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CT- 2024-012

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**CT-2024-012**

OTTAWA, ONT.

**# 3**

**THE COMPETITION TRIBUNAL**

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

**AND IN THE MATTER OF** an application by the Commissioner of Competition for an order pursuant to s. 74.1 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and subsections 74.011(1) and 74.011(2) of the *Competition Act*;

BETWEEN:

**COMMISSIONER OF COMPETITION**

Applicant

- and -

**ROGERS COMMUNICATIONS INC.**

Respondent

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**RESPONSE OF ROGERS COMMUNICATIONS INC.**

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**A. Overview**

1. The Commissioner's Application singles out Rogers for allegedly misleading advertising related to its approach to advertising unlimited wireless data plans, an approach that has been commonplace throughout the industry since 2019. In the more than five years before the Bureau brought this proceeding, Bell, Telus, SaskTel, and other Canadian carriers have marketed their wireless plans as having "unlimited data" in the same way Rogers has, and many of them still do so today.

2. The Commissioner's Application ignores Rogers' ubiquitous disclosure of key plan features, ignores widespread consumer understanding of unlimited wireless data plans, presents a highly selective and misleading collection of advertisements, and unreasonably targets Rogers for an industry-wide practice. The Bureau attacks not only Rogers' advertising but the industry's entire approach to unlimited wireless data plans. Its position is out of step with the market reality, with the Canadian Radio and Television Commission's (CRTC) Wireless Code, and with a common-sense approach to what the ordinary consumer of Infinite plans understood about the service they were buying.

3. Rogers introduced its Infinite wireless plans in June 2019, spurring a significant pro-competitive shift in the Canadian market for high-data users. These plans were intended to address consumer frustration at being forced either to automatically pay overage fees or be cut off from data access. Rogers addressed these concerns by increasing the size of data buckets, eliminating overage fees, and allowing customers to decide for themselves whether to purchase additional high-speed data or continue using unlimited data at a reduced speed.

4. These new Infinite plans significantly reduced Rogers' revenues from overage fees, but were unequivocally beneficial to consumers, as the Competition Bureau has recognized. In submissions to the CRTC in July 2020, the Bureau concluded that the launch of unlimited data plans resulted in an effective 25% decrease in plan prices from the major carriers and released "pent up demand for higher data usage" that consumers were avoiding because of "high penalties if they used more than their plan limit".

5. Rogers' advertising of its Infinite plans has never been false or misleading, much less in a material respect. The Bureau selectively focuses on isolated ads from brand campaigns, while

ignoring the repeated, clear, and conspicuous disclosures that accompanied Rogers' promotion of its plans.

6. These disclosures unambiguously told consumers that they would have high-speed data up to a certain amount based on the plan they chose, with unlimited data at reduced speeds thereafter. This was made clear in Rogers' advertising, on its website, in the description of its wireless plans, and in the plan summaries provided to customers at the time of purchase.

7. Rogers at all times complied with the legal and regulatory requirements to market wireless plans as having unlimited data. In 2013, six years before Rogers launched its Infinite Plans, the CRTC—which regulates the wireless industry in the public interest—specifically addressed the marketing of unlimited wireless plans. The CRTC's mandatory Wireless Code allows carriers to describe wireless plans as offering unlimited data, so long as they disclose any restrictions on the speed or quality of that data. This is precisely what Rogers does.

8. Rogers fully complied with these requirements in designing, launching, and marketing its Infinite plans. In the more than five years since their launch, the CRTC has never taken action against Infinite plans, nor, as far as Rogers is aware, against any other carrier's unlimited plans.

9. With the larger data buckets that Rogers introduced as part of its Infinite plans, only a small percentage of customers exceeded their high-speed data buckets and experienced reduced speeds, and that percentage has steadily declined over the last five years as data buckets have grown larger and larger. As a result, the vast majority of Infinite customers experience unlimited high-speed data.

10. Rogers opposes the Commissioner's Application, denies all of the allegations set out in his Notice of Application, and asks that the relief he seeks be denied in its entirety, with costs payable to Rogers.

**B. Rogers Launches "Infinite" Plans in 2019**

11. Rogers launched its new Infinite plans in June of 2019. Prior to this, carriers sold plans with a set monthly allocation of data, known as a "data bucket". If customers exceeded their bucket before the end of the month, they were either automatically charged overage fees or cut off from access to data entirely.

12. This had been a significant source of consumer complaints. Consumers wanted certainty over the amount they would pay each month, and to be able to use their phones without fear of going over their data allocation or being cut off.

13. Rogers' Infinite plans addressed these concerns. They offered customers significantly larger "max speed" data buckets and eliminated overage fees entirely. Even after customers exceeded their data bucket for the month, they could continue to use unlimited data at a reduced speed with no additional cost. If customers chose, they could purchase additional high-speed data with a "Speed Pass", for which customers were never automatically charged.

14. Infinite plans were developed for and marketed to sophisticated, high-use wireless data consumers. These were the customers who most often exceeded their monthly data allowance and most often incurred overage charges as a result. They wanted larger data buckets, control over their spending, and to use their data without having to worry about exceeding their monthly allowance and paying data overages. Rogers' Infinite plans delivered these benefits.

15. Promotional materials at and following the launch of Infinite plans emphasize the elimination of overage fees and clearly disclose the amount of high-speed data provided for the advertised price (see, *e.g.*, Figure 1, Figure 2, and Figure 3 below).

