



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

TekSavvy Solutions Inc.

800 Richmond Street
Chatham ON N7M 5J5

TELEPHONE +1 519 360-1575
TOLL FREE 877-779-1575

FAX 519.360.1716
teksavvy.com

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 Intervention 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 requests to appear at the public hearing in respect of the Notice, and is pleased to participate in this proceeding.
3. As noted in its 23 August 2018 cover letter to the CRTC providing responses to the CRTC's requests for information dated 16 July 2018, TekSavvy is not a "large telecommunications carrier" and objects to being included in the list of service providers that constitute this ad hoc category for this proceeding. TekSavvy's residential subscribers amount to less than 3% market share for residential Internet services in Canada¹, which is TekSavvy's primary business focus. Furthermore, the reports of misleading or aggressive sales practices that are referenced in the Order in Council that gave rise to this Notice concerned incumbent carriers in particular, and not wholesale-based competitors like TekSavvy.²

¹ According to the Commission's 2017 Communications Monitoring Report, Figure 5.3.1, incumbent and cable-based carriers make up 87% of the market share for residential Internet service. "Other service providers" account for 13% of market share for Internet services.

² Governor in Council, Order in Council ("OIC") P.C. 2018-0685, reproduced in Appendix 1 to the Notice.

4. TekSavvy welcomes this opportunity to offer a wholesale-based competitor perspective on misleading and aggressive retail sales practices.
5. Order in Council P.C. 2018-0685³ by the Governor in Council stated that:
 - Misleading sales practices include providing misleading information;
 - Misleading or aggressive sales practices may include the abuse of information symmetries by Canada's large telecommunications carriers in order to benefit those carriers;
 - Reports of misleading and aggressive sales practices harm or risk harming consumers, including by causing stress, confusion, and frustration; and
 - Canadians deserve a competitive marketplace where consumers are treated fairly.
6. TekSavvy wholeheartedly agrees that Canadians deserve a competitive marketplace for telecommunications services and fair treatment. The Order in Council requires a report regarding the retail sales practices of Canada's large telecommunications carriers and the possibility of harm to consumers caused by those practices. The Commission's Notice seeks comments from Canadians on retail sales practices. TekSavvy submits that aggressive and misleading retail sales practices also occur in the context of providing wholesale services to a competitor's end-user, with harmful effects on competition and consumers. Such practices abuse information symmetries within the wholesale framework, and are unfair both to competitors who use wholesale network access for their retail services and to competitors' end-users.
7. Below, TekSavvy illustrates the conflict of interest that gives rise to inappropriate misleading and aggressive retail sales by incumbents when it ought to be acting solely as a wholesale supplier. TekSavvy explains the harmful effect of these misleading and aggressive retail sales practices on the competitive marketplace and the resulting harm to consumers.
8. TekSavvy then responds to the questions posed in the Notice (Appendix 2) with which TekSavvy has particular experience or expertise. At the heart of TekSavvy's submission are competitive pain points flowing from misleading or aggressive sales practices experienced by its own end-users when an incumbent is asked to complete a wholesale installation or repair, and misleading claims about TekSavvy's quality of service or performance.

A. A conflict of interest: Incumbents control wholesale inputs, and compete with their wholesale customers

9. TekSavvy participates in this proceeding with a unique perspective of a wholesale-based competitor service provider ("competitor").
10. Competitors like TekSavvy lease use of incumbent carriers' transmission facilities and infrastructure (e.g. via DSL or cable) on a wholesale, tariffed basis in order to provide wireline services to its own end-users. The nature of this relationship means that the

³ Appendix 1 to TBNC 2018-246.

incumbent carrier provides wholesale services to the same companies with which it also competes for retail customers.

11. This fundamental conflict of interest presents opportunities for an incumbent carrier to inappropriately sell their own retail services to a competitor's customer when the carrier is acting as a wholesale provider. The most common example is a typical wholesale install, which requires an incumbent technician to be dispatched to the customer's premises to install service.⁴ The technician's presence at the customer's home gives the incumbent a touchpoint to mislead and inappropriately poach TekSavvy's end-user to the incumbent's retail services.
12. Since incumbent carriers provide wholesale services to wholesale-based providers, those incumbent carriers know virtually everything about TekSavvy's customers: end-users' identities and their chosen TekSavvy services. Information about TekSavvy's customers is occasionally used to directly market the incumbents' own retail services, in violation of the rules to maintain a separate Carrier Services Group.⁵

B. Misleading and inappropriate sales practices by incumbents impacts competition, and disproportionately harms competitors without market power

