



**WE'RE DIFFERENT.  
IN A GOOD WAY.**

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**Filed via My CRTC Account**

Mr. Claude Doucet, Secretary General  
Canadian Radio-television and Telecommunications Commission  
1 Promenade du Portage  
Gatineau, Quebec J8X 4B1

11 February 2019

**RE: TekSavvy Reply in Report regarding the retail sales practices of Canada's large telecommunications carriers, Telecom and Broadcasting Notice of Consultation CRTC 2018-246, 16 July 2018** ("TBNC 2018-246" or the "Notice")

Dear Mr. Doucet:

1. TekSavvy Solutions Inc. ("TekSavvy") is an independent Internet and voice service provider based in Chatham, Ontario, and Gatineau, Quebec. TekSavvy provides Internet and voice services over:
  - wholesale DSL and cable network access provided by third parties in provinces across Canada; and
  - self-supplied fixed-wireless network access, in southwestern Ontario.
2. TekSavvy believes in doing what is right for our customers and strives to treat consumers fairly and honestly. We advertise the best available price, so that our best offer is transparent to both consumers and the competitive market. TekSavvy's services are sold on a pre-paid basis, with no fixed-term contract. Additionally, TekSavvy does not use any sales incentives, targets, or rewards to pressure employees to complete sales.
3. TekSavvy's intervention in this proceeding offered a wholesale-based competitor perspective on misleading and aggressive retail sales practices, highlighting the competitive impact of misleading and aggressive claims directed at wholesale-based competitors' end-users. We detailed scenarios of inappropriate, misleading, and aggressive incumbent sales practices targeting TekSavvy's end-users during wholesale-based installation and repair appointments, or providing misleading information about TekSavvy as a competitor. We called for the Commission to:
  - seek all records of any incentives or rewards (monetary or other) offered by incumbents to encourage technicians, whether employees or third parties, to complete retail sales during a third-party installation or repair appointment;

- seek all training materials, sales materials, incentive materials, including policies that address inappropriate sales in wholesale provider contexts;
- seek all training materials, sales materials, incentive materials, including policies, scripts, and rebuttal scripts that address inaccurate and misleading claims about competitor service providers and the quality and performance of their services;
- request information from incumbents about how much competitor end-user information is made available to agents, technicians, third parties, and other incumbent representatives, and what safeguards are in place to ensure that they do not use that information in violation of CSG rules; and
- consider measures to clarify to consumers that flanker brands are extension of incumbents' primary brands, and examine whether flanker brands ought to be able to compete without the limitations of wholesale rates and wholesale processes that competitor ISPs are subject to.

**Wholesale competition is distorted and harmed by misleading and aggressive sales practices**

4. Though incumbents argue that the current competitive marketplace is sufficient to protect consumers from misleading and aggressive sales practices,<sup>1</sup> consumers are harmed where unfair pressure or aggression is used to complete a sale or upsell, where misleading or false statements about competitors are used to win a customer, or where consumers experience unsolicited sales in their own home when they are expecting service installation or repair.
5. The Commissioner of Competition states: "Market forces are the best way to determine how products should be provided, and should be deviated from only in exceptional circumstances where there is documented evidence that market-based competition would run counter to a regulator's policy objectives."<sup>2</sup> The Fair Communications Sales Coalition ("FCSC") suggests that market forces are insufficient, and that existing consumer protection safeguards are largely "laissez-faire, market-driven, and buyer beware."<sup>3</sup>
6. The competitive marketplace is distorted and disproportionately harms competitors without market power when misleading and aggressive sales practices occur from opportunities that arise when incumbents have a conflict of interest. As described in our intervention, incumbents have a conflict of interest when they control wholesale inputs, including dispatching technicians to install service for a wholesale-based provider's

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<sup>1</sup> Bell in its Intervention at para. 45 argues that the "single most effective form of consumer protection" is "the highly competitive telecommunications market place in which customers are free to switch providers in the event they are dissatisfied." Similarly, Rogers in its Intervention at para. 5 states that any issues are a reflection of the complexity that exists "within Canada's competitive telecommunications and broadcasting distribution industry."

<sup>2</sup> Interim Commissioner of Competition Intervention, 30 August 2018, para. 27.

<sup>3</sup> Fair Communications Sales Coalition Intervention, 30 August 2018, para. 232.

customer, and they compete with their wholesale customers for the same retail customer.