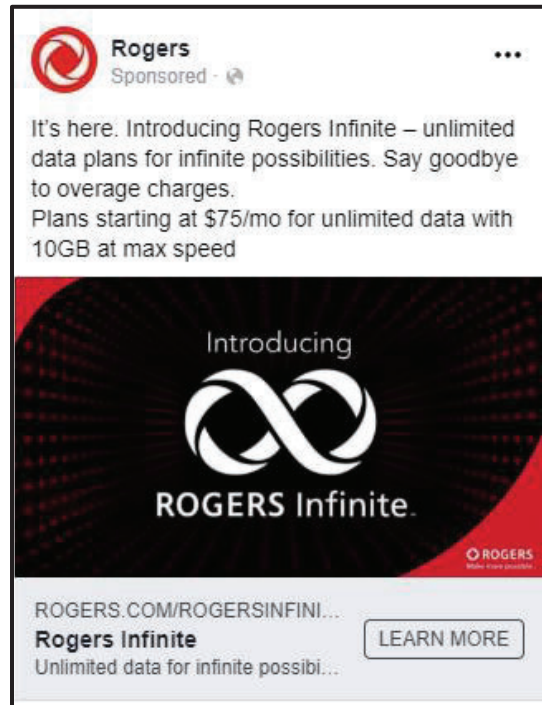


Figure 1: Facebook Advertisement from July 2019

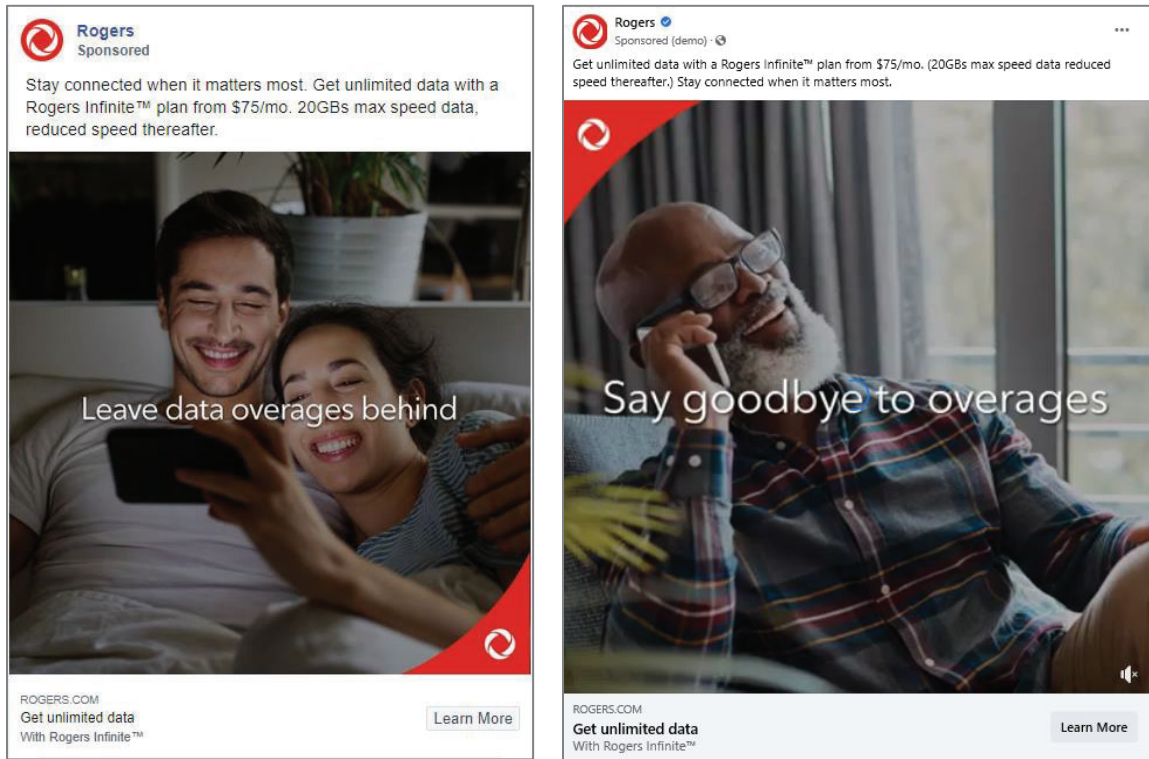


Figure 2: Social Media Advertisements from May 2020

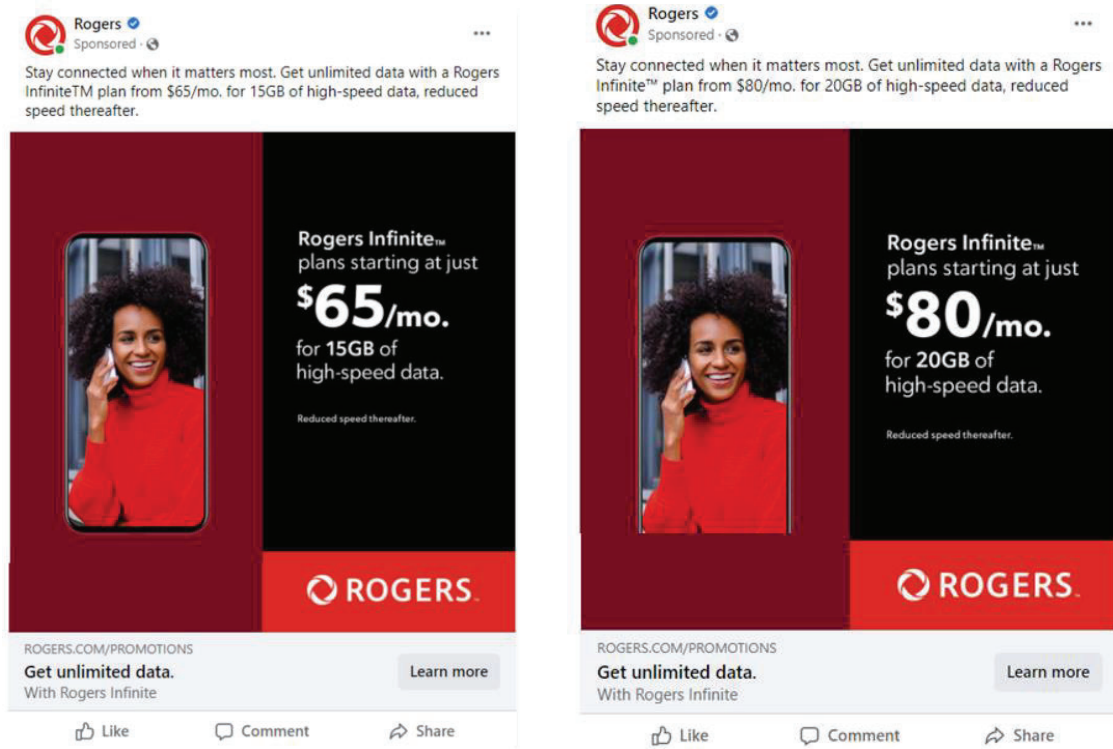


Figure 3: Examples of Infinite Advertisements (January-April 2022)

16. Customers are offered different amounts of high-speed data at different prices and choose the plan that best fits their needs. Plans with smaller high-speed data buckets cost less, and plans with larger high-speed data buckets cost more. The bucket sizes and plan prices are prominently displayed both on Rogers' website and in store (see Figure 4 for the online plan tiles).

