PUBLIC

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March 23, 2026

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Our file 72439.1

Registry of the Competition Tribunal
90 Sparks Street, Suite 600
Ottawa, ON K1P 5B4

Re: 8X Labs Inc. v Vistar Media, Inc. – CT-2025-006 (the "Proceeding")
Informal Motion to Adduce Reply Evidence and for Leave Under Rule 82 of the Federal Court Rules

Dear Registrar,

I. INTRODUCTION

1. We are co-counsels to 8X Labs Inc. ("8X" or the "Applicant"), in the Proceeding. This informal motion is filed pursuant to the Direction of the Tribunal dated March 13, 2026, which permitted the Applicant to serve and file an informal motion to adduce reply evidence on its section 103.1 application by March 23, 2026.

2. The Applicant seeks two forms of relief through this motion:

   (a) **Leave to file reply evidence:** The Applicant requests leave to file the proposed Supplemental Affidavit of Frédéric Dionne (the "Supplemental Affidavit"), attached hereto in draft, in reply to the Affidavit of Scott Mitchell sworn March 6, 2026 (the "Mitchell Affidavit") and the Affidavit of Jordan Fraser sworn March 6, 2026 (the "Fraser Affidavit"), which were filed with Vistar Media Inc. (the Respondent") written representations on or about March 10, 2026.

   (b) **Leave under Rule 82 of the Federal Rules:** The Applicant requests leave, pursuant to Rule 82 of the Federal Court Rules, SOR/98-106 (the "Federal Rules"), applicable to these proceedings under Rule 34(1) of the Competition Tribunal Rules (SOR/2008-141), for Mr. Dionne to have deposed to the Affidavit of Frédéric Dionne sworn November 27, 2025 (the "Initial Affidavit") and, if the Tribunal grants leave to file the Supplemental Affidavit, for Mr. Dionne to depose to the sworn version thereof, and for counsel to present argument in the written representations based thereon.

3. The Supplemental Affidavit attaches three exhibits: (i) a video recording of the June 25, 2024 video call between Mr. Dionne, Mr. Mitchell and Ms. Witt (the "Video Recording")[1]; (ii) an email from Mr. Jesse Galal of Ads Alfresco dated September 17, 2020[2]; and (iii) an email from Mr. Jesse Galal of Bulletin dated October 30, 2023[3]. The proposed draft Supplemental Affidavit is 16 paragraphs in length and is accompanied by this informal motion.

4. The Applicant respectfully brings the Rule 82 of the Federal Rules leave request as part of this informal motion rather than deferring it to its written representations in reply under Rule 120 of the Competition Tribunal Rules, SOR/2008-141 (the "Rules"). The Respondent has argued at paragraphs 60–63 of its Memorandum of Fact and Law that the Initial Affidavit of Mr. Dionne is inadmissible under Rule 82 of the Federal Rules and that the application for leave under Section 103.1 of the Competition Act, R.S.C. 1985, c. C-34 (the "Act") should be dismissed on this basis alone. Given the gravity of this challenge—which, if accepted, would eliminate the Applicant's entire evidentiary foundation—the Applicant submits that it would be imprudent and prejudicial to defer the Rule 82 issue to the written representations. The Tribunal should have the benefit of the Applicant's position on this threshold issue at the earliest opportunity, and combining the Rule 82 request with the present motion promotes the efficient and fair disposition of both procedural questions.

II. THE LAW

A. Reply Evidence at the Leave Stage

5. Rule 120 of the Rules, provides that the person making an application for leave under section 103.1 of the Act may serve a reply on each person against whom an order is sought and on the Commissioner within seven days after being served with the representations in writing under Rule 119[4].

6. While Rule 119(3) governs the Respondent's right to adduce affidavit evidence with leave of the Tribunal, the Rules do not expressly address the Applicant's right to adduce reply affidavit evidence in response to a Respondent's affidavits filed under Rule 119(3). However, the Tribunal retains inherent jurisdiction to manage its proceedings fairly and efficiently, including the discretion to admit evidence that is necessary to ensure a complete and accurate evidentiary record for its screening function.