13. There are asymmetries between telecommunications service providers competing for retail customers. These asymmetries are intensified when incumbents providing wholesale services also compete against their wholesale customers for retail customers.
14. TekSavvy's best possible product prices are as advertised on its website, such that TekSavvy's best offer is easily available and transparent to both consumers and the competitive market. The largest input for TekSavvy's retail pricing is the costs of wholesale network access and capacity, which are set by incumbent wholesale access tariffs approved by the CRTC.
15. The economic reality for incumbents is different compared to wholesale-based competitor service providers like TekSavvy. Incumbent carriers' approach to retail pricing is based on aggressively discounting their "regular" price, which consumers can further negotiate downwards with a sales employee. Incumbents' retail pricing is based on the recovery of capital expenditures, which allows incumbents to offer lower retail pricing prices than regulated wholesale tariff rates. When an incumbent offers to a consumer to match or beat TekSavvy's retail price, they effectively undercut their own wholesale tariffs and undermine wholesale competition – effectively squeezing out wholesale-based competitors like us.

⁴ Some incumbents and their flanker brands (secondary brands that are extensions of incumbents, often used to combat and eliminate low-price competitors while protecting a company's premium-price offerings) provide the retail option for "DIY" installs when there is already a cable line that may not be in use. However, they have not made the same option available for wholesale services, instead requiring technician visits on almost every install.

⁵ *Issues related to customer/carrier services groups*, Broadcasting and Telecom Regulatory Policy CRTC 2011-512, 19 August 2011.

16. The market power of an incumbent service provider exacerbates the effect of misleading or aggressive sales practices in the competitive marketplace for telecommunications services. Competitors without market share, such as TekSavvy, are at a systemic disadvantage when competing in the marketplace when they are unknown or new to a consumer. They must convince the consumer to place their trust in TekSavvy as their telecommunications service provider, while building credibility with that customer in every interaction – sales, installation appointments, technical support, or customer service.
17. When incumbents with market power make misleading statements about wholesale-based competitors' services, especially about quality and performance, such statements distort competition and impair consumers' ability to make informed choices about their desired telecommunications service provider. These statements confuse consumers about available service provider options. Misleading statements about wholesale-based competitors are harmful to competition and over time, these kinds of misleading and deceptive practices can drive competitors from the market.
18. Moreover, incumbents themselves stand to benefit from misleading statements about wholesale-based competitors. When they win that consumer to their own retail services, they do so typically in a context where they should not be selling or promoting an incumbent's services. Wholesale-based competitors like TekSavvy are powerless to correct or combat any impression left by incumbents' misleading statements about its own service quality or performance because it is not present during these statements, and may not even be made aware about these practices, as it would merely receive a cancellation from its own end-user.

C. Misleading or aggressive sales practices

Question 2: Have you experienced misleading or aggressive sales practices from a service provider? If so, provide details about that experience, including the service provider and service in question, when and how the sales interaction occurred, the nature of the sales practice used, and what avenues you may have used to address the sales practice.

19. TekSavvy customers have reported three types of misleading or aggressive sales practices that are able to arise because of the inherent conflict of interest of providing wholesale services while competing against its wholesale customers for retail customers.
20. There are two additional sales practices that concern TekSavvy, because they distort and confuse consumers' understanding of telecommunications services and competitive options.

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.

21. As mentioned above, the regulatory regime requires every wholesale install to dispatch an incumbent technician to the customer's premise to install service.⁶ For some repair tickets, the wholesale provider must send an incumbent technician to diagnose and repair the service issue.
22. End-users report to TekSavvy with some regularity that technicians offered TekSavvy's end-user a better price or a faster speed through an incumbent retail service during the TekSavvy install appointment. Our customers report that technicians sometimes even offer to install an incumbent service during that appointment.
23. TekSavvy does not hear about all cases where a sales offer is made during its end-users' installation or repair appointment – we would only learn about this if the customer lets us know. Some customers advise TekSavvy about the incumbent offer and ask TekSavvy to price match. Since we are not able to price match incumbent offers, we may lose that customer to the incumbent. Other customers might quietly cancel their TekSavvy service but not mention that an incumbent offer during the installation appointment changed their mind.
24. If we are made aware about an inappropriate sale or promotion of incumbent services during a TekSavvy install or repair appointment, TekSavvy escalates that issue to the incumbent's wholesale Carrier Services Group (CSG). The incumbent CSG typically replies that they will investigate and take "appropriate action", which usually means coaching a technician. While carriers claim that they have policies against some of this behaviour, they do not appear to have imposed any controls against technicians selling incumbent retail services, and they openly approve of technicians answering end-user questions about the incumbents' retail services, even when they are on site for a wholesale installation. Furthermore, no remedy is available to TekSavvy for the lost customer.
25. TekSavvy has heard anecdotes from end-users about technician incentives for sales. In one case, a Rogers technician told a TekSavvy end-user that they only get paid \$10 to perform TekSavvy's install, and that TekSavvy is not at the top of their priority list. TekSavvy has also heard that Rogers' technicians have a \$50 to \$75 incentive if they convince the end-user to switch to Rogers' retail services during a wholesale-based competitor's install or repair appointment.
26. It should be totally unacceptable and never tolerated for technicians to promote the incumbent's retail services during a wholesale service call. In TekSavvy's view, this is harmful to competition, unfair to competitors and to consumers.