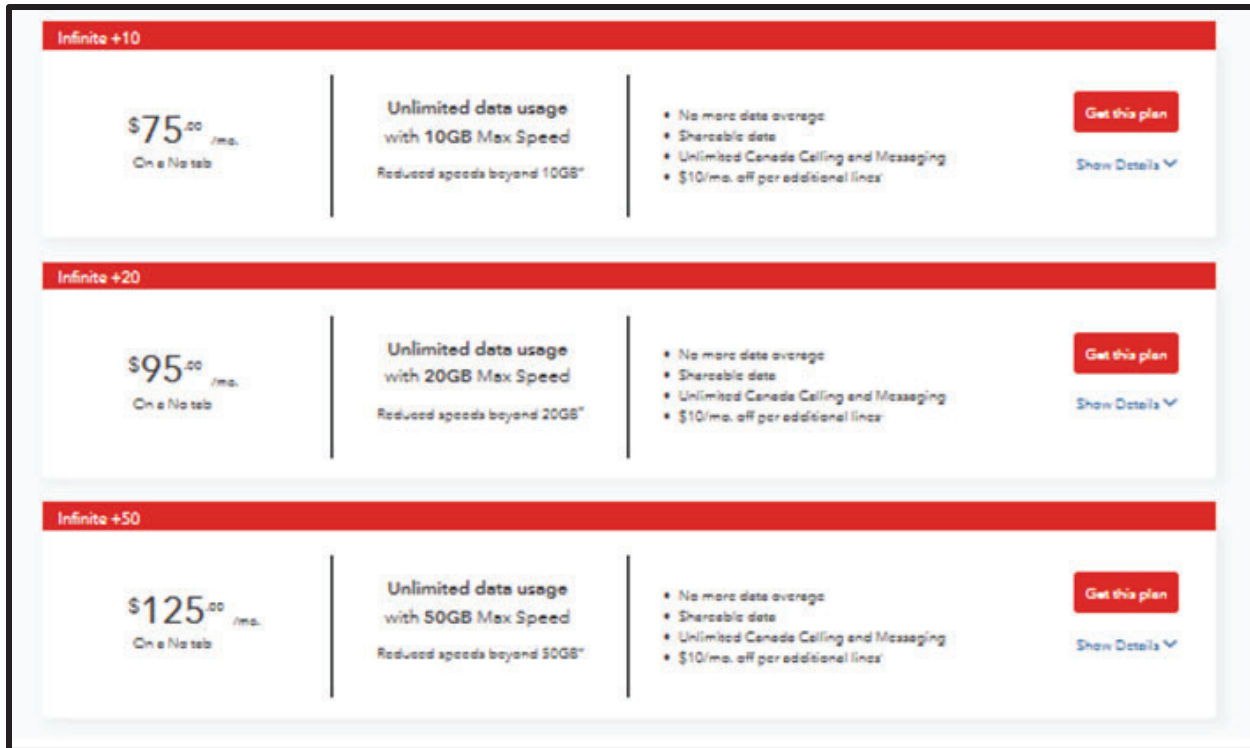


Figure 4: Screenshot from Rogers Mobility Website at Launch

17. Rogers clearly and conspicuously disclosed to every customer who was considering purchasing an Infinite plan that they would receive a certain amount of high-speed data—as chosen by them—and would have “unlimited data at reduced speeds thereafter”. This same disclosure is repeated multiple times during the purchasing process.

18. At the time of launch in 2019, the smallest Infinite high-speed data bucket was 10GB—more than three times the monthly usage of an average wireless data subscriber at the time. Rogers also offered 20GB and 50GB plans for customers seeking even larger high-speed data buckets. Since then, data buckets have steadily grown in size while the cost of plans has come down dramatically. The smallest Infinite plan now offers 100GB of data and the cost per gigabyte has decreased significantly.



19. The Bureau asserts that Infinite plans were designed to increase revenues from the sale of additional data. In fact, the opposite is true and Rogers knew from the outset that these revenues would drop significantly. Rogers nevertheless introduced Infinite plans to address consumer frustrations with overage fees. In the third quarter of 2019—the first full quarter following the introduction of Infinite plans—revenues from overage fees fell by over \$50 million compared to the same quarter in 2018 and have significantly decreased since.

20. The Bureau’s repeated allegations that Rogers introduced Infinite plans as a way to drive increased consumer spending on data is false. It was not Rogers’ intention and it was not the result, as is plainly evident. Rogers introduced these plans to address significant consumer concerns, not because they would increase Rogers’ data revenues.

21. Shortly after launch, the Competition Bureau acknowledged the positive impact that unlimited data plans had on wireless data plan prices and consumer choice more generally. In submissions to the CRTC, the Bureau noted that “the launch of ‘unlimited plans’ arguably amounted to a decrease of approximately 25% in the Big 3’s plan prices in most markets ... as compared with previous equivalent plans”.

22. Rogers’ introduction of its no-overage-fee Infinite plans spurred other major carriers to do the same, leading to a significant pro-consumer shift in the wireless industry. Over the past five years, Bell, Telus, SaskTel, and other carriers have offered plans with no overage fees, large high-speed data buckets, and unlimited usage at reduced speeds thereafter. They have also marketed these unlimited data plans in substantially the same way as Rogers on their websites and in promotional materials (see, for example, Figure 5 and Figure 6).

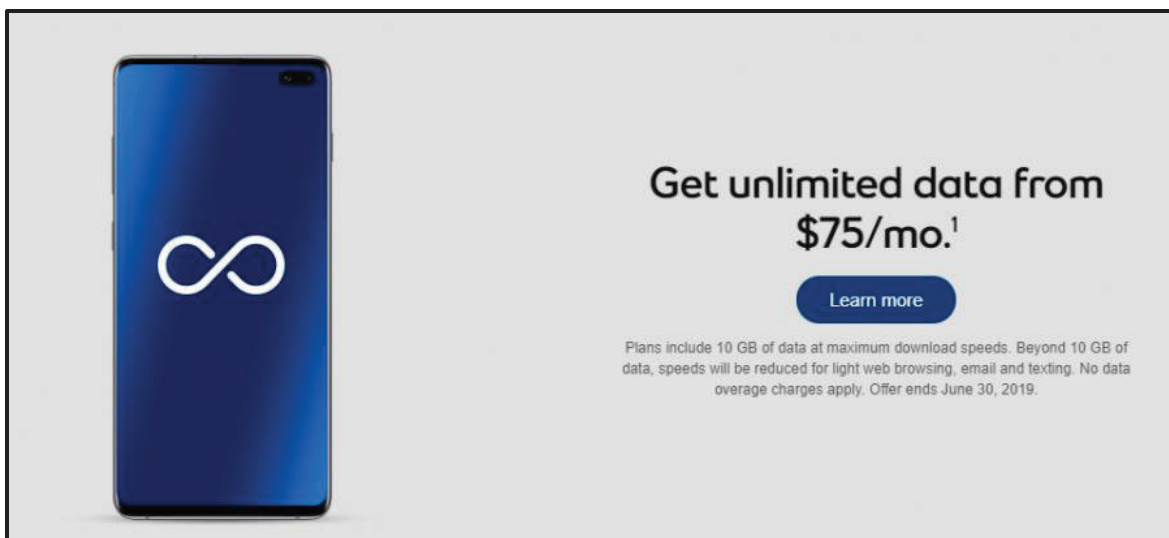


Figure 5: Bell Facebook Ad, 2019



Figure 6: Screenshots from Telus Digital Ad, December 3, 2022

23. The ubiquitous presence of these plans in the market over the last five years, together with carriers' consistent marketing of them, are important context for the Bureau's allegations. The messaging from other carriers reinforces Rogers' own messaging and thus informs how the ordinary consumer would understand these plans, the features they offer, and their limits on high-speed data usage.

