

Competition Tribunal



Tribunal de la concurrence

Citation: *8X Labs Inc. v Vistar Media Inc.*, 2026 Comp Trib 8

File No.: CT-2025-006

Registry Document No.: 34

**IN THE MATTER OF** an application for an order granting leave under section 103.1 of the *Competition Act*, RSC 1985, c C-34, to commence an application under sections 75, 76, 77 and 79 of the *Competition Act*;

BETWEEN:

**8X Labs Inc.**  
(applicant)

and

**Vistar Media Inc.**  
(respondent)



Decided on the basis of the written record.

Before: Mr Justice Andrew D. Little (Chairperson)

Date of Reasons for Order and Order: 24 February 2026

## **ORDER AND REASONS**

**(Motion for an order under Rule 119(3))**

[1] On November 27, 2025, the applicant, 8X Labs Inc. (“8X”) filed an application for leave under section 103.1 to commence an application under sections 75, 76, 77 and 79 of the *Competition Act*. Very briefly, 8X alleges anti-competitive activities on the part of Vistar Media Inc. (“Vistar”) in the digital out-of-home (“DOOH”) advertising industry.

[2] By informal motion with submissions in a letter dated January 20, 2026, the respondent Vistar seeks an order under Rule 119(3) of the *Competition Tribunal Rules*, SOR/2008-141, for leave to adduce responding affidavit evidence. Vistar provided two draft affidavits from Vistar employees, one from Scott Mitchell (Managing Director, Canada) (the “draft Mitchell Affidavit”) and a second from Jordan Fraser (Senior Director, Enterprise and Publisher Solutions) (the “draft Fraser Affidavit”).

[3] 8X opposed Vistar’s motion and filed responding submissions by way of letter dated January 30, 2026. Vistar filed reply submissions by letter dated February 9, 2026.

[4] The requirements to obtain leave under Rule 119(3) have been set out and applied in *Martin v Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc., and Apple Canada Inc.*, 2025 Comp Trib 12, 2025 CanLII 79244, at paras 20-22, 30, 35, 40, 46; *JAMP Pharma Corporation v Janssen Inc.*, 2024 Comp Trib 4, 2024 CanLII 79685, at paras 6-13, 35-37, 42, 47; *Audatex Canada, ULC v CarProof Corporation*, 2015 Comp Trib 13, 2015 CACT 13, at paras 16-17, 19, 22-24, 28-29.

[5] In *Martin*, the test was summarized as follows:

[20] First, to obtain leave to file responding evidence under Rule 119(3), a moving party must “set out, in as much detail as possible, the discrete facts and specific evidence that it wishes to include in the proposed affidavit”: *JAMP*, at para 9, quoting *Audatex Canada, ULC v CarProof Corporation*, 2015 Comp Trib 13, at para 17.

[21] Second, the proposed responding evidence must relate to one or more narrowly defined issues or discrete facts, not wide-ranging issues: see *JAMP*, at paras 12-13, 35, 42, 47 and the cases cited there.

[22] Third, the following requirement also appears in *JAMP*:

[37] In my view, to be acceptable on the section 103.1 leave application, Janssen’s evidence in this area must be limited to factual (not expert) evidence and be tailored to negate or respond directly to JAMP’s factual allegations, keeping in mind the legal test and requirements under section 103.1 (including the requirement for credible, cogent and objective evidence at this stage). It also bears reinforcing that the role of a single judicial member of the Tribunal on the leave application is a summary and screening role, and is

more constrained than the panel's role in deciding a section 79 application on its merits.

[Underlining added in *Martin*.]

[6] On this motion, 8X's position was that both the draft Mitchell Affidavit and the draft Fraser Affidavit contained "wide ranging" evidence rather than "narrow information that aims to demonstrate that [8X] fails to meet the specific requirements" in sections 75, 76, 77 and 79 of the *Competition Act*.

[7] 8X submitted that the draft Fraser Affidavit:

- should be rejected as it does not present "new credible evidence", does not adduce discrete facts in respect of the Canadian activities and conduct that the *Competition Act* is concerned with and does not demonstrate that 8X failed to meet the statutory requirements in sections 75, 76, 77 and 79; and
- attached certain exhibits that are the same or substantially the same as exhibits already in the record.

[8] 8X submitted that the draft Mitchell Affidavit:

- contains claims that are not substantiated with new credible evidence; and
- includes wide-ranging evidence about Vistar's limited market share in Canada. Specifically, 8X argued that Vistar characterized two competitors as "the largest SSP by advertising revenue" and the "most prominent and widely adopted digital signage CMS platform in Canada", but such proposed evidence as to the competitive nature of the DOOH advertising industry in Canada and Vistar's market position in such market is "wide-ranging evidence" of factual disputes and should only be adduced on the merits. 8X argued that it had adduced sufficient credible evidence on market share to support a *bona fide* belief by the Tribunal on the merits of the leave application.

[9] I conclude that the contents of both draft affidavits meet the criteria in the case law and that leave should be granted to file them in executed form.