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[1] Draft Supplemental Affidavit, Exhibit SA-1.

[2] Draft Supplemental Affidavit, Exhibit SA-2.

[3] Draft Supplemental Affidavit, Exhibit SA-3.

[4] A different scheduling timeline was approved by a direction of the Tribunal on December 23, 2025, Registry Document No. 12.

7. In recent decisions[5], the Tribunal established the framework for admitting responding affidavit evidence at the section 103.1 leave stage. The Tribunal held that the moving party must demonstrate:

   (a) the existence of specific facts and circumstances justifying the filing of affidavit evidence;

   (b) the evidence must pertain to narrowly-defined issues or discrete facts, not wide-ranging issues;

   (c) the evidence must be factual, not expert evidence, and tailored to negate or respond directly to the other party's factual allegations; and

   (d) the evidence must be necessary to the written representations and of assistance to the Tribunal in its screening function.

8. Notably, in the JAMP Affidavit Order[6], the Tribunal confirmed and applied these principles, emphasizing that the section 103.1 application is a "screening process meant to be decided expeditiously and not on the basis of a full evidentiary record". The Tribunal noted that providing draft affidavits assists in determining the scope of proposed evidence[7].

9. Critically, the Tribunal has consistently held that its role at the leave stage is a screening function based on the sufficiency of credible and objective evidence. As the Federal Court of Appeal stated in the Symbol Technologies decision[8], "the threshold for an applicant obtaining leave is not a difficult one to meet. It needs only provide sufficient credible evidence of what is alleged to give rise to a bona fide belief by the Tribunal." The evidence must be credible, cogent, and objective to support this screening function.

B. Rule 82 of the Federal Rules

10. Rule 82 of the Federal Rules provides:

> *Except with leave of the Court, a solicitor shall not both depose to an affidavit and present argument to the Court based on that affidavit.*

11. Rule 82 applies to Competition Tribunal proceedings by virtue of Rule 34(1) of the Competition Tribunal Rules, which provides that where an issue is not addressed by the Competition Tribunal Rules, the Federal Rules may be followed.

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[5] *Audatex Canada, ULC v. CarProof Corporation*, 2015 Comp. Trib. 13 [***Audatex Affidavit Order***]; *Audatex Canada, ULC v. CarProof Corporation*, 2015 Comp. Trib. 28 [***Audatex Leave Decision***]; *CarGurus, Inc v Trader Corporation*, 2016 Comp. Trib. 12 [***CarGurus Affidavit Order***]**;** *JAMP Pharma Corporation v Janssen Inc., 2024 Comp Trib 4* [***Jamp Affidavit Order***]; *Alexander Martin v Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc., and Apple Canada Inc.*, 2025 Comp Trib 12.

[6] JAMP Affidavit Order, para 8, in reference to the Audatex Affidavit Order.

[7] JAMP Affidavit Order, para 11, in reference to the Audatex Affidavit Order.

[8] *Symbol Technologies Canada v. Barcode Systems Inc.*, [2005] 2 F.C.R. ("*Symbol*"), para 17.

12. The Respondent raises Rule 82 in its Memorandum of Fact and Law at paragraphs 60–63, arguing that the Initial Affidavit of Mr. Dionne should not be admitted because Mr. Dionne is counsel in this matter. The Respondent argues that "[t]here is no basis to exempt Mr. Dionne from the normal standard applied to counsel" (para 63) and that the application should be dismissed on this basis alone.

13. Notably, the Respondent's argument omits any reference to the leave mechanism that is the defining feature of Rule 82. Rule 82 does not prohibit a solicitor from deposing to an affidavit and presenting argument—it provides that this may be done *with leave of the Court*. The opening words "Except with leave of the Court" are not surplusage; they reflect the drafters' recognition that circumstances will arise in which a solicitor must provide an affidavit, and they establish a mechanism to address those circumstances. The Applicant now seeks that leave.