**C. Competition Bureau Pursues Rogers Years After Infinite Launch**

24. In the four years following Rogers’ launch of its Infinite plans and the industry’s widespread adoption of “unlimited” data offerings, the Bureau never took enforcement action related to the promotion of these plans. It issued no guidance, sent no warning letters, and commenced no enforcement proceedings against Rogers or against any other carrier. Similarly, the CRTC has not taken any action against any carrier, under the Wireless Code or otherwise.

25. According to materials the Commissioner filed in the Federal Court in connection with its investigation of Rogers, the Competition Bureau began reviewing representations from Canadian wireless providers in September 2021, “to assess whether wireless products were being marketed as ‘unlimited’ when usage was restricted, limited, or qualified in some way”. The Bureau did not advise Rogers of its investigation at that time.

26. In March 2022, the Competition Bureau opened an investigation into Rogers regarding the promotion of its Infinite plans. Again, the Bureau did not notify Rogers of this investigation. On April 6, 2023, three days after Rogers closed its acquisition of Shaw Communications, the Commissioner opened an inquiry, only into Rogers, under s. 10(1)(b)(ii) of the *Competition Act*. The Bureau first notified Rogers of the inquiry by letter dated June 2, 2023, two months after opening the inquiry, more than a year after it commenced its investigation, and four years after the launch of Rogers’ Infinite plans.

27. The Bureau’s significant delay in opening its inquiry—four years following Rogers’ introduction of Infinite plans—has materially prejudiced Rogers’ ability to answer the Bureau’s case. Since Rogers only became aware of the Bureau’s investigation in June 2023, Rogers had no reason to preserve documents relevant to its defence going back to 2019. Rogers’ marketing of

its Infinite plans, and the key features of those plans, have been clear and conspicuous since their launch in 2019. This unexplained delay also casts doubt on the harm the Bureau is alleging and the merits of the Commissioner's Application.

28. The Bureau has improperly and unfairly singled out Rogers in this Application for longstanding representations that have been industry-wide for years. No other carrier has been subject to enforcement action for its promotion of "unlimited" data plans over the past five years, despite having made substantially identical representations to those at issue in this Application.

29. The Bureau's use of its significant enforcement powers to selectively target Rogers and not to address its concerns on an industry-wide basis creates the unfair and harmful impression that it is only Rogers whose practices are at issue. It subjects Rogers to reputational damage, and unfairly tilts the competitive landscape to the material prejudice of Rogers and material advantage of its competitors.

**D. Rogers' Infinite Representations are Neither False nor Misleading**

30. The Bureau's allegations rest on an incomplete, highly curated, and materially misleading selection of materials. They present a distorted view of the representations Rogers made to consumers and misstate the general impression such representations are likely to create.

31. Viewed from the perspective of the ordinary consumer of unlimited wireless data services, Rogers' representations convey the general impression that Infinite plans give customers (i) a monthly *high-speed* data bucket of their choosing, and (ii) access to unlimited amounts of data *at reduced speeds* if they exceed that bucket, with no overage fees. This is the general impression based on Rogers' promotional materials and multiple disclosures throughout the purchasing process.

32. The Bureau relies on selective marketing materials, taken in isolation and divorced from the broader context in which they were made and understood in the market. The Bureau focuses on “brand” marketing and ignores ads promoting specific plans and prices, such as those in Figures 1, 2, and 3, above. The Bureau also ignores the repeated, clear, and conspicuous disclosures made during the purchasing process, discussed in more detail below.

33. None of the representations excerpted at paragraphs 14-19 of the Commissioner’s Notice of Application fairly provide a sense of the general impression conveyed by Rogers’ Infinite representations, either as a whole or individually. The ordinary consumer does not experience individual billboards, excerpts from social media posts, and still-frames from YouTube advertisements in a vacuum, without the benefit of the additional information provided as part of the full context of the Infinite representations and during the purchasing process, or without regard to the broader market context in which Rogers’ Infinite plans were launched.

34. Nor is the general impression conveyed by Rogers’ representations materially impacted by the brand name “Infinite” or the “infinity loop”. Ordinary consumers do not view this branding as exhaustively describing plan features, which are identified and explained clearly in promotional materials and during the purchasing process. Other businesses have used similar branding, both in the telecommunications and other markets. For example, Bell has used the “infinity loop” to promote its version of unlimited plans (see Figure 5 above), and Visa has used the “Infinite” brand for its premium credit card—all without any apparent issue from the Bureau.

35. Ordinary consumers of Infinite plans are highly knowledgeable about wireless services. They know that plans always come with different features and a variety of terms and conditions, beyond those disclosed on billboards or space constrained advertisements. They would not view

isolated representations as intending to reflect or describe all the features of any specific plan. That information is prominently and repeatedly disclosed to consumers during the purchasing process, as discussed below.

36. Taking, as it must do, the perspective of the ordinary consumer of unlimited data plans, the Bureau cannot meet its burden to establish that Rogers' representations were false or misleading. Nor can the Bureau meet its burden to show that the isolated, incomplete examples it has chosen were material to the ordinary consumer's purchasing decision.

**E. Rogers Clearly and Conspicuously Disclosed Plan Features**

37. The general impression conveyed by Rogers' promotional representations is reinforced by clear, conspicuous, and repeated disclosures throughout the purchasing process. It is impossible for any consumer to purchase an Infinite plan without:

- (a) Learning that different plans offer different amounts of *high-speed* data at different prices;
- (b) Learning that they will have access to unlimited data *at reduced speeds* thereafter, with no overage fees; and
- (c) Choosing the amount of high-speed data that suits their needs.

38. Each of these points is reinforced multiple times throughout the purchasing process. And even after a purchase is made, customers are given the opportunity to cancel their service if they change their mind.

39. For customers subscribing online, Rogers’ website prominently identifies, in bold font, the amount of high-speed data available with each plan. This is followed by clear disclosure that there is “Unlimited data at reduced speeds thereafter” (see, *e.g.*, Figure 7).

