

Competition Tribunal



Tribunal de la concurrence

Citation: *Canada (Commissioner of Competition) v Rogers Communications Inc.*, 2025 Comp Trib 11

File No.: CT-2024-012

Registry Document No.: 33

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

**AND IN THE MATTER OF** an application by the Commissioner of Competition for an order under section 74.1 of the *Competition Act* for 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)



Date of hearing by videoconference: July 14, 2025

Before: Madam Justice Jocelyne Gagné

Date of Reasons for Order and Order: August 11<sup>th</sup>, 2025

**REASONS FOR ORDER AND ORDER PARTIALLY GRANTING A MOTION FOR ADDITIONAL PRODUCTION**

## **I. OVERVIEW**

[1] On March 26, 2025, the Tribunal issued a Scheduling Order directing the applicant, the Commissioner of Competition (“Commissioner”) and the respondent, Rogers Communications Inc. (“Rogers”), to provide the other party, by June 13, 2025, their affidavit of documents. On June 30, 2025, the parties requested, and the Tribunal granted, an extension to the deadline to file any motion arising from the affidavits of documents and/or productions, from June 30 to July 7, 2025.

[2] On July 7, 2025, Rogers filed an informal motion for an order to compel further documentary production from the Commissioner, that Rogers deems relevant. On July 10, 2025, the Commissioner opposed Rogers’ motion, and on July 11, 2025, Rogers filed a reply. The Tribunal heard the motion by videoconference on July 14, 2025.

## **II. THE NOTICE OF APPLICATION**

[3] On December 23, 2024, the Commissioner filed a Notice of Application pursuant to section 74.1 of the *Competition Act*, RSC 1985, c C-34 (“Act”), alleging that Rogers has previously engaged in, and continues to engage in, reviewable conduct contrary to paragraph 74.01(1)(a) and subsections 74.011(1) and 74.011(2) of the Act.

[4] According to the Commissioner, Rogers misleads consumers by offering data plans that are said to be unlimited, but that, in fact, have limits. The Commissioner argues that by advertising limited data plans as if they were unlimited, Rogers has made and continues to make representations to the Canadian public that are false or misleading in a material respect for the purpose of promoting the supply or use of wireless telecommunication service and related products, and its business interests more generally (the “Impugned Representations”).

[5] The Commissioner seeks various forms of relief, including “a declaration that [Rogers] has engaged in, and continues to engage in, reviewable conduct contrary to paragraph 74.01(1)(a) and subsections, 74.011(1) and 74.011(2) of the Act”; “an order prohibiting Rogers from engaging in the reviewable conduct or substantially similar reviewable conduct in Canada for a period of ten years from the date of such order”; “an order requiring Rogers to pay such an administrative monetary penalty as the Tribunal deems appropriate”, and “an order requiring Rogers to pay an amount, not exceeding the total amounts paid to Rogers for the products in respect of which the reviewable conduct was engaged in, to be distributed among those persons to whom the products were sold, in an amount and manner to be assessed by the Tribunal.”

## **III. DOCUMENT PRODUCTION**

[6] Prior to the start of this proceeding and following an application by the Commissioner, the Federal Court issued an order on December 1, 2023, requiring Rogers to produce records and to provide written returns of information under paragraphs 11(1)(b) and (c) of the Act.

[7] Rogers now seeks an order to compel the Commissioner to produce the following two categories of records: (i) “All records related to the Commissioner’s consideration or investigation of telecommunications providers’ unlimited plan representations including prior to September 2021” (“Unlimited Plan Records”); and (ii) “All relevant records from Bell, Telus and any other

third party received by the Bureau pursuant to any supplementary or voluntary information request or section 11 order related to their equivalent unlimited plans [...]” – including those obtained in the context of the Commissioner’s review and challenge of the Rogers/Shaw transaction (CT-2022-002) (“Third-Party Records”).

#### **IV. ISSUES**

[8] The present motion raises the following issues:

- (a) Are the two categories of records sought by Rogers relevant to the matters at issue in this proceeding?
- (b) If any such records are relevant, is Rogers’ request consistent with the principle of proportionality?

#### **V. ANALYSIS**

##### **(1) Unlimited Plan Records**

[9] Rogers seeks production of the Commissioner’s Unlimited Plan Records, including (i) the Commissioner’s analysis of other telecommunication providers’ unlimited plan representations; (ii) notes related to an internal conference call held on April 14, 2020 concerning unlimited plan representations; (iii) documents related to an alleged “pause” in the Commissioner’s review of unlimited plan representations across the industry between June 2020 and August 2021; and (iv) documents related to the Commissioner’s decision not to pursue other telecommunication providers with respect to their unlimited plan representations.

