TORYS LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario M5K 1N2
P. 416.865.0040| F. 416.865.7380

www.torys.com

Linda Plumpton
lplumpton@torys.com
P. 416.865.8193

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E-FILING

The Registrar
Competition Tribunal
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, ON K1P 5B4

Dear Registrar:

Re: *Consumers Council of Canada v. Live Nation Entertainment, Inc. et al.*, CT-2025-008

We are counsel for the respondents in this matter ("**Live Nation**"). We write in response to the Tribunal's February 19, 2026 direction and the applicant's February 20 letter seeking to file supplementary evidence in support of its application for leave to bring an application under sections 77 and 79 of the *Competition Act*.

Live Nation objects to the filing of the supplementary evidence in the affidavit of Maria Arabella Robles ("**Proposed Evidence**") and to the amendments in the applicant's memorandum of fact and law referencing the Proposed Evidence. Contrary to the Applicant's position, leave is required to file the Proposed Evidence, and the applicant has not demonstrated that this evidence meets the test for leave. None of the Proposed Evidence goes to issues of which the relevance was unknown to the applicant or could not have been known prior to the release of the Tribunal's decision in *Martin v. Alphabet Inc*, 2026 Comp Trib 3. In fact, the applicant's original materials already address the issues to which the Proposed Evidence is said to relate. This motion should be dismissed.

The applicant's letter also asks the Tribunal to set a schedule for the remaining steps for filing evidence and written argument. As explained at the end of this letter, this proposal is at odds with what the parties jointly proposed in January and should not be followed.

Leave is required

The *Competition Tribunal Rules*, SOR/2008-141 do not address the filing of supplementary evidence on an application for leave to proceed under section 103.1 of the *Competition Act*. In the circumstances, pursuant to Rule 34(1), the practice and procedure set out in the *Federal Courts Rules* may be followed.

Rule 312 of the *Federal Court Rules* provides for the filing of additional affidavits and supplementary records and specifies that leave of the Court is required. The test to file additional evidence is a four part conjunctive test, which asks: (i) whether the Proposed

Evidence serves the interests of justice; (ii) whether it will assist the Court; (iii) whether substantial prejudice will be caused to the other side; and (iv) whether the Proposed Evidence was not available or could not have been anticipated as being relevant at an earlier date.[1]

The Tribunal has previously referred to Rule 312 in the context of an application for leave under section 103.1 of the *Competition Act* and held that the principles governing granting leave under Rule 312 "apply even more forcefully" in the context of a "summary process" like an application for leave to proceed. As the Tribunal remarked, "since a party must put its best case forward at the first opportunity, the discretion of the Court to permit the filing of additional material should be exercised with great circumspection".[2]

Proposed Evidence was available and its relevance was apparent to the applicant

The applicant concedes the Proposed Evidence was available when it filed its application for leave to proceed. But it has not explained why it could not have anticipated the relevance of the Proposed Evidence at that time. The Proposed Evidence does not address any new issues that arise from the Tribunal's decision in *Martin*. Rather, it simply goes to "bolstering" the applicant's previously filed affidavit evidence and "add[s] nothing by way of a valid excuse for the delay in filing the defence to counterclaim."[3] For this reason, the Proposed Evidence should not be admitted.

The applicant's original Memorandum of Fact and Law in support of the Notice of Application for leave to proceed ("**MOFL**") and supporting evidence—particularly the Affidavit of Misha Nili sworn December 18, 2025—already address two of the three categories in which the applicant classifies the Proposed Evidence:

1. What applicant's counsel have done and intend to do to obtain funding to prosecute the case: MOFL, paras. 118, 122, 124; Nili Affidavit, paras. 8-10.

2. What applicant's counsel have done and intend to do to obtain evidence for trial: MOFL, paras. 123; Nili Affidavit, paras. 4-7.

The applicant did in fact anticipate that evidence going to these two issues would be relevant in the context of its leave application.