III. THE SUPPLEMENTAL AFFIDAVIT MEETS THE TEST FOR ADMISSIBILITY

A. The evidence responds to discrete new factual claims

14. The Supplemental Affidavit responds to specific, identifiable factual claims raised for the first time in the Mitchell Affidavit and the Fraser Affidavit. The Applicant could not have reasonably anticipated these claims when filing the Initial Affidavit on November 27, 2025, as the Respondent's affidavits were only authorized by the Tribunal's Order of February 24, 2026[9], and filed in their final form on March 10, 2026. The new factual claims and the corresponding evidence are set out in the following table:

New Claim in Respondent's Affidavits	Supplemental Affidavit Response	Exhibit
Mitchell Aff., para 46: Vistar proposed "bespoke terms" as a "good faith" compromise	Suppl. Aff., paras 4–7: Video Recording shows no genuine proposal was made; decision was pre-made	SA-1
Mitchell Aff., para 25: Vistar never required use of its ad server to access SSP	Suppl. Aff., paras 5, 7(c): Video Recording shows Mitchell explicitly conditioned SSP access on licensing Vistar's ad server	SA-1
Mitchell Aff., para 47: 8X rejected Vistar's proposal and was hostile	Suppl. Aff., paras 4, 7(a)–(b): No proposal to reject; 8X referenced legal rights only after refusal	SA-1
Fraser Aff., para 17: 8X represented it would operate as media owner	Suppl. Aff., paras 9–10: Vistar was fully aware of 8X's business model as technology provider	Exh. 19–21 of Initial Aff.
Fraser Aff., para 38: Vistar would not invest resources to support 8X's CMS	Suppl. Aff., para 12: 8X CMS already fully onboarded and operational on Vistar's platform	N/A (facts in evidence)
Mitchell Aff., para 45: 8X had no sales team; limited, undesirable inventory	Suppl. Aff., paras 13–16: 8X had experienced sales professionals; third-party emails confirm inventory was highly valued	SA-2; SA-3

[9] *8X Labs Inc.* v *Vistar Media Inc.*, 2026 Comp Trib 8, Registry document no. 34.

B. The evidence is narrowly-defined and factual

15. The Supplemental Affidavit is strictly limited to factual evidence responding to the discrete claims identified above. It does not introduce new legal theories, expert opinions, or wide-ranging evidence about the digital-out-of-home ("DOOH") market. The three exhibits are: (i) the Video Recording, which is an objective, contemporaneous record of the key interaction at issue; and (ii) two brief business emails from a third party confirming the value of 8X's inventory, directly responsive to Mr. Mitchell's new characterization of that inventory as undesirable.

C. The evidence is necessary for the Tribunal's screening function

16. The Video Recording is critical evidence for the Tribunal's screening function. Without it, the Tribunal would be asked to assess the *bona fide* credibility of the Applicant's claims regarding the June 25, 2024 call based solely on competing sworn statements—Mr. Dionne's account in the Initial Affidavit versus Mr. Mitchell's materially different account in the Mitchell Affidavit. The Video Recording resolves this evidentiary conflict objectively. It is precisely the kind of credible, cogent, and objective evidence that the Tribunal requires at the screening stage.

17. The screening function under section 103.1 requires the Tribunal to form a *bona fide* belief based on sufficient credible evidence. Where the Respondent has been permitted to adduce affidavit evidence under Rule 119(3) that directly contradicts the Applicant's sworn evidence on material facts, fairness and the interests of justice require that the Applicant be permitted to file narrowly-targeted reply evidence to correct the record. To hold otherwise would mean that the Respondent's uncontradicted sworn statements—which the Applicant alleges are false and misleading—would be accepted at face value at the screening stage, potentially resulting in the dismissal of a meritorious application.