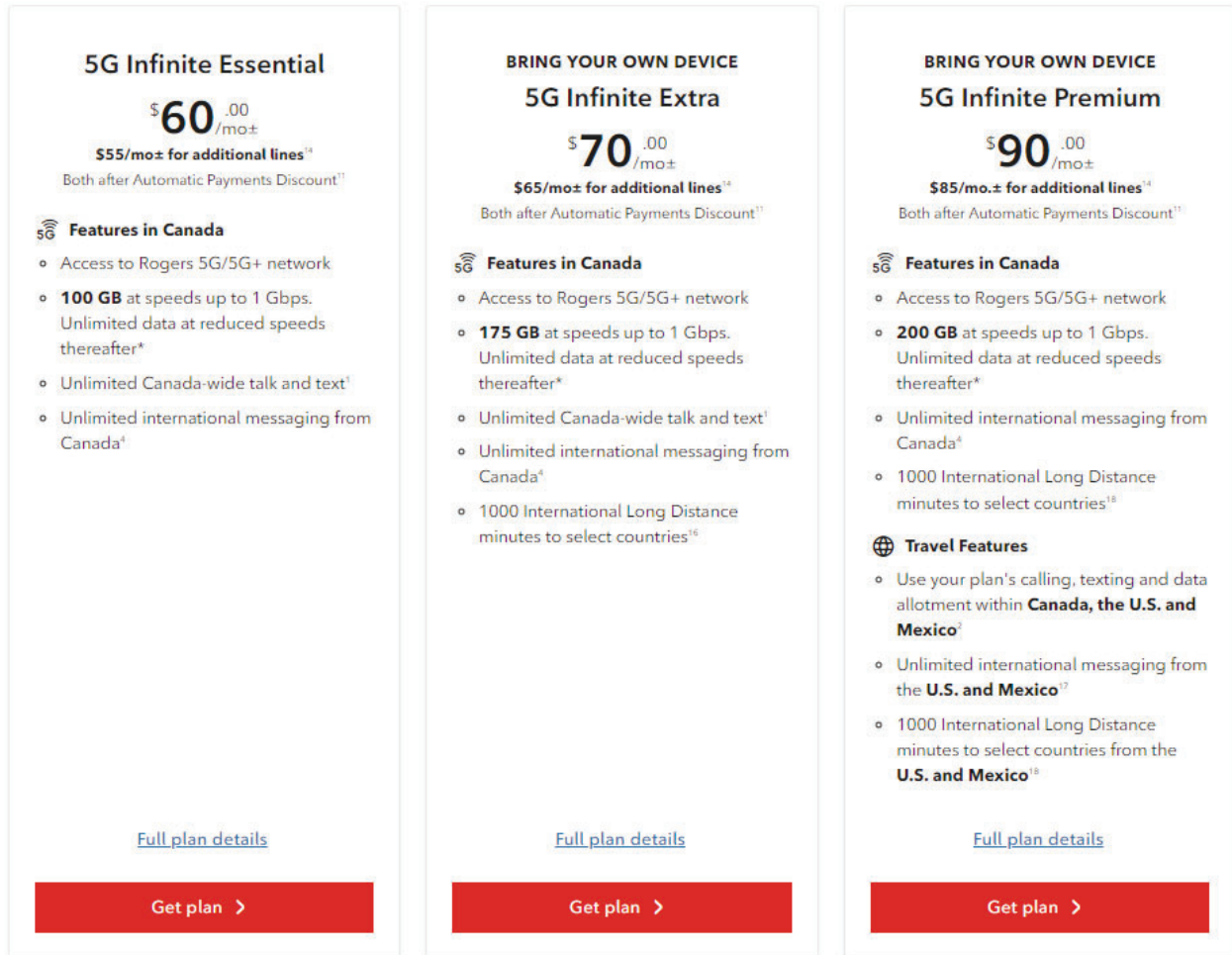


Figure 7: Screenshot from Rogers Website, taken February 5, 2025

40. Once customers select the red “Get plan” button at the bottom of the plan tiles, they are brought to a web page titled “Build Your Plan”. They are presented with the different plans available and choose the one that best suits their needs. Each option discloses the amount of high-speed data available per month, and again states “Unlimited data usage at reduced speeds beyond [the bucket size selected]” (see Figure 8).

# Build Your Plan

[Have a promo code?](#)

☒ Bring Your Own Device

## 1. Select your data option

5G Infinite

Talk and Text

All Rogers 5G Infinite plans include ▼

✓ **SELECTED**

5G Infinite Essential BYOD

☒ Data 100 GB

☒ Unlimited data usage at reduced speeds beyond 100 GB

☒ Unlimited Canada-wide calling<sup>1</sup>

~~\$75.00/mo~~

\$60.00/mo

After \$10.00 Automatic Payments Discount

🏷️ Plan price includes 1 offer(s):

- Includes \$5/mo off

5G Infinite Extra BYOD

☒ Data 175 GB

☒ Unlimited data usage at reduced speeds beyond 175 GB

☒ Unlimited Canada-wide calling<sup>1</sup>

~~\$85.00/mo~~

\$70.00/mo

After \$10.00 Automatic Payments Discount

🏷️ Plan price includes 1 offer(s):

- Includes \$5/mo off

5G Infinite Premium BYOD

☒ Data 200 GB

☒ Unlimited data usage at reduced speeds beyond 200 GB

☒ Canada, the U.S. and Mexico<sup>11</sup>

~~\$105.00/mo~~

\$90.00/mo

After \$10.00 Automatic Payments Discount

🏷️ Plan price includes 1 offer(s):

