and nothing in this plan affects the legal obligations of each party to take reasonable steps to preserve relevant documents.
4. For the purposes of this Discovery Plan, “document” includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy or portion of that material. For greater certainty, a document includes any email or other correspondence, mobile phone text messages, and messages using third party messaging applications.
5. Any Party may make a motion to the Tribunal: (i) to compel another Party to take the steps contemplated by the Discovery Plan; or (ii) relating to any other discovery-related issue. Subject to the *Competition Tribunal Rules*, the *Practice Direction Regarding Timelines and Scheduling for Proceedings before the Tribunal*, and the *Practice Direction Regarding an Expedited Proceeding Process before the Tribunal*, the Parties agree that on any such motion, they will adhere to the following procedures:
 - a. Prior to bringing a motion contemplated in this section, a Party shall first make good faith efforts to resolve or limit the issues in dispute by holding a meeting or a telephone conference with the other Parties.
 - b. The Tribunal may take the existence of this Discovery Plan, and the extent to which the Parties have complied with it, into account in determining whether to grant the order sought.
 - c. Any responding Party on such a motion may seek to justify its non-compliance with the Discovery Plan on the basis of, among other things, any information that was unknown or unavailable to the Party at the time this Discovery Plan was entered into.

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² The Parties acknowledge and agree that this request relates to the documents of Rogers only, and that Shaw shall not be required to search for such documents or train its TAR algorithm to identify such documents as responsive.

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8. Rogers and Shaw shall discharge their obligations under paragraph 7 of this Discovery Plan by applying search terms and using technology-assisted review processes to identify documents that may be relevant to the issues in dispute. The technology-assisted review will be conducted in a manner consistent with practices used to identify documents responsive to the SIR issued to the Respondent on June 3, 2021. The agreed upon search terms are listed in Schedule "A", and the agreed upon custodians are set out immediately below.

Shaw Custodians	
1	Adel Awad – VP, Wireless Network Quality & Operations
2	Brad Shaw – Chief Executive Officer
3	Brian O'Shaughnessy – Senior Vice President Wireless & 5G Technology
4	Candice McLeod - Senior Vice President, Enterprise Business Solutions
5	Dale Turner - Vice President Marketing, Pricing and Packaging
6	Damian Poltz - SVP, Wireline Technology & Strategy
7	Dan Sumner - Vice-President, Customer Base Management / Marketing
8	Feiber Omana - SVP, Corporate Dev & Strategic Planning
9	Jay Gardner -VP, Product Management
10	Katherine Emberly - President, Business
11	Linda Thomas - SVP, Commercial Finance
12	Magued Sorial – VP, Wireless Network Engineering
13	Mathew Flanigan – VP, Wireless Growth
14	Pat Button - SVP Sales & Distribution
15	Paul Deverell - President, Consumer
16	Paul McAleese – President
17	Rob Myatt - VP, Enterprise Service Provider & Carrier Solutions
18	Tamer Morsy Saleh - SVP, Technical & CTO, Freedom
19	Trevor English - EVP, Chief Financial & Corporate Development Officer
20	Zoran Stakic -Chief Operating Officer & Chief Technology Officer

Rogers Custodians	
1	Aimee Debow – Sr. Director Strategy, Planning, Governance and Service Communications
2	Alexander Brock – SVP Strategy & Partnership
3	Anthony Staffieri – President & CEO
4	Bart Nickerson – SVP Marketing
5	Chris Smale - VP, Customer Base Management & (Former) VP Wireless Pricing
6	Christine Pop - Vice President, Wholesale Solutions

Rogers Custodians	
7	Cory Watson – Sr. Director, Network Technology Integration
8	Daniel Golberg – SVP Strategy and Corporate Development
9	David Fuller – President Wireless Services
10	Dean Prevost – President, Integration
11	Delia Pan – VP Customer Base Management
12	Drew Stevenson - Vice President, Brand
13	Eric Bruno – SVP, 5G, Content & Connected Home Products
14	Glenn Brandt – (Former) SVP Development
15	Joe Natale – (Former) President & CEO
16	John Mallovy, VP, Corporate Real Estate
17	Jorge Fernandes - Chief Technology Information Officer
18	Julie Gass – Marketing Director of Cross-Sell
19	Kye Prigg – SVP Access Networks and Operations
20	Lawrence Shum – Sr. Director, Shaw Integration
21	Lisa Shanoff - Director/Business Owner Fido Retention, Agile Marketing
22	Luciano Ramos - SVP Network Development & Core Engineering
23	Mahes Wickramasinghe – Chief Administration Officer
24	Marisa Fabiano – SVP Integration Lead
25	Matthew MacLellan - Integration Management Office
26	Mehrzad Ghassemi – VP Customer Base Management
27	Nancy Audette
28	Paul Carpino – VP of Investor Relations
29	Philip Hartling – President, Wireless Services
30	Sandra Pasquini – SVP HRBP Consumer & Talent Acquisition
31	Shailendra Gujarati – VP Prepaid
32	Shannon Bell, SVP, Information Technology
33	Simone Lumsden, SVP CMO, Wireless Services
34	Upinder Saini – SVP Product & Device
35	Vedran Petrusic – Sr. Dir. Wireless Pricing