IV. LEAVE UNDER RULE 82 SHOULD BE GRANTED

18. The Respondent argues at paragraphs 60–63 of its Memorandum of Fact and Law that the Initial Affidavit of Mr. Dionne should not be admitted under Rule 82 because Mr. Dionne is counsel in this matter. The Respondent concludes that "[t]he Dionne Affidavit should not be admitted and the application for leave should be dismissed on this basis" [10]. Respectfully, this argument fundamentally misconstrues Rule 82.

A. Rule 82 provides a leave mechanism — it is not an absolute bar

19. The most significant feature of Rule 82 is its opening clause: "*Except with leave of the Court*." These words are not decorative. They establish a gateway through which a solicitor may, with judicial approval, both depose to an affidavit and present argument. The Respondent's memorandum makes no reference to this leave mechanism—a remarkable omission, as it is the very mechanism the Applicant now invokes.

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[10] Memorandum of Facts and Law of the Respondent, para 63.

20. The purpose of Rule 82 is not to prevent solicitors from providing evidence in all circumstances. Rather, Rule 82 addresses a specific concern: the risk that a single lawyer will simultaneously occupy the roles of witness and advocate, potentially (a) compromising counsel's professional objectivity; (b) placing counsel's credibility in issue before the trier of fact; and (c) creating confusion between evidence and argument. These concerns are addressed when leave is sought and appropriate safeguards are in place.

21. As the Respondent itself acknowledges, courts are "reluctant to accept or give weight to evidence where an affidavit addresses matters in dispute or expresses opinions"[11]. The operative word is "*reluctant*"—not "prohibited." The court's remedy may be reduced weight, depending on the circumstances, but not automatic exclusion. This confirms the modern approach: where a solicitor's affidavit is necessary, the evidence is admitted and given the weight it deserves, taking into account the affiant's role and the circumstances of the case.

B. Mr. Dionne was the only person with personal knowledge of the material facts

22. The circumstances of this case present the paradigmatic situation contemplated by Rule 82's leave mechanism. Mr. Dionne is not a typical lawyer who happened to swear an affidavit on a point of substance. He was the Chief Executive Officer of 8X Labs Inc. from its founding until December 1, 2024, when the company was acquired by Retail Fluent, a U.S. company. The Canadian assets (mainly customer contracts) were sold the following day, on December 2, 2024[12].

23. During the entirety of the relevant period, Mr. Dionne was the individual who:

(a) managed 8X's business operations, including all relationships with customers as well as suppliers such as Vistar;

(b) personally participated in the June 25, 2024 video call with Vistar's representatives;

(c) personally oversaw discussions with Vistar on behalf of 8X regarding the access to Vistar's SSP;

(d) had direct knowledge of 8X's customer relationships, technology platform, and the impact of Vistar's conduct on 8X's business, both in Canada and in the U.S.; and

(e) oversaw the strategic decisions that followed, including the eventual sale of 8X's Canadian assets.

24. As both CEO and in-house counsel of a small technology company, Mr. Dionne occupied a unique position in which these roles were necessarily combined. 8X was not a large corporation with separate legal and executive departments. Mr. Dionne was the company's operational leadership. **No other person at 8X had**

[11] *Mobile Telesystems Public Stock Company v. Canada (Attorney General)*, 2025 FC 181, para 28.

[12] Initial Affidavit, para 204, 208.

the comprehensive knowledge of the business relationships, supplier interactions, and competitive dynamics necessary to provide a complete evidentiary record. The Respondent has not identified any alternative affiant—because none exists.