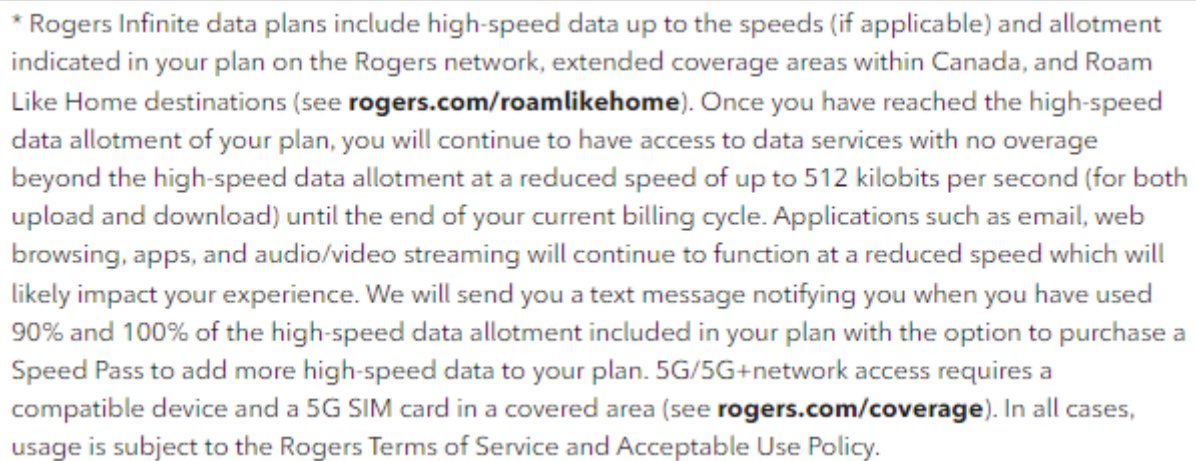
- Includes \$5/mo off

Continue

Figure 8: Screenshot from Rogers’ “Build Your Plan” Page, taken February 5, 2025



41. If a customer wishes to know more about the reduced speed after they exceed their monthly bucket, both the asterisk on the initial plan page (Figure 7) and the “See Full Details” drop-down on the second page (Figure 8), lead to a more detailed description that explains: (i) that they have a bucket of data at high-speed; (ii) that they will have access to unlimited data at a reduced speed of 512kbps thereafter with no overage fees; and (iii) that applications such as email and web browsing will continue to function, but the reduced speed “will likely impact your experience” (see Figure 9).

A screenshot of a text box from the Rogers website. The text is in a sans-serif font, with some words in blue (hyperlinks) and some in bold. The text explains that Rogers Infinite data plans include high-speed data up to the speeds (if applicable) and allotment indicated in your plan on the Rogers network, extended coverage areas within Canada, and Roam Like Home destinations (see [rogers.com/roamlikehome](https://rogers.com/roamlikehome)). Once you have reached the high-speed data allotment of your plan, you will continue to have access to data services with no overage beyond the high-speed data allotment at a reduced speed of up to 512 kilobits per second (for both upload and download) until the end of your current billing cycle. Applications such as email, web browsing, apps, and audio/video streaming will continue to function at a reduced speed which will likely impact your experience. We will send you a text message notifying you when you have used 90% and 100% of the high-speed data allotment included in your plan with the option to purchase a Speed Pass to add more high-speed data to your plan. 5G/5G+ network access requires a compatible device and a 5G SIM card in a covered area (see [rogers.com/coverage](https://rogers.com/coverage)). In all cases, usage is subject to the Rogers Terms of Service and Acceptable Use Policy.

\* Rogers Infinite data plans include high-speed data up to the speeds (if applicable) and allotment indicated in your plan on the Rogers network, extended coverage areas within Canada, and Roam Like Home destinations (see [rogers.com/roamlikehome](https://rogers.com/roamlikehome)). Once you have reached the high-speed data allotment of your plan, you will continue to have access to data services with no overage beyond the high-speed data allotment at a reduced speed of up to 512 kilobits per second (for both upload and download) until the end of your current billing cycle. Applications such as email, web browsing, apps, and audio/video streaming will continue to function at a reduced speed which will likely impact your experience. We will send you a text message notifying you when you have used 90% and 100% of the high-speed data allotment included in your plan with the option to purchase a Speed Pass to add more high-speed data to your plan. 5G/5G+ network access requires a compatible device and a 5G SIM card in a covered area (see [rogers.com/coverage](https://rogers.com/coverage)). In all cases, usage is subject to the Rogers Terms of Service and Acceptable Use Policy.

Figure 9: Screenshot from “Full Details” page on Rogers Website, taken February 5, 2025

42. Once a customer selects their high-speed data bucket size, they are prompted to review their order and given a copy of their Wireless Service Agreement, which again sets out how much high-speed data their plan offers each month, with “unlimited data at reduced speeds thereafter” (Figure 10).

**Plan Details**

**Added Plan**

5G Infinite Essential

Effective: **January 06, 2025**

Monthly Fee: **\$55.00**

Plan category: Financing Consumer Lite

Service Agreement Term: **Month-to-Month**

Plan description:

- 80GB shared data at speeds up to 1Gbps, unlimited data at reduced speeds thereafter. See [rogers.com/terms](https://rogers.com/terms) for Data Policy
- Unlimited Canada-Wide Calling
- Unlimited Canada-Wide Sent & Received Text, Picture & Video Messages
- Call & Name Display
- Voicemail
- 2500 Call Frwd Mins
- Conference Calling
- Call Waiting
- 5G/5G+ network access (requires 5G/5G+ device & coverage)
- Auto Pay Discount Eligible

Figure 10: Excerpt from an Infinite customer's Wireless Services Agreement

43. Customers are required to confirm acceptance of their Wireless Service Agreement by clicking a checkbox at the time of purchase. Once the transaction is complete, Rogers sends them a copy of their Wireless Service Agreement, along with a “Critical Information Summary”. The Critical Information Summary describes key plan features in plain terms, highlighting the size of the data bucket the customer has chosen and reiterating the disclosure that data speed will be reduced beyond that bucket (Figure 11).



## Critical Information Summary

This Critical Information Summary outlines the most important elements of your recent transaction for wireless services.

Name: [REDACTED] Telephone Number: [REDACTED]  
Account Number: [REDACTED] Date of Agreement: January 06, 2025

### Wireless Services

#### Plan Details

Plan Name	5G Infinite Essential
Plan Category	Financing Consumer Lite
Plan Monthly Service Fee	\$55.00
Service Agreement Term	Month-to-Month
Plan Includes	<ul style="list-style-type: none"><li>- 80GB shared data at speeds up to 1Gbps, unlimited data at reduced speeds thereafter. See <a href="https://rogers.com/terms">rogers.com/terms</a> for Data Policy</li><li>- Unlimited Canada-Wide Calling</li><li>- Unlimited Canada-Wide Sent &amp; Received Text, Picture &amp; Video Messages</li><li>- Call &amp; Name Display</li><li>- Voicemail</li><li>- 2500 Call Fwd Mins</li><li>- Conference Calling</li><li>- Call Waiting</li><li>- 5G/5G+ network access (requires 5G/5G+ device &amp; coverage)</li><li>- Auto Pay Discount Eligible</li></ul>

When using your services, including any unlimited services, please remember that you are subject to our Acceptable Use Policy, provided to you and posted at [rogers.com/terms](https://rogers.com/terms).

#### Summary of Fees

<b>Monthly Fees for Wireless Service</b>	
Monthly Fees - Plan	\$55.00
<b>Total Monthly Fees for Wireless Service (before applicable taxes and discounts)</b>	<b>\$55.00</b>

### Contacting Rogers and the CCTS

To contact Rogers about your wireless service, reach out to us in any of the ways listed at [rogers.com/contactus](https://rogers.com/contactus) or call us at 1 888 ROGERS1 (764-3771).