7. TekSavvy noted with interest Bell's description of how complex it is to sell communications services.<sup>4</sup> Rogers similarly notes the complexity of the telecommunications and broadcasting distribution industry.<sup>5</sup> This complexity is multiplied for competitive ISPs like TekSavvy, where there is a wholesale-based underlying provider that controls inputs like wholesale rates, installation and repair schedules, and performance of the installation and repair. When incumbents' employees cross the line and push retail sales or make inappropriate statements about competitors' services when they ought to be solely performing a wholesale function, competitors' ability to sell and explain its own services to consumers becomes even more complicated. This disproportionately impacts competitors' ability to compete effectively against dominant incumbent players.

**Internal Codes are insufficient to address misleading or aggressive sales targeted at competitors, such as wholesale-based providers**

8. Incumbents submitted internal Codes of Conduct and sales training documents as evidence that misleading or aggressive sales are not condoned, with potential consequences for code breaches.
9. For example, Bell states that its Bell Code of Business Conduct applies to "everyone at Bell".<sup>6</sup> While not explicitly stated, TekSavvy infers that Bell's technicians who perform wholesale-based provider installations and repair appointments are bound by Bell's Code of Business Conduct.
10. Rogers states: "field sales agents are required to complete a tailored Code of Conduct training (specific to in-person interactions) at orientation, which highlights the expectations regarding ethical sales interactions."<sup>7</sup> However, Rogers does not specify whether this Code of Conduct or training would be applicable to employees that are not purely in a sales function, who might have the opportunity to sell during field interactions with customers. For example, Rogers' technicians perform wholesale-based provider installations and repair appointments, which have been inappropriately used as sales opportunities described in TekSavvy's intervention.
11. Bell excerpted section 2.11.1 of its Bell Code of Business Conduct in relation to how its agents portray or may make statements about competitors or end-users' decisions about competitors:

The Code states that behaving competitively means that we:

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<sup>4</sup> Bell Intervention, para. 2 lists 15 examples of things its agents must understand and be able to explain to customers about its Internet services.

<sup>5</sup> Rogers Intervention, para. 5.

<sup>6</sup> Bell Intervention, para. 6.

<sup>7</sup> Rogers Intervention, para. 49.

- **Do not** portray a competitor to the public or to a customer in an inaccurate, misleading, disparaging or unfair manner or in a way contrary to laws that govern competitive business practices.
  - **Do not** state as fact our understanding of a competitor's price information as that information may be out of date and incomplete.
  - **Do not** behave disrespectfully toward a customer who has decided to purchase a competitor's products or services; rather we rigorously promote and provide high-quality service for any other product we may supply to this customer.<sup>8</sup>
12. Bell goes on to suggest that to maintain trust, employees should “give customers the straight facts about their competitive choices.”<sup>9</sup> It’s not clear to TekSavvy how Bell purports to ensure that its employees are giving “straight facts” about “competitive choices.” In practice, these ostensible limits on claims provide an opportunity for Bell employees to compare Bell’s services to its competitors, with the underlying goal of marketing and selling Bell’s services. These rules can’t be seen as meaningful safeguards against misleading practices.
13. Since Bell’s Code applies to “all employees”, Bell’s Code ought have safeguarded against misleading or aggressive scenarios used to poach wholesale-based competitors’ customers, which were illustrated in our intervention:
- Scenario 1: an incumbent technician inappropriately offers to sell or sells incumbent services to a TekSavvy end-user during an installation or repair appointment for TekSavvy’s services; and
  - Scenario 2: an incumbent’s employee or third party, such as a sales representative or technician, makes a misleading and inaccurate statement about TekSavvy’s services.
14. Bell also outlines the potential consequences of a breach of its Code, from immediate discipline to possible civil or criminal prosecution.<sup>10</sup> Bell states that it monitors vendors and provides in-field coaching to agents when required.<sup>11</sup> Rogers submits that customer interactions for field sales are monitored with targeted audits.<sup>12</sup>
15. Given that TekSavvy continues to hear anecdotal reports from its end-users that incumbent technicians are inappropriately selling incumbent retail services during install and repair appointments, these Codes do not appear to sufficiently safeguard against misleading and aggressive sales practices targeting competitors. As described in our

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<sup>8</sup> *Ibid.* at para. 7.

<sup>9</sup> *Ibid.* at para. 8.

<sup>10</sup> *Ibid.* at para. 11.

<sup>11</sup> *Ibid.* at paras 30 and 32.

<sup>12</sup> Rogers’ Intervention, para. 49.

intervention, there do not appear to be any controls against technicians selling incumbent retail services and no remedy is available to TekSavvy.