[10] Rogers argues that the documents it seeks are relevant to two parts of its defence as found in paragraphs 24 to 29 of its response to the Notice of Application. First, the Commissioner waited almost 4 years after Rogers started making the Impugned Representations before making Rogers aware of his concerns; and second, the Commissioner has unfairly targeted Rogers for conduct that is industry wide.

[11] According to Rogers, competing telecommunication providers advertise their unlimited plans in substantially the same way as Rogers does, and these similar representations are relevant to assessing consumer understanding in the wireless industry. Moreover, and in addition to competitors’ records being relevant to the Tribunal’s assessment of the Impugned Representations, not only has the Commissioner “improperly and unfairly singled out Rogers”, but Rogers argues that its offering in fact “spurred other major carriers to do the same, leading to a significant pro-consumer shift in the wireless industry.”

[12] In short, the Commissioner responds that the rationale or the motivation behind the timing of investigative steps, as well as Rogers’ claim that it was “unfairly targeted”, are irrelevant considerations. The Commissioner confirmed that he has produced “all the non-privileged evidence he has collected of unlimited representations made by other telecommunications companies” related to the present matter.

[13] The Tribunal agrees with the Commissioner.

[14] As to the timelines of the Commissioner's investigation into Rogers' conduct and subsequent enforcement action, these issues are not part of the debate. There is no dispute that Rogers started making the Impugned Representations in 2019 and that it was not until 2023 that the Commissioner contacted Rogers with his concerns.

[15] In *The Commissioner of Competition v Live Nation Entertainment, Inc et al*, 2019 Comp Trib 3, the respondents contended that an eight-year gap between a 2009 investigation and a 2017 application created an estoppel and should limit remedy. On discovery, Live Nation asked the Commissioner (i) why it took eight years to take enforcement action; and (ii) why the Commissioner did nothing with earlier complaints about Live Nation's conduct. The Tribunal refused to require the Commissioner to answer both questions for the following reason:

[18] What is relevant are the facts that the Commissioner apparently took eight years to raise the complaint with the Respondents and allegedly did not follow-up on complaints received in 2008, not the reasons or explanations behind those decisions of the Commissioner.

[16] The same can be said about the four year it took the Commissioner to advise Rogers of his concerns, after the launch of its unlimited plans. I agree with the Commissioner that while the legal significance of the timing can be debated at the hearing, the relevant dates that followed the launch of Rogers' unlimited plans, up until the filing of the Commissioner's application, are not in dispute.

[17] With respect to Rogers' allegation that it was improperly singled out, it is not a defence that is available in law. In *R v Miles of Music Ltd*, 74 OR (2d) 518, 1989 CanLII 255, a case that considered unfairness in abuse of process, the Ontario Court of Appeal found that:

It cannot be a defence to a speeding driver that the police did not prosecute all drivers who were speeding on the same highway at the same time. In any event, the absence of any evidence that, however prevalent the offensive practice may be, the police had reasonable grounds for prosecuting some other alleged offender, makes it impossible to say that the respondents were selected for prosecution on the basis of grounds relating to personal characteristics.

[18] The Act gives the Commissioner the power and discretion to investigate and enforce its provisions as it sees fit. It does not dictate how and when to do it, nor does it impose an industry wide approach to enforcement.

[19] Therefore, Rogers' requests for the Unlimited Plan Records, as defined in paragraph 9, is denied. The Unlimited Plan Records will not be produced.

[20] Given this conclusion, there is no need for the Tribunal to assess whether the request is consistent with the principle of proportionality.

**(2) Third-Party Records**

[21] Rogers also seeks production of Third-Party Records received by the Commissioner “pursuant to any supplementary or voluntary information request or section 11 order” since 2019, including in the context of the Rogers-Shaw matter (CT-2022-002). These include (i) marketing plans, reports, research and competitive assessment of unlimited wireless plans; (ii) assessment of the competitive impact of unlimited plans, and (iii) communications related to complaints regarding unlimited wireless plans.

[22] According to Rogers, given the nature of some specifications found in previous section 11 orders and in supplementary or voluntary information requests issued to various telecommunication providers, it is reasonable to expect that the Commissioner received records that are relevant to the present matter – especially since the Commissioner considers as an aggravating factor the fact that other providers such as Bell and Telus launched similar plans to Rogers.