If you have a concern that isn't resolved to your satisfaction after contacting us through the above options, we invite you to share your concern in detail by submitting it to us at [rogers.com/concern](https://rogers.com/concern) or writing to us at Office of the President, 333 Bloor St. East, Toronto ON M4W 1G9.


Finally, you can also write to the Commission for Complaints for Telecom-television Services (CCTS) at [www.ccts-cprt.ca](https://www.ccts-cprt.ca), or call them at 1 888 221-1687.

Figure 11: Excerpt from an Infinite customer's Critical Information Summary

44. Both the Wireless Service Agreement and the Critical Information Summary direct customers to Rogers' "Data Policy" (available at [rogers.com/terms](https://rogers.com/terms) and excerpted in Figure 12)

for additional details on high-speed data allocations and speed reductions. This Policy again provides the information available to consumers during the purchase process under “See full details”.

## Rogers mobile plans data policy



### Rogers Infinite Plans Data Policy

Rogers Infinite plans include high-speed data up to the amount included in your plan on the Rogers network, extended coverage areas within Canada, and Roam Like Home destinations (visit [rogers.com/roamlikehome](https://rogers.com/roamlikehome)). Once you have used all of the high-speed data included in your plan, you will continue to have access to data services with no overage at a reduced speed of up to 512 kilobits per second (for both upload and download) until the end of your current billing cycle. Applications such as email, web browsing, apps, and audio/video streaming will continue to function at a reduced speed, which will likely impact your experience. We will send you a text message notifying you when you have used 90% and 100% of the high-speed allotment included in your plan with the option to purchase a Speed Pass to add more high-speed data to your plan. In all cases, usage is subject to the Rogers Terms of Service, Acceptable Use Policy and Network Management Policy.

Figure 12: Excerpt from Rogers’ Mobile Plans Data Policy, available at [rogers.com/terms](https://rogers.com/terms), taken January 12, 2025

45. While the appearance and layout of Rogers’ website has evolved since Infinite plans were launched in June 2019, the online purchase process has always clearly disclosed to prospective customers: (i) the amount of high-speed data available with each plan; and (ii) that unlimited data is available “*at reduced speeds thereafter*”.

46. Rogers makes the same disclosure to prospective Infinite customers subscribing in-store or by phone. Training materials provided to customer service representatives and partner retailers at the time of launch identified the key features of Infinite plans, which were to be communicated to consumers. These materials explain that Infinite plans include unlimited data with no overage charges, with a bucket of data at “max speeds” and access above that data allotment at reduced speeds.

47. Customers purchasing their Infinite plan in-store or by telephone are also provided their Wireless Service Agreements and Critical Information Summaries (referenced above). And if customers are dissatisfied with the terms of their plan after reviewing these documents, they can cancel their services without penalty. Those who purchased an Infinite plan without a device can cancel their services at any time. Those who purchased an Infinite plan with a device can cancel their services within fifteen days provided they return their device.

48. Whether online, in store, or over the phone, Rogers clearly, conspicuously, and repeatedly discloses the key features of its Infinite plans. Every subscriber to an Infinite plan necessarily understands that different plans have different amounts of high-speed data. They are told repeatedly and in plain language that they will have access to unlimited data *at reduced speeds* if they go over their high-speed bucket. And they are presented with different plans at different price points so they can choose the amount of high-speed data that best suits their needs.

49. The ordinary consumer of Infinite plans understands these choices are not meaningless. They understand that they can choose to pay a lower amount for a smaller bucket or a higher amount for a larger bucket. They understand they will enjoy unlimited usage at reduced speeds thereafter, without paying overage fees. The Bureau's suggestion that consumers have the general impression that every plan entitles them to unlimited high-speed data is impossible to reconcile with the purchasing process and the clear and repeated disclosures made throughout.

**F. Large Buckets Mean Customers Effectively Have Unlimited High-Speed Data**

50. Even if the Bureau's position regarding general impression is correct, which Rogers denies, the overwhelming majority of Infinite customers have access to high-speed data in such

significant quantities that it is *effectively* unlimited for their purposes. That is, the vast majority of Infinite customers never exceed their monthly high-speed data buckets, and therefore never experience speed reductions at all.

51. Consistent with the relative increase in the size of Infinite high-speed data buckets, the average utilization of high-speed data was never close to the average bucket size, and consistently declined since Infinite plans were launched in 2019. Since launch, only a small percentage of Infinite plan customers exceed their high-speed mobile data bucket each month. Of the limited number of Infinite customers each month who exceed their high-speed data bucket, the vast majority continue to use mobile data at reduced speeds without purchasing a Speed Pass.

52. The average percentage of Infinite customers each month that purchase Speed Pass top-up data at any point in their billing cycle is low and has consistently declined. Usage trends demonstrate that, for the vast majority of Infinite plan customers, the high-speed mobile data bucket is effectively unlimited. For the small minority of customers that exceed their high-speed data bucket in a given billing cycle, all continue to enjoy unlimited data at reduced speeds for the remainder of the billing cycle, with no overage fees. Indeed, most of the small number of customers that exceed their high-speed data bucket do not purchase a Speed Pass.

**G. Regulated Conduct Defence; Presumption of Consistency with CRTC Wireless Code**

53. The promotion of “unlimited data” plans is explicitly addressed by the CRTC in the Wireless Code, as part of its statutory mandate under the *Telecommunications Act*.

54. In 2013, the CRTC implemented the Wireless Code following extensive public consultation with various stakeholders, including submissions from the Competition Bureau. It amended the Wireless Code in 2017, again following an extensive public consultation process.

55. The Wireless Code expressly permits carriers to market “unlimited” data plans, provided (a) those plans do not carry any automatic overage fees, and (b) the carrier clearly explains any plan limits in a “Fair Use Policy” and “Critical Information Summary”.

56. A Fair Use Policy is a publicly accessible document that explains what the carrier considers unacceptable use of its wireless services. A Critical Information Summary is a one- or two-page document provided to customers at the time of purchase, summarizing their key contract terms in plain and easy-to-understand language. It is required to include “a description of any limits imposed on services purchased on an unlimited basis”, including data speed reductions. Rogers has always complied with these requirements.

57. The Tribunal should reject the Bureau’s attempt to undermine the approach established by the CRTC respecting the representations at issue in this Application. The *Competition Act* should be applied in a manner that is consistent with and respects the policy choices of the CRTC, as reflected in the Wireless Code, given the CRTC’s function as a federal agency with the expertise and statutory mandate to regulate the telecommunications industry.

