

FILED / PRODUIT

Date: October 21, 2022

CT- 2022-002

Annie Ruhlmann for / pour
REGISTRAR / REGISTRAIRE

CT-2022-002

OTTAWA, ONT.

Doc. # 472

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, RSC 1985, c C-34;

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

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

B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

- and -

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

Respondents

- and -

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

Intervenors

WITNESS STATEMENT OF JESSICA FISET

1. I, Jessica Fiset, am a Paralegal with the Mergers and Monopolistic Practices Branch of the Competition Bureau (the "**Bureau**"). Since September 2021, I have been assigned to the Bureau's case team reviewing the proposed merger of Rogers Communications Inc. ("**Rogers**") and Shaw Communications Inc. ("**Shaw**") (the "**Proposed Transaction**"). My duties as part of the case team include receiving and

organizing document productions including arranging for their preservation and import into the Bureau's electronic discovery application, Nuix Discover.

2. I make this witness statement in support of the Commissioner of Competition's (the "**Commissioner**") application for an order under section 92 of the *Competition Act*, RSC 1985, c C-34 (the "**Act**").
3. On June 18, 2021, the Commissioner began an inquiry into the Proposed Transaction.
4. On May 9, 2022, the Commissioner brought this application before the Competition Tribunal.
5. In the course of the Commissioner's inquiry into the Proposed Transaction and the current proceedings before the Competition Tribunal, Rogers and Shaw have electronically produced documents to the Bureau. The occasions on which Rogers and Shaw have done so include the following, among others:
 - a. in response to supplementary information requests ("**SIRs**") issued to Rogers and Shaw by the Commissioner on June 3, 2021;
 - b. as part of the production of documents listed on Rogers' and Shaw's Affidavits of Documents;
 - c. on undertakings provided in answer to questions asked during the examination for discovery of Paul McAleese on August 22 and 23, 2022; and
 - d. on undertakings provided in answer to questions asked during the examination for discovery of Dean Prevost on August 25 and 26, 2022.
6. As part of the electronic productions referenced above, Rogers and Shaw also produced associated file metadata. File metadata refers to document properties and bibliographic information attributable to electronically stored information ("**ESI**"). ESI refers to any information readable in a computer system. Examples of metadata

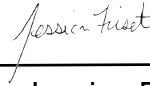
include file paths where the ESI was located, document authors, and document custodians.

7. A party producing ESI provides associated metadata in the form of an electronic file known as a “load file” that accompanies the production. Load files are then used by the Bureau to import the ESI into Nuix Discover where the ESI and associated metadata can be viewed.
8. The Bureau has issued enforcement guidelines titled “Production of Electronically Stored Information” dated April 28, 2015 (the “**Guidelines**”). The Guidelines set out the Bureau’s preferred formats for receiving ESI. Schedule B of the Guidelines lists 33 fields of metadata that parties producing ESI to the Bureau should provide in a load file accompanying the production. Attached as **Exhibit “A”** is a copy of the Guidelines.
9. The respective SIRs issued by the Bureau to Rogers and Shaw on June 3, 2021 required that productions of ESI by each respective party in response to the SIRs be accompanied by a load file containing the associated metadata in accordance with Schedule B of the Guidelines. Attached as **Exhibit “B”** is a copy of the SIRs dated June 3, 2021.
10. Additionally, the parties to this proceeding agreed in the discovery plan dated June 28, 2022 to follow the Guidelines with respect to the production of ESI as part of the discovery process. Attached as **Exhibit “C”** is a copy of the discovery plan dated June 28, 2022.
11. Rogers and Shaw sent load files containing metadata to the Commissioner on:
 - a. August 15, 2021, August 17, 2021, and December 6, 2021 with respect to their responses to the SIRs issued by the Commissioner;
 - b. July 15, 2022 and July 22, 2022 with respect to their productions of documents listed on their respective Affidavits of Documents; and

- c. September 9, 2022 and September 14, 2022 with respect to undertakings in answer to questions asked during the examinations for discovery of Paul McAleese and Dean Prevost.
12. Attached as **Schedule “A”** to my witness statement is an Excel spreadsheet setting out certain metadata fields attributable to documents provided by Rogers and Shaw that are listed on the Commissioner’s Notice under rule 68(1)(a) of the Competition Tribunal Rules. Schedule “A” only lists documents for which a load file was provided by Rogers or Shaw, as applicable. Schedule “A” compiles certain metadata fields contained in those load files by way of an export from Nuix Discover. The metadata fields included in Schedule “A” are described as follows:
 - a. DOCID: the Bates number for the document;
 - b. DOCDATE: the date of document as stated on its face;
 - c. TITLE: the title of the document as stated on its face;
 - d. PARENTBATE: the Bates number for the parent document, if any;
 - e. FILEPATH: the path where the native electronic document was stored;
 - f. FILENAME: the file name of the native electronic document;
 - g. CUSTODIAN: the person that had possession or custody of the document;
 - h. TO: if a document is an e-mail, the recipient of the e-mail;
 - i. FROM: if a document is an e-mail, the sender of the e-mail;
 - j. CC: if a document is an e-mail, any persons copied on the e-mail;
 - k. BCC: if a document is an e-mail, any persons blind copied on the e-mail;
 - l. AUTHOR: the creator of the native electronic document;
 - m. DATECREATED: the date the native electronic document was created;
 - n. TIMECREATED: the time the native electronic document was created;
 - o. DATESENT: if a document is an e-mail, the date the e-mail was sent;
 - p. TIMESENT: if a document is an e-mail, the time the e-mail was sent;
 - q. DATELASTMOD: the date the native electronic document was last modified;
 - r. TIMELASTMOD: the time the native electronic document was last modified;

13. In Schedule "A", where a metadata field is empty with respect to a particular document, no metadata for that field with respect to the document was provided by the producing party.