25. The necessity of Mr. Dionne's evidence is underscored by a simple but dispositive observation: the Respondent cannot have it both ways. It cannot demand that the Applicant's evidence be based on direct personal knowledge rather than hearsay, while simultaneously arguing that the only person with that direct personal knowledge—Mr. Dionne—should be barred from providing it[13]. Excluding Mr. Dionne's affidavit under Rule 82 would not improve the quality of 8X's evidence; it would eliminate it entirely. This would be contrary to the interests of justice and to the purpose of the leave mechanism that Parliament has established under section 103.1 of the Act.

C. Co-counsel has been retained to handle all advocacy

26. The recognized solution to the Rule 82 concern is exactly what the Applicant has implemented: the appointment of co-counsel to handle the advocacy functions. LCM Attorneys Inc. has been retained as co-counsel in this matter for the express purpose of ensuring that the proceedings are not affected by any dual-role concern.

27. Because the application for leave will be determined on written representations alone—there is no oral hearing—the advocacy function is limited to the preparation and filing of written submissions and co-counsel will intervene in any circumstance where the Tribunal requires separation of the witness and advocate roles, as such may be directed by the Tribunal from time to time given the circumstances of the case.

28. With co-counsel in place, the dual-role concern that underlies Rule 82 is fully addressed. Mr. Dionne provides the factual evidence (as the former CEO with direct personal knowledge), while co-counsel handles the advocacy. The integrity of both functions is preserved. This is precisely the arrangement that Canadian courts have accepted as the appropriate solution to Rule 82 situations.

D. The leave stage context favors granting leave

29. The Rule 82 analysis must be situated within the specific procedural context of this proceeding. This is a leave application under section 103.1 of the Act — a screening mechanism with a lower evidentiary threshold than a full hearing. As the Tribunal recognized in *JAMP*, the section 103.1 application is "a screening process meant to be decided expeditiously and not on the basis of a full evidentiary record."[14]

30. At the leave stage, the Tribunal's role is to determine whether there is sufficient credible evidence to give rise to a *bona fide* belief that the conditions for a Tribunal

[13] Memorandum of Facts and Law of the Respondent, paras 64-73.

[14] *Supra*, note 6.

order are met. The Tribunal is not making findings of fact, weighing competing evidence on the merits, or assessing the credibility of witnesses in the manner of a trial. In this context, the concerns that animate Rule 82—namely, that a trier of fact may be confused by a lawyer simultaneously acting as witness and advocate—are significantly diminished. There is no oral hearing. The Tribunal members are experienced adjudicators fully capable of distinguishing between the factual content of Mr. Dionne's affidavit and the legal arguments advanced in the written representations.

31. The Competition Tribunal has also expressly recognized that information will necessarily be incomplete at the leave stage. In the CarGurus decision[15], the Tribunal stated: "I appreciate that there will inevitably be incomplete information on some topics at the application for leave stage." A rigid application of Rule 82 that eliminates the Applicant's entire evidentiary foundation would be inconsistent with this recognition and with the Tribunal's mandate to conduct an efficient screening function.

E. The Respondent's authorities are distinguishable

32. The Respondent relies on two authorities in support of its Rule 82 argument. Neither supports the exclusion of the Initial Affidavit of Mr. Dionne.

33. The Respondent cites the Federal Court of Appeal's Cross-Canada decision that "it is improper for a solicitor to compromise his independence by acting in a proceeding in which a member of his firm has given an affidavit on a point of substance."[16] However, *Cross-Canada* involved a typical litigation scenario where a law firm member swore an affidavit while the firm continued to act as advocates—and where an alternative affiant was available. The key distinction is that in *Cross-Canada*, the mixing of the witness and advocate roles was *unnecessary*. Here, it is *unavoidable*. Mr. Dionne is not an external litigation lawyer who improperly decided to swear an affidavit. He is the former CEO of the applicant company who also happens to be a lawyer, and no other person could have provided the evidence. Moreover, the appointment of co-counsel directly addresses the "compromised independence" concern that *Cross-Canada* was designed to prevent. Furthermore, in the same decision, the Federal Court of Appeal emphasised that "there will always be exceptions and all of the circumstances in a case must be taken into account"[17].