[10] On the leave application under section 103.1, 8X filed an affidavit from Frédéric Dionne sworn on November 27, 2025 (the "Dionne Affidavit") that includes 286 paragraphs. At a high level, the proposed application relates to the products offered by each party, certain aspects of the competitive landscape in the DOOH advertising industry, and certain events and interactions between the parties including in October/November 2021 and June 2024.

[11] The draft Mitchell Affidavit and the draft Fraser Affidavit seek to respond to certain aspects of the Dionne Affidavit that are relevant to the elements of the sections of the *Competition Act* under which 8X seeks leave to file its proposed notice of application, and in a manner that is targeted and proportionate.

[12] 8X's submissions did not address the contents of specific paragraphs of the two proposed draft affidavits. However, on my review for the purposes of this motion, it appears that the contents of the draft Mitchell Affidavit are responsive to statements made and issues raised in the Dionne Affidavit, as follows below. The draft Mitchell Affidavit:

- a) discusses DOOH advertising (paragraphs 4-13) and Vistar's products relevant to this proceeding (paragraphs 14-15, 21, 34-35), which are responsive to descriptions of these topics in the Dionne Affidavit;
- b) at paragraphs 16-20, contains information about 8X's business as an aggregator, which is responsive to the Dionne Affidavit (see e.g., paragraphs 23-24, 124);
- c) at paragraphs 21-25 and 41, contains information responsive to 8X's allegations of tied selling in the Dionne Affidavit (see e.g., paragraphs 175-176, 269);
- d) at paragraphs 26-32, contains information related to Vistar's competitors and their supply-side platforms in Canada, which responds to the Dionne Affidavit (see e.g., paragraphs 14-17, 26, 43-50, 59, 62-64, 124, 151-158, 235, 258, 264, 278-280);
- e) at paragraph 33, contains information related to Vistar's prices, which responds to the allegations in the Dionne Affidavit (see e.g., paragraphs 67-68, 264, 280);
- f) at paragraphs 34-36 and 39-50, contains information responsive to allegations of refusal to deal in the Dionne Affidavit (see paragraphs 151-174);
- g) at paragraphs 37-38, responds to the Dionne Affidavit (see paragraphs 9, 70-71, 249-262) related to T-Mobile's acquisition of Vistar;
- h) at paragraphs 51-52, contains information about how 8X's former assets (i.e., its media customers) were made available to buyers (advertisers) through Vistar's supply side platform in early 2025, which is responsive to the Dionne Affidavit (see Part F).

[13] For its part, the draft Fraser Affidavit contains information (in paragraphs 3-31) that responds to the evidence in the Dionne Affidavit relating to the end of 8X's agreement with Vistar for access to Vistar's supply side platform in 2021, which is relevant to 8X's claims in Part D of the Dionne Affidavit, including at paragraphs 105-117. The draft Fraser Affidavit also contains information related to the same issues as are addressed in the draft Mitchell Affidavit at paras 51-52.

[14] In my view, the two draft affidavits contain properly tailored evidence that responds to certain aspects of the Dionne Affidavit that contain the factual basis for proposed claims in the applicant's proposed notice of application. I am also satisfied that the draft contents of the proposed draft affidavits relate to one or more elements of sections 75, 76, 77 and 78-79 of the *Competition Act*.

[15] Some of the information in the proposed affidavits concerns features of the competitive landscape in the DOOH industry. However, I do not believe that the contents of the draft affidavits raise the same issue and related concerns that arose in *Martin* (at paragraphs 39-40).

[16] While the proposed affidavits attach exhibits that overlap with exhibits in the Dionne Affidavit, doing so makes the proposed affidavits easier to read compared with using cross-references to the counterpart exhibits in the Dionne Affidavit.

[17] Although 8X submitted that the draft affidavits do not present “new credible evidence” that 8X has failed to file, the two draft affidavits contain evidence not presented by the Dionne Affidavit. 8X’s responding submissions on this motion did not explain why the evidence is not credible.

[18] 8X also did not expand on its position that the information in the draft Mitchell Affidavit is not “substantiated”. The information will, of course, be verified by Mr Mitchell’s signature on oath or affirmation.

[19] With respect to 8X’s position on the evidence related to the two competitors, I find that Vistar’s proposed evidence is responsive and sufficiently narrow and discrete to be permissible as responding evidence on the application for leave.

[20] The respondent’s motion is granted. Costs of the motion are reserved to the disposition of the application for leave under section 103.1.

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

[21] The Tribunal grants leave to the respondent to adduce responding evidence under Rule 119, by filing executed versions of the draft Mitchell Affidavit and the draft Fraser Affidavit (described in the Reasons).

[22] Costs of this motion are reserved to the disposition of the application for leave under section 103.1.

DATED at Ottawa, this 24<sup>th</sup> day of February 2026.

SIGNED on behalf of the Tribunal by the Chairperson

(s) Andrew D. Little

**COUNSEL OF RECORD:**

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**8X Labs Inc.**

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Frédéric Dionne

For the respondent:

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