While the MOFL and original supporting evidence did not directly address applicant's counsel's experience in competition law (the applicant's third category of Proposed Evidence), there is no reason it could not have done so. The applicant says paragraph 232 of *Martin* supports the need for this evidence. That paragraph appears in a section of the Tribunal's reasons that rely on the Supreme Court's *Council of Canadians with Disabilities* decision,[4] which the Applicant cited extensively in the MOFL filed in December.[5] As the Tribunal stated:[6]

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[1] *C-Tow Marine Assistance Ltd. v. Sea Tow Services International, Inc.*, 2024 FC 101, para. 42.

[2] *Audatex Canada, ULC v. CarProof Corporation*, 2015 CACT 28, paras. 35-36.

[3] See *Budget Steel Ltd. v. Seaspan International Ltd.*, 2003 FCT 390, paras. 7, 12.

[4] See *Martin*, paras. 231-237, in particular paras. 234-235, and 237, citing *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27.

[5] See paras. 52-54.

[6] *Martin*, para. 237.

> A plaintiff/applicant's capacity, resources and expertise are factors expressly stated and explained in the public interest standing decisions of the Supreme Court – cases that the applicant himself relied upon …

Moreover, the applicant references passages in *Martin* that suggest the Tribunal will consider the applicant's capacity to bring the claim forward, including the applicant's resources. These issues are the subject of the Affidavit of Don Mercer sworn December 15, 2025 and filed in support of the application for leave to proceed. They are also squarely addressed at paras. 117-118 of the MOFL.

That the significance of the Proposed Evidence may have become clearer following the release of *Martin* is not a basis to admit it as supplementary evidence when its relevance "surely would have been within the reasonable contemplation of the [applicant] at the outset of [the leave proceedings], and they had the duty to put their best foot forward at the earliest opportunity."[7]

Evidence left out by inadvertence is not admissible as supplementary evidence

In addition to the categories of evidence described above and in the applicant's letter, the Proposed Evidence includes "documents inadvertently omitted from last record". This evidence should not be admitted. Counsel's inadvertence being the sole explanation offered for the late filing of evidence weighs against its admission. This is especially so as regards hearsay evidence appended to the affidavit of a member of applicant's counsel's firm, of which the probative value will be low.[8]

Setting a Timetable

Live Nation submits that it would be appropriate to set a timetable for the remaining steps in the application after this motion is determined. The applicant suggests those remaining steps should be concurrent (*i.e.*, written submissions should be filed together with any proposed evidence and a motion for leave to file that evidence). This is not the usual manner in which recent applications for leave have proceeded,[9] and would potentially result in confusion if evidence that is referenced in Live Nation's memorandum of fact and law is not ultimately admitted by the Tribunal. It is also at odds with the parties' proposal made to the Tribunal in January, before any proposed supplementary evidence had been filed. There is no reason in this case to endorse the applicant's proposal: nothing is so time sensitive that it will be impacted by a few additional weeks required for a schedule that provides for the scope of evidence to be finalized before written submissions are filed.

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[7] See *Lax Kw'alaams Indian Band v. Canada (Minister of Western Economic Diversification)*, 2007 FC 550, para. 35.

[8] *Pfizer Canada Inc. v. Canada (Health)*, 2007 FC 168, paras. 5-6, 10.

[9] See, *e.g.*, the Tribunal's July 17, 2025 direction in *Martin*, the January 16, 2026 direction in *Samuelson-Glushko v. Apple Canada Inc. et al.* (CT-2025-007), the August 18, 2024 direction in *JAMP Pharma Corporation v. Janssen Inc.* (CT-2025-006), and the parties' agreement in *8X Labs Inc. v. Vistar Media Inc.* (CT-2025-006).

Respectfully submitted,

Linda Plumpton

LP:MC

cc: James Gotowiec, Colette Koopman and Martha Cote (Torys LLP)
David Sterns, Adil Abdulla and Maria Arabella Robles (Sotos LLP, counsel for the Applicant)