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COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

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By E-Mail: tribunal@ct-tc.gc.ca

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

Dear Registry Officer:

Re: 8X Labs Inc. v. Vistar Media Inc., File No. CT-2025-006

We are counsel to Vistar Media Inc. (**Vistar**) in the subject application by 8X Labs Inc. (**8X**), pursuant to section 103.1 of the *Competition Act*, RSC, 1985, c C-34 (the [Competition Act](#)) (the **Application**).

Please accept this letter as Vistar's response to 8X's informal motions dated March 23, 2026, for leave to (a) file a new affidavit of Frédéric Dionne (the **Proposed Second Dionne Affidavit**), and (b) to rely upon a solicitor's affidavit under Rule 82 of the *Federal Court Rules*, SOR/98-106 (the [FCR](#)) in the underlying Application.

In summary, Vistar:

1. Does not object to the Tribunal permitting 8X to file the Proposed Second Dionne Affidavit on the conditions described in this letter, including that Vistar is granted leave to file the attached brief Supplementary Memorandum of Fact and Law (the **Supplement**) to address the prejudice to Vistar in having delivered its responding submissions without the benefit of 8X's proposed reply evidence; and
2. Submits that the ultimate admissibility of Mr. Dionne's evidence, including whether leave should be granted under Rule 82 and whether the Proposed Second Dionne Affidavit should be considered at all, should be decided at the same time as and with the context provided by the Application.

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Vistar has been prejudiced by 8X's late request for leave to file reply evidence

As also described in paragraph 14 of the Supplement, 8X relies on the test for leave to file responding evidence, not *reply* evidence. When the correct test is considered, it is apparent that 8X cannot meet it:

1. The proposed reply evidence was available to 8X when it filed its initial evidence;
2. The proposed reply evidence does not assist the Tribunal because it does not add anything to the existing evidence (as described in the Supplement, the evidence entirely corroborates Mr. Mitchell's evidence, essentially adding nothing to the record); and
3. 8X's failure to file this evidence earlier and its delay in announcing its intention to seek leave to file reply evidence has prejudiced Vistar:
 - The request to file reply evidence ought to have been delivered – or at least announced – after the Tribunal's decision granting leave to file Vistar's responding evidence on February 24, 2026. While 8X has argued that Mr. Dionne's personal circumstances kept him from dealing with this matter until 8X received Vistar's responding submissions,¹ his co-counsel could have easily advised that 8X intended to seek leave to deliver reply evidence. Had they done so, the parties and the Tribunal could have adjusted the schedule to accommodate such a motion in advance of Vistar's responding written submissions. No such communication was made. Vistar has now been prejudiced by delivering its arguments based on a potentially incomplete evidentiary record.

Although 8X cannot meet the test for leave to file reply evidence, Vistar does not object to the Tribunal receiving the Proposed Second Dionne Affidavit, so long as:

1. Vistar is given leave to file the Supplement to mitigate the prejudice caused by 8X's delay in seeking leave:
 - This condition is fair and reasonable because the lateness of 8X's request means that Vistar has not had an opportunity to provide submissions on 8X's proposed reply evidence. While Vistar could have requested leave to file sur-reply submissions, such a request would only lengthen what has already become a protracted process.

¹ See 8X's Informal Motion dated March 23, 2026, para. 38.

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2. Questions of the final admissibility of the Proposed Second Dionne Affidavit are decided in the context of the Application:
 - This condition is fair and reasonable because certain elements of the leave test, such as whether the evidence will assist the Tribunal, are best considered in the context of the full Application now that it has been nearly fully briefed;
 - As well, as described in Vistar’s Memorandum of Fact and Law and the enclosed Supplement, Mr. Dionne’s evidence suffers from numerous disqualifying failures that affect its admissibility (including that some of the evidence appears to have been collected in breach of Quebec’s privacy laws). These issues are properly considered in the context of the full Application;
 - Indeed, the Courts have repeatedly affirmed that the admissibility of evidence should only exceptionally be determined at an interlocutory stage.² 8X has not advised of any exceptional circumstances (and there are none). The Tribunal has discretion to defer such requests until the hearing of the Application.³

Separately, confidential designation should continue to apply to the video attached as an exhibit to the Proposed Second Dionne Affidavit. As explained in the Supplement, 8X’s recording of the video likely violated Quebec’s Act respecting the protection of personal information in the private sector, CQLR c P-39.1 because it captured individuals’ biometric data without their consent. The video can be transcribed for filing purposes if necessary.

The admissibility of 8X’s evidence under Rule 82 should be decided at the same time as the Application, not before

8X’s informal motion for leave under Rule 82 should not be decided in advance of the Application. As described above, the Tribunal has discretion to defer adjudication on questions of admissibility to the hearing of the Application.

Such a deferral is particularly appropriate here given that the Application has been nearly fully briefed and is at the precipice of decision. If 8X wished to have its motion decided in advance of the Application, 8X ought to have sought leave under Rule 82 at the outset of this proceeding. It has provided no explanation for its failure to do so. Indeed, 8X now claims to have structured its representation with Rule 82 in mind, with Mr. Dionne providing evidence and LCM providing the written advocacy. The Supplement describes the reasons to question this late-breaking asserted division. But if accepted, this intentional division reinforces that 8X knew at the outset of this Application that leave was required under Rule 82 and that it failed to seek leave in a timely fashion. It cannot now complain about the issue being decided in the context of the full Application.

² See, e.g., *Canada Post Corp v. Canada (Minister of Public Works and Government Services)*, [2002 FCT 1327](#), para 20. Preliminary determinations of admissibility “should be used with great restraint” per *McCain Foods Limited v. J.R. Simplot Company*, [2023 FC 1480](#), para 24.

³ *Vancouver Airport Authority – Order relating to the motion by Vancouver Airport Authority objecting to the admissibility of certain proposed evidence*, [2018 CACT 15](#), para 15.



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Deferral is also appropriate given the many other admissibility issues presented by Mr. Dionne's evidence, such that the admissibility of his evidence should be considered in whole as opposed to piecemeal. Indeed, many of the admissibility issues described in Vistar's responding submissions reinforce why affidavits from counsel are discouraged and why leave under Rule 82 should not be granted in these circumstances.

In the alternative, if the Tribunal wishes to determine the substance of 8X's informal motion before the Application, Vistar relies on the submissions regarding the admissibility of Mr. Dionne's first affidavit, contained at paragraphs 61-63 of Vistar's Memorandum of Fact and Law, delivered March 10, 2026, as well as the submissions contained in the enclosed Supplement.

Yours truly,

BENNETT JONES LLP



Emrys Davis

ECD:nb

cc: Ethan Schiff, Dylan Yegendorf, *Bennett Jones LLP*
Sebastien Caron & David Quesnel – *LCM Attorneys Inc.*
Frederic Dionne – *Fred Dionne Legal Inc.*

Encl. Supplementary Memorandum of Fact and Law of the Respondent, Vistar Media Inc., dated April 2, 2026