Signed, this 20th day of October 2022



Jessica Fiset

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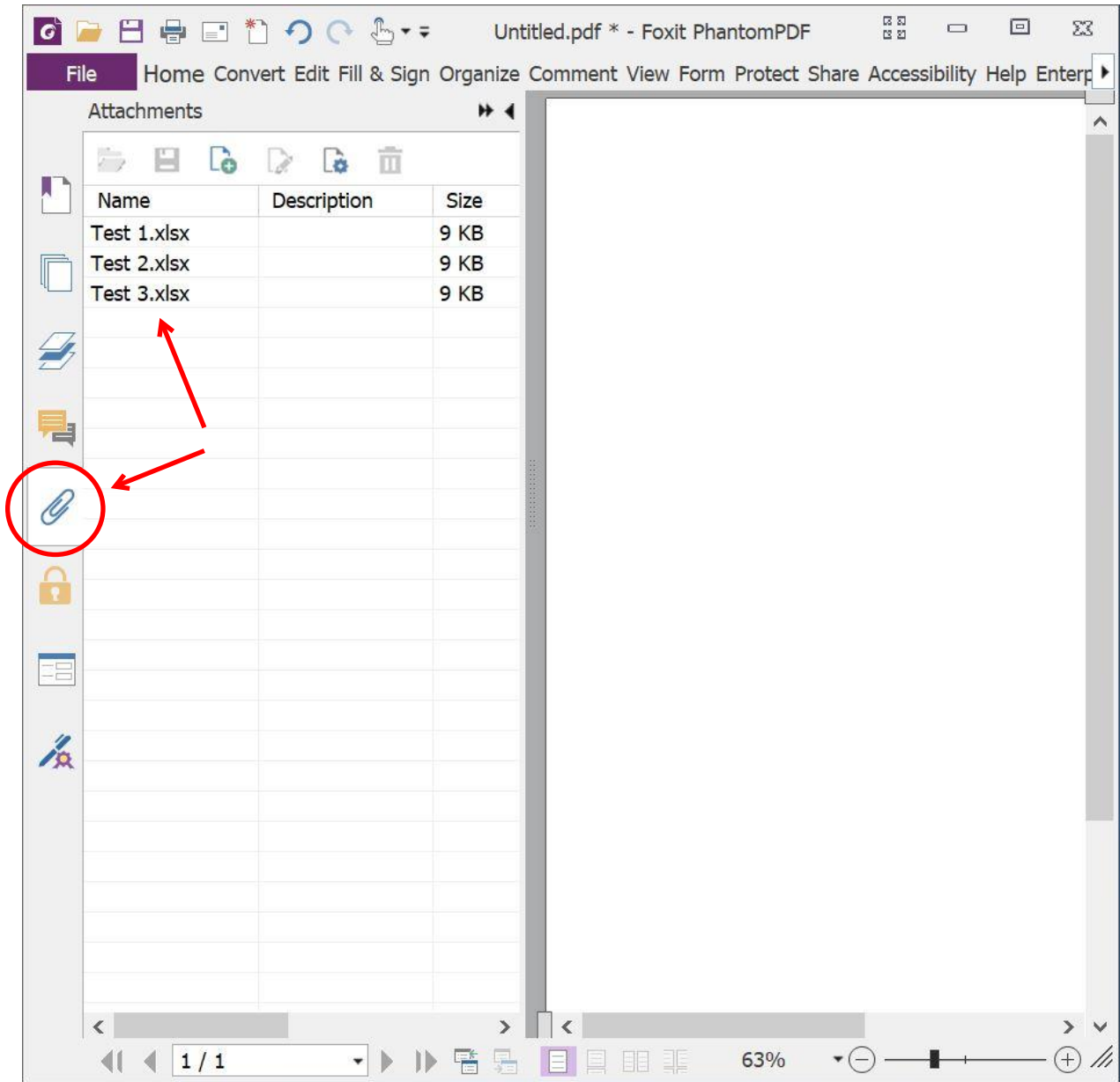
**ATTORNEY GENERAL OF ALBERTA AND
VIDEOTRON LTD.**

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**WITNESS STATEMENT
OF JESSICA FISET**

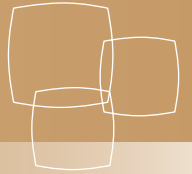
Please see attachment: Schedule A - File Metadata

- Step 1 - Click paperclip on left hand side
- Step 2 - Double click attachment to open





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*.

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Cat. No. Iu54-54/2015E-PDF
ISBN 978-0-660-01970-3

2015-04-28

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

PREFACE

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

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

John Pecman

Commissioner of Competition

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I. 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.



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.



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.



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).



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]

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Competition Bureau
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Gatineau, Quebec K1A 0C9]

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National Capital Region: 819-997-4282
TTY (for hearing impaired) 1-800-642-3844]

Facsimile

[819-997-0324]



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.



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.).