34. The Respondent cites paragraph 28 for the proposition that courts are "reluctant to accept or give weight to evidence where an affidavit addresses matters in dispute or expresses opinions."[18] This authority actually *supports* the Applicant's position. The court spoke of reluctance to give *weight* to such evidence—not of a prohibition against its admission. The appropriate remedy is not exclusion of the entire affidavit, but rather a careful weighing of its contents, depending on the circumstances of the case. The Tribunal is eminently capable of assigning

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[15] *CarGurus, Inc. v. Trader Corporation*, 2016 Comp. Trib. 15, para 76.

[16] *Cross-Canada Auto Body Supply (Windsor) Ltd. v. Hyundai Auto Canada*, 2006 FCA 133, para 7 ("Cross-Canada Decision"). Cited in para 62 of the Respondent's Memorandum of Facts and Law.

[17] Cross-Canada Decision, para 5.

[18] *Supra*, note 11, para 28. Cited in the Respondent's Memorandum of Facts and Law, para 62.

appropriate weight to different portions of the Initial Affidavit of Mr. Dionne, accepting the factual evidence based on Mr. Dionne's personal knowledge as CEO while it may give less weight to any statements that shade into advocacy or opinion, as the case may be.

F. The prejudice to the Applicant if leave is denied would be catastrophic and disproportionate

35. If Rule 82 leave is denied, the consequence is not merely the exclusion of a marginal piece of evidence. It is the elimination of the Applicant's *entire evidentiary foundation*. The Initial Affidavit of Mr. Dionne is the sole affidavit supporting the application for leave. Without it, the application has no factual basis whatsoever, and would necessarily fail. The proposed Supplemental Affidavit, which responds to specific false and misleading statements in the Respondent's evidence, would similarly be lost.

36. This result would be grossly disproportionate. Rule 82 is a procedural safeguard designed to protect the integrity of proceedings by preventing the conflation of the witness and advocate roles. It is not designed to be wielded as a weapon to deprive a party of its right to present any evidence at all. Where the procedural concern underlying the Rule is fully addressed—as it is here, through the co-counsel arrangement—denying leave would elevate procedural form over substantive justice and contravene both the Tribunal's statutory authority under subsection 9(2) of the Competition Tribunal Act to proceed "less formally and more expeditiously than a court, subject to procedural fairness," and its own mandate under Rule 2(1) of the Competition Tribunal Rules to "deal with all matters as informally and expeditiously as the circumstances and considerations of fairness permit." These principles were emphasized in the recent Alexander Martin decision[19].

37. Granting leave, by contrast, causes no prejudice to the Respondent. The Respondent is fully aware that Mr. Dionne is the affiant. It has had the opportunity to cross-examine the affidavit in its responding submissions and to challenge specific paragraphs on grounds of hearsay, opinion, or weight. Co-counsel LCM Attorneys Inc. will handle all advocacy. The integrity of the proceeding is fully preserved.

V. ADDRESSING ANTICIPATED OBJECTIONS

A. Timeliness of the reply evidence motion

38. The Respondent may argue that the Applicant should have filed this motion within seven days of the Tribunal's Order of February 24, 2026. However:

    (a) The final affidavits were not sworn until March 6, 2026, and not filed until on or about March 10, 2026. The Applicant could not identify the specific new claims requiring a response until it received the actual and final evidence;

    (b) Rule 120 provides that the Applicant may file a reply within seven days after being served with the representations in writing under Rule 119. This

[19] *Martin* v *Alphabet Inc. et al.*, 2026 Comp Trib 3, para 179, *inter alia*.

motion is filed in accordance with the timeline established by the Tribunal's Direction of March 13, 2026[20];

(c) The Applicant's co-counsel, Me Frédéric Dionne of Fred Dionne Légal Inc., who is also the principal affiant, was incapacitated due to illness for approximately two weeks preceding the CMC of March 12, 2026. Mr. Dionne's direct involvement was essential to the preparation of this motion and the Supplemental Affidavit, as he is the deponent and a direct participant in the events at issue; and

(d) The Tribunal's Direction of March 13, 2026, set March 23, 2026 as the deadline for this motion, implicitly acknowledging that the timing is appropriate.

