

February 5, 2021

David Harding
Senior Competition Law Officer
Competition Bureau
50 Victoria Street
Gatineau, Quebec K1A 0C9

Dear Mr. Harding:

Re: TekSavvy Solutions Inc. (“TekSavvy”) Complaint to Commissioner of Competition

On January 20, 2020, TekSavvy wrote the Bureau advising that Bell and Rogers were abusing their dominant position in wholesale and retail markets for broadband internet service in Ontario and Quebec. On February 20, 2020, TekSavvy followed up with a 57-page Complaint, detailing Bell and Rogers’ abuse.¹ Since then, at the Bureau’s request, TekSavvy has provided significant additional information, including by way of an RFI Response and, most recently, by way of its December 4, 2020 submission. The facts relied on by TekSavvy in support of its Complaint are largely uncontroverted, including the fact that Bell and Rogers:

- charge TekSavvy and other wholesale-based competitors (WBCs), on a regular and ongoing basis, grossly inflated wholesale rates; and
- target TekSavvy and other WBCs with fighting brand retail prices below the inflated wholesale costs they were imposing on TekSavvy and other WBCs.

As detailed in TekSavvy’s December 4, 2020 submission, Bell and Rogers’ anti-competitive conduct, has “disciplined” TekSavvy and other WBCs, forcing them to raise their retail prices. As a consequence of Bell and Rogers’ conduct, competition in retail markets for home internet service in Ontario and Quebec has been substantially lessened and consumers in those markets are being forced to pay higher prices for internet service. Of course, the Bureau need not (in fact, *should* not) come to a definitive determination regarding any of these matters at this time. Rather, the “reason to believe” standard in section 10 of the *Competition Act* (Act) having been met, the Bureau should forthwith commence an inquiry “with the view of determining the facts.”

Since the Complaint was filed, TekSavvy has asked the Bureau from time to time for an indication of where its investigation stands. Drawing on s. 29 of the Act, the Bureau has refused to provide TekSavvy with even the most general indication of the status of its investigation, instead requesting ever more information from TekSavvy. Section 29 of the Act limits the Bureau’s ability to share certain classes of information, but as a matter of law, it does not foreclose communications in respect of the status of an investigation. TekSavvy submits that where companies, like TekSavvy, invest substantial time and money in bringing matters in good faith to the Bureau’s attention, it is incumbent on the


¹ <https://www.teksavvy.com/wp-content/uploads/2020/02/PUBLIC-TekSavvy-Complaint-02202020.pdf>

Bureau to provide some meaningful indication of where a matter stands and move beyond the formalism of “we are taking the complaint seriously” and “the investigation is ongoing”.

TekSavvy asks:

- What is the status of the Bureau’s investigation in this matter?
- What steps has the Bureau taken to move the investigation forward, beyond seeking information from TekSavvy and other WBCs?
- Is the Bureau seeking additional information to assist it in determining whether the reason to believe standard has been met; and, if not, one year on, when will the Bureau make a decision regarding whether or not to initiate an inquiry?

Yours truly,


John Syme

Matthew Boswell, Commissioner of Competition

Excerpts from Remarks, Vancouver Competition Policy Roundtable, January 26, 2021²

Comprising a significant portion of Canada’s private-sector employment, small- and medium-sized firms are often the upstarts that drive competition in markets across Canada, challenging entrenched incumbents, and sometimes disrupting entire industries. If Canada’s small- and medium-sized businesses fail, we lose vital economic activity today, and more dynamic markets tomorrow.

...

Thanks to the pandemic, the consequences of the “digital divide” have never been clearer. In response to vital public health measures, many firms have had to rapidly shift their business models to a more digital focus. To make that shift successfully, those businesses need reliable, affordable access to Canada’s networks. For this reason, the Bureau will continue its vigilance and advocate for increased competition in Canada’s telecommunications markets.

...

Canada should stay the course on its commitment to the principles of competition. During a crisis, it is tempting to believe that relaxing the principles of competition will ease economic stressors and support recovery, but experience shows the opposite is true. More than ever, Canadians need the protection and benefits that competition provides. This is especially true in sectors like telecommunications and digital markets, which are critical to the success of Canadian businesses, workers and students.

cc. Kyle Mitchell, VP, Corporate & Legal Affairs, TekSavvy Solutions Inc.

² <https://www.canada.ca/en/competition-bureau/news/2021/01/2021-vancouver-competition-policy-roundtable-speech.html>