### **Incentives for Technicians Performing Sales Functions Not Clear**

16. Bell states that their sales agents are compensated with commissions to motivate sales activations.<sup>13</sup> Rogers also offers sales agents commissions, bonus pay, and short-term incentive programs based on customer satisfaction, if sales agents meet a minimum threshold of their sales target.<sup>14</sup>
17. It is not clear whether these commissions are limited to agents in a pure sales role. For example, TekSavvy in its intervention described sales completed by technicians while attending a wholesale-based provider install or repair appointment. As raised by TekSavvy in its submission, end-users have anecdotally told us that technicians have a monetary incentive to switch an end-user to its retail services, or a monetary disincentive to complete a wholesale-based provider install. The Commission ought to clarify what incentives or rewards (monetary or other) are offered by incumbents to technicians, whether employees or third parties, who complete retail sales during a third-party installation or repair appointment.

### **Codes of Conduct to address misleading and aggressive sales and the CCTS**

18. The FCSC proposes that the Commissioner for Complaints for Telecom-television Services (“CCTS”) be granted the authority to resolve sales practices complaints and act to resolve a dispute between the customer and the service provider. TELUS and the FCSC agreed that the CCTS ought to administer any consumer protection rules or codes of conduct that result from the Commission’s inquiry.
19. TekSavvy submits that any code of conduct resulting in this proceeding ought to address the sales scenarios raised by TekSavvy in its interventions:
  - inappropriate sales during technician appointments;
  - misleading statements about wholesale-based competitor’s services;
  - inappropriate marketing use of competitors’ end-user information held by Carrier Services Groups (CSG); and
  - misrepresenting the technological nature of a service.

### **Flanker brands’ sales practices**

20. In response to TekSavvy’s procedural request, the following carriers confirmed that their responses for information include sales practices about their flanker brands:
  - Bell: Bell Mobility, Virgin Home Internet, Virgin Mobile, Lucky Mobile

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<sup>13</sup> Bell Intervention, para. 23.

<sup>14</sup> Rogers Intervention, para. 49.

- Rogers: Fido, Chatr, Cityfone
  - TELUS: Koodo, Public Mobile, PC Mobile
  - Shaw: Freedom Mobile
21. TekSavvy submits that these carriers ought to similarly clarify whether that their interventions' description of Codes of Conduct, sales practices, and controls apply for employees of their flanker brands, if not already addressed in their intervention. For example, are employees selling Bell's flanker brands bound by Bell's Business Code of Conduct, such as how competitors or competitive offers are not to be portrayed? Fido explicitly compares itself to TekSavvy in its marketing materials, even though it is an incumbent flanker brand. Are Fido's employees bound by Rogers' Business Code of Conduct, and does Rogers' Business Code of Conduct circumscribe how employees portray its competitors?<sup>15</sup>
22. Consumers may not understand or be made aware that flanker brands are an extension of incumbents. Where flanker brands market themselves as direct competitors to wholesale-based providers, consumers may have the impression that they have even more service provider choice, and that the flanker brand competes on an equal footing to competitive ISPs like TekSavvy.

### **Conclusion**

23. Retail sales practices occur in many contexts for telecommunications services – in a store, over the phone, at a consumer's door, or during an installation or repair appointment. Where an incumbent uses a wholesale transaction as an opportunity to complete a sale, the Commission ought to consider this a retail sale within the scope of this hearing, and investigate whether there are misleading or aggressive sales practices in this context.
24. The Order in Council required the Commission to report on – selling retail services, whether done in the context of wholesale or traditional retail sales practices described in incumbents' interventions. If the wholesale transaction gives an incumbent the opportunity to
25. TekSavvy submits that competition and incumbents' own internal codes of conduct and training are insufficient to prevent against misleading and aggressive sales practices experienced by its end-users because of incumbent carriers' conflict of interest and opportunity to sell retail services during a wholesale installation appointment.
26. Incumbents exercise their control over wholesale inputs and significantly complicate the process of onboarding a wholesale-based provider's end-users, to the benefit of the incumbent and the detriment of both the competitor and, most importantly, the consumer.

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<sup>15</sup> Rogers Intervention, para. 28 mentions that a Business Code of Conduct is detailed to Rogers' employees during orientation. It is not clear whether Fido employees, for example, are bound by the same Code.

27. The Commission ought to consider retail sales practices directed at wholesale-based providers' end-users and the impact of these practices on the competitive marketplace.

Yours truly,

*[transmitted electronically]*

Janet Lo  
VP, Privacy & Consumer Legal Affairs

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