B. The Video Recording should have been filed with the Initial Affidavit

39. When the Initial Affidavit was sworn on November 27, 2025, Mr. Dionne relied on his own recollection and notes to file of the June 25, 2024 call, which he believed to be a faithful and complete account. The Video Recording, which had been preserved in Mr. Dionne's digital files since the date of the call, was not initially submitted because Mr. Dionne did not anticipate that Mr. Mitchell would provide sworn statements materially contradicting his account. The Video Recording became necessary only after the Mitchell Affidavit introduced new claims regarding "bespoke terms," "good faith," and the denial of tying SSP access to SaaS licensing—claims that are objectively contradicted by the Video Recording.

40. As the Tribunal recognized in its Order of February 24, 2026 (2026 Comp Trib 8), the Respondent's affidavits were permitted because they responded to specific allegations in the Initial Affidavit. By the same logic, the Applicant's reply evidence should be permitted where it responds to specific new claims in the Respondent's affidavits.

41. With respect to Exhibits SA-2 and SA-3 (the Galal emails), the Applicant acknowledges that these documents predate the Respondent's affidavits. However, the Applicant did not need to adduce evidence of the value of its inventory in the Initial Affidavit because this was not a contested issue at that time. It only became necessary to adduce this evidence after Mr. Mitchell characterized 8X's media assets as "generally not desirable or in high demand."[21] The need for this evidence is new, even if the documents themselves are not.

C. Rule 82 leave was not raised at the CMC

42. The Applicant acknowledges that the Rule 82 leave issue was not raised at the Case Management Conference of March 12, 2026. However, this is not a bar to the relief sought:

(a) Under Rule 81(1) of the Competition Tribunal Rules, a party may bring an informal motion at any time by sending a letter to the registry and serving it on other parties. There is no requirement that a procedural issue must

[20] Direction to Counsel, Registry Document no. 47. Also see *Supra*, note 4.

[21] Mitchell Affidavit, para 45.

have been raised at a prior CMC before it can be the subject of a motion. The CMC is a case management tool, not a gate-keeping mechanism that precludes later procedural requests.

(b) The need for Rule 82 leave was crystallized by the Respondent's Memorandum of Fact and Law, which was filed on March 10, 2026—only two days before the CMC. Given the severity of the Respondent's Rule 82 challenge and the short timeframe between the filing of the Memorandum and the CMC, the Applicant's counsel was unable to fully assess and respond to the issue before the conference.

(c) Subsection 9(2) of the Competition Tribunal Act confers on the Tribunal the ability to proceed "less formally and more expeditiously than a court, subject to procedural fairness." Consistently, Rule 2(1) of the Competition Tribunal Rules empowers the Tribunal to "dispense with, vary or supplement" the application of its Rules "in order to deal with all matters as informally and expeditiously as the circumstances and considerations of fairness permit." Procedural flexibility is a hallmark of Competition Tribunal practice.

(d) Because the application for leave is determined on written representations alone (no oral hearing), the Rule 82 issue must be resolved through this motion before the Tribunal issues its decision. Filing now—rather than waiting for the Tribunal to potentially rule adversely on the Respondent's challenge—demonstrates good faith and gives the Tribunal a clear basis on which to address the issue.