9. Each Respondent shall provide the Commissioner with complete responses to the questions his counsel sent them on June 21, 2022 relating to its use of technology-assisted review. Questions 1-6 and 11-13 have been answered as of the date of this Plan and answers to questions 7-10 shall be a provided together with the AOD that is to be served on July 15, 2022.
10. The Commissioner shall list in his AOD that that will be served on July 15, 2022 relevant privileged and non-privileged records falling into the following subject areas:
 - a. documents relating to Proposed Transaction as it relates to Wireless Services, including, without limitation, all documents provided to the Commissioner by the Respondents or by other industry participants;
 - b. complaints, comments, reactions and feedback received by the Bureau in relation to the Proposed Transaction;
 - c. requests for information, production orders and/or subpoenas issued by the Bureau in connection with the Proposed Transaction and all responses received by the Bureau in relation thereto;
 - d. notes, transcripts and other records of meetings, interviews and/or examinations conducted with or of industry participants or other third parties, and documents pertaining to such meetings, interviews and/or examinations;
 - e. communications between the Bureau and industry participants or other third parties, and documents pertaining to such communications, to the extent not covered by subparagraph 10(d); and
 - f. documents relating to the Bureau's communications with any enforcement or regulatory agency or industry association, including the Canadian Radio-television and Telecommunications Commission and Innovation, Science and Economic Development Canada, in relation to the Proposed Transaction.
11. With respect to the production of electronically stored information ("**ESI**"), the Parties agree to follow the Competition Bureau's Enforcement Guidelines with respect to Production of Electronically Stored Information.

C. AFFIDAVITS OF DOCUMENTS AND DOCUMENT PRODUCTIONS

12. AODs shall be exchanged by July 15, 2022.
13. In conjunction with and at the same time as the delivery of their AODs, the Parties shall produce a list of documents over which they assert privilege ("**Privilege List**"). The list will identify the asserted privilege.
14. AODs and Privilege Lists shall list each document produced or withheld and the following information:
 - a. DOCID
 - b. DOCDATE
 - c. DOCTITLE
 - d. AUTHOR
 - e. TO
 - f. FROM
 - g. DOCTYPE
 - h. CONFIDENTIALITY LEVEL
15. Unless otherwise challenged not later than 60 days before trial, the Parties admit that all producible documents exchanged between them are authentic for purposes of the *Canada Evidence Act*. Where documents lack the necessary identifying information to establish the authenticity of the document, the Parties agree to provide the necessary identifying information, if available, in writing, within 30 days upon request. For greater certainty, the Parties admit the authenticity of any such document based on the identifying information that is provided.
16. Unless otherwise challenged not later than 60 days before trial, the Parties admit the integrity of all producible documents exchanged between them for purposes of complying with the best evidence provisions set out in section 31.2 of the *Canada Evidence Act*.
17. The Parties agree that in the event any privileged document(s) or any irrelevant confidential document(s) are inadvertently included in the productions of a Party, neither the listing of such document(s) nor the production of the actual document(s) will constitute, as the case may be, a waiver of privilege or a waiver of confidentiality over the document(s) or its subject matter.

18. If a Party inadvertently produces a document that is privileged, it will provide notice of such to the other Parties within 7 days of learning of the inadvertent production. If a Party receives a document that appears to that Party to be privileged, it will notify the Party that produced the document within 7 days of becoming aware that the document appears to be privileged. Regardless of how an inadvertently produced privileged document comes to light, all copies of such a document (either electronic or otherwise) will be deleted or destroyed by the Party or Parties to which the document was inadvertently produced immediately upon receipt of a notice described above, or upon discovery by that Party of the privileged document to the extent technically feasible, and if not feasible the Parties shall make arrangements for the return and replacement of the electronic or other medium which cannot be deleted or destroyed. The destruction of an inadvertently produced privileged document will include the deletion of any associated OCR, extracted text, notes and work product made in relation to the inadvertently produced privilege document. Further, the media on which the inadvertently produced privilege document was produced will also be returned to the producing Party to the extent the receiving Party still possesses such media.
19. Should a Party dispute a claim of privilege made by another Party under paragraph 18, the Party disputing the privilege must still comply with paragraph 18, but shall give notice of their dispute to the Party that produced the document within 30 days of the initial notice describe in paragraph 18. The Party disputing the privilege will make the appropriate motion to the Tribunal to have the matter adjudicated.
20. A Party that has received an inadvertently produced document shall not rely on or otherwise use in any way any privileged information learned from such document; but for greater certainty, nothing in this paragraph shall be interpreted as an agreement to extend a privilege to facts having an independent existence of a privileged communication.
21. After serving their respective AODs on July 15, 2022, the Parties shall comply with their continuing production obligations.
 - a. To the extent that a Party discovers additional non-privileged documents that are relevant to a matter at issue in this proceeding, the Party shall produce said documents to the other Parties within 7 days after becoming aware of them.