[23] In response, the Commissioner’s position is essentially that such a request amounts to a disproportionate, “exorbitant” ask, while the odds that such an exercise yields any critical information are trivial.

[24] The Commissioner pleads at paragraph 46(f) of his Notice of Application that the launch by Bell and Telus of similar plans to Rogers’ is an aggravating factor. He also submits on this motion that other telecommunication providers “copied Rogers”. Through the material filed by the Commissioner in the present matter, Rogers was made aware that in the context of the review of the Rogers-Shaw transaction, the Commissioner gathered marketing documents from competing telecommunication providers, including about unlimited plans. Those documents informed the Commissioner’s inquiry, and the material that concerned Rogers has been produced in the present litigation as part of the Commissioner’s Notice of Application.

[25] Similar documents obtained from Bell and Telus through section 11 orders, also in the context of the review of the Roger-Shaw transaction, are similarly relevant for the following reasons:

1. They are likely to inform the Tribunal about consumer’s understanding and effect of the representations in the marketplace, and what Bell and Telus understood about the marketplace, including any market research they did about the plans;
2. They go to the Commissioner’s pleading of aggravating factors as pleaded in paragraph 46(f) of his Notice of Application.

[26] The Tribunal agrees with Rogers that records that may reveal whether competing telecommunication providers merely followed suit, or rather already planned to launch their own unlimited plan, are relevant to this issue.

[27] However, I do not find relevant the documents that may reveal whether other telecommunication providers unlimited plans were successful in attracting customers and reducing or eliminating any alleged “benefit” Rogers received from introducing its unlimited plans.

[28] Turning to the question as to whether the production by the Commissioner of these records is consistent with the principle of proportionality (the main, if not only, basis for the Commissioner's position on this issue), the Tribunal considers that it is. Importantly, the Commissioner provided no evidence to sustain the allegation that to proceed with the production was overly burdensome. The Commissioner alleges that reviewing the Bell and Telus records for relevance to this Application would require reviewing over a million documents. In support of that allegation, the Commissioner refers the Tribunal to a 2023 affidavit sworn in a context of the section 11 application against Rogers whereby the affiant states that it took several months to review 22,000 records from the Rogers/Shaw Supplemental Information Request (RS SIR) for information that might overlap with the section 11 request. This evidence does not support the Commissioner's allegation in the present matter.

[29] In *The Commissioner of Competition v Vancouver Airport Authority*, 2017 Comp Trib 16, the Tribunal stated the following:

[35] I do not dispute that the proportionality rule applies to Tribunal proceedings. More specifically, on questions such as those raised in this Refusals Motion, the Tribunal must always take into account issues of proportionality (*The Commissioner of Competition v Reliance Comfort Limited Partnership*, 2014 Comp Trib 9 ("Reliance") at paras 25-27). However, the case law is clear: claims invoking the principle of proportionality must be supported by evidence (*Wesley First Nation (Stoney Nakoda First Nation) v Alberta*, 2013 ABQB 344 at paras 93-94; *Montana Band* at para 33). It is not sufficient to merely raise the argument that it would be too onerous to comply with a request to provide answers to questions on discovery. Some evidence must be offered to support the claim and to establish how a request could be disproportionate to its value.

[30] The Commissioner also alleges that the parties agreed that neither would be required to review or list the records produced in response to the RS SIR for relevance to this application. In support of that allegation, the Commissioner refers the Tribunal to his June 2025 affidavit of documents, where it is rather stated that this agreement covers the records produced by Rogers, not those produced by third parties such as Bell and Telus.

[31] I am therefore of the view that the Commissioner's argument on proportionality – or lack thereof – must fail.

**FOR THESE REASONS, THE TRIBUNAL ORDERS THAT:**

[32] Rogers' motion for additional production is granted in part.

[33] The Commissioner is to file, and deliver to Rogers on or before August 18, 2025, a further affidavit of document inclusive of the following Third-Party Records:

- (a) Marketing plans, reports, research and competitive assessment of unlimited wireless plans;
- (b) Assessment of the competitive impact of unlimited plans (including Rogers); and

(c) Communications related to complaints regarding unlimited wireless data plans.

[34] As success on this motion is divided, costs shall be in the cause.

DATED at Ottawa, this 11<sup>th</sup> day of August, 2025.

SIGNED on behalf of the Tribunal by the Presiding Judicial Member.

(s) Jocelyne Gagné

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