D. No precedent for applicant reply evidence

43. The Applicant acknowledges that filing reply evidence with a supplemental affidavit at the leave stage may be a novel procedural step. However:

(a) The Tribunal has broad discretion under subsection 9(2) of the Competition Tribunal Act and Rule 34(1) of the Competition Tribunal Rules to address questions of practice and procedure not specifically provided for;

(b) The expansion of private access rights under the June 2024 amendments to the Act reflects Parliament's intent to strengthen private enforcement. Procedural rigidity that prevents applicants from responding to false or misleading affidavit evidence would undermine this legislative purpose;

(c) The principles of natural justice and fairness require that where a respondent has been permitted to adduce affidavit evidence introducing new factual claims contradicting the applicant's evidence, the applicant must have a fair opportunity to respond; and

(d) The Tribunal's Direction of March 13, 2026, expressly contemplates the filing of this motion.

VI. COMPLETENESS AND INTEGRITY OF THE EVIDENTIARY RECORD

44. Without the Supplemental Affidavit, the evidentiary record would be incomplete and potentially misleading. The Respondent's affidavits contain statements regarding the June 25, 2024 call that are contradicted by the Video Recording—an objective, contemporaneous record. If the Tribunal is denied access to this evidence, it will be asked to assess credibility of competing sworn accounts without the benefit of the objective evidence that resolves the conflict.

45. Without Rule 82 leave, the Applicant's entire evidentiary foundation—both the Initial Affidavit and the proposed Supplemental Affidavit—would be excluded. The application would fail not on its merits, but on a procedural technicality that is fully addressed by the co-counsel arrangement. This would be contrary to the interests of justice and to the purpose of the section 103.1 screening mechanism.

46. The interests of justice are served by ensuring the Tribunal has access to all relevant and material evidence for its screening function under this Proceeding. The Supplemental Affidavit is narrowly targeted, proportionate, and directly responsive to the Respondent's new claims. Rule 82 leave is warranted by the unique circumstances of Mr. Dionne's dual role as former CEO and counsel, the absence of any alternative affiant, and the co-counsel arrangement. Granting both forms of relief will not unduly lengthen the proceeding or transform the leave application into a merits hearing.

VII. RELIEF SOUGHT

47. The Applicant respectfully requests that the Tribunal:

(a) Grant leave to the Applicant to file the Supplemental Affidavit of Frédéric Dionne, in the form of the draft attached hereto, and the exhibits attached thereto, as reply evidence on its section 103.1 application, and direct that Mr. Dionne shall swear the Supplemental Affidavit and file it within such period as the Tribunal may determine;

(b) Pursuant to Rule 82 of the Federal Rules, applicable under Rule 34(1) of the Competition Tribunal Rules, grant leave for Mr. Frédéric Dionne to have deposed to the Affidavit of Frédéric Dionne sworn November 27, 2025, and for co-counsel to present argument in the written representations based thereon;

(c) In the event the Tribunal grants leave to file the Supplemental Affidavit pursuant to paragraph (a) above, grant leave under Rule 82 for Mr. Dionne to depose to the sworn version thereof, and for co-counsel to present argument in the written representations based thereon;

(d) In the alternative to paragraphs (a) through (c), grant leave to the Applicant to file such portions of the Supplemental Affidavit as the Tribunal considers appropriate and grant such Rule 82 leave as the Tribunal considers just; and

(e) Reserve the costs of this motion to the disposition of the section 103.1 application.

We are available to address any questions you may have about the foregoing.

Yours truly,

LCM ATTORNEYS INC.

David Quesnel

FRED DIONNE LÉGAL INC.

Frédéric Dionne

c.c. Bennett Jones LLP, counsel to the Respondent
Dylan Yegendorf
Emrys Davis
Ethan Schiff

Encl. Draft Supplemental Affidavit of Frédéric Dionne
Exhibit SA-1: Video Recording (secured hyperlink)
Exhibit SA-2: Email from Jesse Galal (Ads Alfresco) dated September 17, 2020
Exhibit SA-3: Email from Jesse Galal (Bulletin) dated October 30, 2023
Password Letter (filed under separate cover)