58. In addition, and contrary to paragraph 45 of the Commissioner’s Notice of Application, Rogers’ representations were never inconsistent with the Bureau’s 2017 *Deceptive Marketing Practices Digest*, Volume 3. There, the Bureau stated that “marketing a telecommunication service as ‘unlimited’ *may* raise concerns under the misleading prohibitions in the *Competition Act* if, in fact, the service *is materially limited in a manner that is inconsistent with its general impression*”. It did not say that wireless carriers should never use “unlimited” for plans with high-speed data buckets and reduced speeds thereafter, even if such speed reductions are clearly disclosed.



59. The Bureau also explained that its position is similar to that of the U.S. Federal Trade Commission, which has only required that any restrictions on unlimited wireless plans be clearly and conspicuously disclosed. As set out above, Rogers and other carriers have followed that approach since the launch of Infinite plans and the Bureau did not take any enforcement action with respect to that approach over a five-year period.

60. Rogers pleads and relies upon the regulated conduct defence.

**H. Request for Relief Is Inappropriate and Unwarranted**

61. Even if the Tribunal were to find that Rogers engaged in reviewable conduct, which is expressly denied, the Tribunal should exercise its discretion not to order any relief beyond the declaration pleaded at paragraph 1(a) of the Notice of Application. The other pleaded relief—namely, a prohibition order, an administrative monetary penalty, and a restitutionary award—are inappropriate and unnecessary.

62. Furthermore, to impose such relief particularly after the Bureau chose not to take any enforcement action for more than five years would be contrary to the requirement in section 74.1(4) that any order should be made with a view to promoting conformity and not with a view to punishment.

***i. Rogers Exercised Due Diligence in Marketing and Promoting Infinite Plans***

63. At all times material to this Application, Rogers took reasonable and diligent steps to ensure that prospective customers would not be likely to be misled by its Infinite representations. As a result, in accordance with section 74.1(3) of the *Competition Act*, no order under section 74.1(1)(b), (c), or (d) can be ordered against Rogers.



64. In particular, since launch in June 2019, Rogers' Infinite representations have complied with all the requirements of the CRTC in the Wireless Code and with the position of the Competition Bureau described in the 2017 *Deceptive Marketing Practices Digest*—neither of which say that carriers cannot use “unlimited” to promote plans with reduced data speeds where such limitations are clearly disclosed.

65. In light of the regulatory environment and the position consistently taken by the Competition Bureau and the CRTC, it was reasonable for Rogers to believe that it was at all times in compliance with its obligations under the *Competition Act*, and that its approach to promoting its Infinite plans—like those of its competitors for their equivalent plans—were neither false nor misleading. No order under section 74.1(1)(b), (c), or (d) should be imposed because Rogers acted with diligence and reasonable care to ensure that the ordinary consumer interested in its Infinite wireless plans was not likely to be misled by its representations.

***ii. Section 74.1(5) Factors Weigh Against an Administrative Monetary Penalty***

66. The Bureau's request for an administrative monetary penalty against Rogers should be rejected. Rogers denies each of the alleged aggravating factors at paragraph 46 of the Notice of Application, and in addition to the facts pleaded above, relies on the following as relevant factors under s. 74.1(5) of the *Competition Act*:

- (a) Reach, frequency, and duration of the impugned conduct: The Bureau did not take any enforcement action against Rogers for more than five years in respect of what it now claims are deceptive marketing practices. And the Bureau still has not taken any enforcement action against any other carrier. The continued reach,

frequency, and duration of “unlimited” data representations was a direct consequence of this regulatory inaction and cannot be held against Rogers.

- (b) Vulnerability of the consumers: Infinite plans are directed at sophisticated, high-use data customers, who are interested in accessing large data buckets and having bill certainty. Customers in other segments of the wireless market can purchase other kinds of plans that best serve their needs, including occasional use or low-cost plans. Contrary to paragraph 46(c) of the Commissioner’s Notice of Application, the ordinary consumers in the market for unlimited wireless services are not vulnerable, are capable of understanding clear and repeated disclosures of speed reduction, and are clearly familiar with the option to purchase high-speed data buckets of different sizes and at different prices.
- (c) Materiality of any representations: Customers were repeatedly told, both in promotions and during the purchasing process, that Infinite plans include a high-speed data bucket and unlimited data at reduced speeds thereafter. The Bureau’s selection of isolated and incomplete promotional statements are insufficiently material to alter customers’ purchasing decisions in respect of unlimited wireless plans. This is particularly the case in light of the repeated disclosure made to relevant consumers throughout the purchasing process.
- (d) The effect on competition in the wireless market: Rogers’ introduction of Infinite plans was manifestly pro-competitive, which was widely recognized in the media and acknowledged by the Competition Bureau in its CRTC submissions referenced above. Customers are unquestionably better off with bigger data

buckets, lower prices, and no overage fees. If anything, the fact that Rogers' competitors soon launched their own similar unlimited plans should be a mitigating factor, since Rogers stood to gain no benefit from its approach to marketing its plans.

- (e) Likelihood of self-correction: No administrative remedy under s. 74.1 is necessary to ensure compliance with any finding of the Tribunal regarding the impugned representations.
- (f) Financial position of the person against whom the order is made: As noted above, the overriding principle under s. 74.1(4) of the *Competition Act* is that any relief must be determined with a view to promoting compliance, not punishment. Compliance with the Tribunal's determinations can be achieved in this case without a monetary penalty.
- (g) Rogers' history of compliance with the *Competition Act*: Contrary to the Bureau's characterization of the two inquiries referenced in paragraph 46(i):
  - With respect to Rogers' performance claims concerning Chatr (Rogers' pre-paid wireless brand), these claims were found by the Ontario Superior Court to be unquestionably true and fully substantiated after the claims were made. In that case, the Ontario Superior Court specifically determined that Rogers had suffered reputational harm as a result of the Commissioner's application in that case; and

- The consent agreement reached between the Commissioner and Rogers concerning industry-wide “premium text messaging” is a negotiated settlement that states expressly that nothing in that agreement “shall be taken as an admission or acceptance by [Rogers] of any facts, wrongdoing, submissions, legal argument or conclusions for any other purpose”. In that case, the Commissioner took enforcement action against Rogers, Bell, and Telus at the same time and ultimately reached negotiated resolutions with all three carriers. In this instance, the Commissioner has targeted Rogers and remained silent with respect to its competitors.

67. For all of the reasons outlined above, should the Tribunal find any violation of the *Competition Act*, it should exercise its discretion not to order any relief under s. 74.1(1).

**I. Other Procedural Matters**

68. For the reasons set out above, Rogers asks that the Application be dismissed in its entirety, with costs.

69. Rogers agrees with the Commissioner that this proceeding be conducted in English in the City of Ottawa.

**DATED** at the City of Toronto, this 6<sup>th</sup> day of February, 2025.

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