- b. For greater certainty, paragraphs 15 and 16 of this Discovery Plan shall apply to any documents produced in accordance with subparagraph 21(a) hereof. To the extent that such documents are produced less than 60 days before trial, the Parties shall promptly agree upon the date by which the challenges contemplated by paragraphs 15 and 16 must be made, and failing such agreement shall immediately seek direction from the Tribunal.
- c. To the extent that additional documents are produced in accordance with subparagraph 21(a), each producing Party shall deliver a supplementary AOD. Any supplementary AOD will include the information set out in paragraph 14 of this Discovery Plan.
- d. Any Party may, in examining for discovery the representative of another Party, request production of additional documents or categories of documents.

D. ORAL DISCOVERIES

- 22. Examinations for discoveries shall be completed between August 15 and 26, 2022 and shall be conducted virtually.
- 23. A member of Rogers' Executive Leadership Team, to be identified by Rogers, shall be examined on behalf of Rogers, which examination shall be limited to no more than 2 days.
- 24. A member of Shaw's Executive Leadership Team, to be identified by Shaw, shall be examined on behalf of Shaw, which examination shall be limited to no more than 2 days.
- 25. A competition law officer shall be examined on behalf of the Commissioner, which examination shall be limited to no more than 2 days.
- 26. Each Party shall provide answers to undertakings given during the examination for discovery of its representative witness within 10 days after the date on which the examination for discovery in question is completed.
- 27. Any motions arising from examinations for discovery shall be brought by September 7, 2022.

28. Any follow-up examinations for discovery shall be completed by September 16, 2022.

PREPARED AND AGREED UPON BY:



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Schedule "A"

- 3500 MHz
- 3800 MHz
- 5G
- 600 MHz
- 700 MHz
- Accenture [Rogers only]
- "Advanced Wireless Services" or AWS
- auction
- Aviator [Rogers only]
- backhaul
- BCG [Rogers only]
- Bell
- "Big Binge"
- "Big Gig"
- Bundl*
- "capex avoid*" [Rogers only]
- "capitalized labour" or "capital labour" or "cap labour" [Rogers only]
- CCTS
- "Chat bot" or Chatbot
- Churn
- Cityfone
- "clean team" [Rogers only]
- "Competition Bureau" or Bureau
- Converg*
- "cost optimization"
- "CRTC 2021-130"
- "CRTC 2019-57"
- "Day 1" or "Day 30" or "Day 60" or "Day 90" [Rogers only]
- "decommission" [Rogers only]
- dives*
- Eastlink
- efficien* [Rogers only]
- ETA [Rogers only]
- Fizz
- Flanker*
- Freedom
- FT [Rogers only]
- FTE [Rogers only]
- HC or Headcount [Rogers only]
- hotspot or "hot spot"

- integrat* [Rogers only]
- “integration cost” [Rogers only]
- “Integration management office” or IMO [Rogers only]
- “internal audit” or IA [Rogers only]
- “keep site” [Rogers only]
- KPI [Rogers only]
- “labour OPEX” [Rogers only]
- “labour productivity” [Rogers only]
- Lambton [Rogers only]
- lease
- “Low cost”
- Lucky
- Mars
- McKinsey [Rogers only]
- “merger integration” [Rogers only]
- microwave
- MIT [Rogers only]
- Mobil*
- “Mobile Virtual Network Operator” or “Mobile Network Operator” or MVNO or MNO
- “Network shar*”
- “Occasional use”
- “OPEX people synergy targets” [Rogers only]
- PMI [Rogers only]
- “process improvement” [Rogers only]
- PT [Rogers only]
- Public
- Quebecor
- “Radio Access Network” or RAN*
- Recapture
- “relative to peer*” or “relative to industry”
- “remedy purchaser” or “remedy buyer” or remedy
- roaming
- Rogers
- Shaw [Rogers only]
- “Shaw Mobile”
- “Shaw Mobile for Business”
- spectrum
- synerg* [Rogers only]
- Tariff
- “TELUS Mobility”
- “third party ISP access” or “third party internet access”
- “Total Business Transformation” or TBT [Shaw only]
- UFP or “Unified Fibre Plan” [Rogers only]
- Videotron

- Virgin
- Voice
- “voluntary departure” [Rogers only]
- “Wifi” or “wi-fi” or “go wifi” or “go wi-fi”
- “Winback” or “Win back”

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
(RESPONSE TO CROSS-MOTION served OCTOBER 18, 2022)**

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