⁶ Some incumbents and their flanker brands provide the retail option for "DIY" installs when there is already a cable line that may not be in use. However, incumbents have not made the same option available for wholesale services, instead requiring technician visits for almost every install. One flanker brand directly advertises this comparison to customers: "with TekSavvy the modem and activation charges can add up to \$219.90 in upfront costs and requires technician install."

27. **TekSavvy requests that the Commission 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.**
28. **TekSavvy further requests that the Commission seek all training materials, sales materials, incentive materials, including policies that address inappropriate sales in wholesale provider contexts.**

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.

29. End-users report to TekSavvy with some regularity that technicians or retail sales agents made inaccurate claims about TekSavvy, particularly about TekSavvy's service quality and performance. These inaccurate claims are often coupled with attempts to switch the customer to the incumbent's own retail services.
30. Below are a sample of false claims about TekSavvy reported to us by our customers:
 - A Rogers technician claimed that Rogers owns TekSavvy.
 - A Rogers technician convinced a TekSavvy end-user that they could only get up to 50 Mbps with TekSavvy but could get faster speeds from Rogers.
 - During an installation for TekSavvy DSL service, a Bell technician examined the ports and told TekSavvy's end-user that the building was "fibre only" and gave the customer a contact number to set up fibre with Bell retail.⁷
 - During an installation for TekSavvy service, a Shaw technician falsely claimed that TekSavvy's modems were inferior to Shaw's modems and sold their Shaw service to the end-user.
31. In the Commission's previous consultation on the competitor quality of service regime⁸ and in interventions to this Notice, the Commission received public interventions referring to inaccurate claims made about TekSavvy by incumbent technicians or sales agents. Here are a sample of inaccurate claims:
 - Bell sales representative misrepresented the quality of competitors' services to a retail customer: "Specifically, Bell claimed that their competitor TekSavvy's service was unreliable in comparison with their 'dedicated never shared internet line'." Bell also stated to the same customer in an online chat: "TekSawvy [*sic*] uses the Bell line to offer the Internet service. You will not get a reliable service with Tekksawvy [*sic*]."⁹

⁷ Wholesale-based providers like TekSavvy do not currently have access to incumbents' fibre-to-the-premises services. However, TekSavvy has come across a few cases where service at an address has been upgraded from legacy to fibre-to-the-premises infrastructure, and the incumbent has allowed the legacy copper facilities to languish, meanwhile erroneously deeming service at that address to be "fibre-only".

⁸ Telecom Notice of Consultation CRTC 2017-49, Review of the competitor quality of service regime, 23 February 2017, <https://crtc.gc.ca/eng/archive/2017/2017-49.htm>.

⁹ TBNC 2018-246, Intervention #980.

- Bell technician told a TekSavvy customer that service is better with Bell.¹⁰
 - Bell technician told a TekSavvy customer: “You know TekSavvy just uses our lines, right? When there is a repair, we prioritize TekSavvy’s clients below everyone.”¹¹
 - Rogers technician told a TekSavvy customer that he would not get as good service with TekSavvy. There would be longer wait time for service, like “additional weeks.”¹²
 - Bell told a TekSavvy customer that TekSavvy is responsible for some of the copper lines.¹³
32. As with scenario 1, TekSavvy does not hear about all cases where inaccurate claims are made about its service quality or performance – it would only learn about this if the customer made TekSavvy aware.
33. If we are made aware about an inaccurate claim about its services, TekSavvy escalates that issue to the incumbent’s wholesale CSG. The incumbent CSG typically replies that they will investigate and take “appropriate action”, which usually means coaching a technician. While carriers claim that they have policies against some of this behaviour, they do not appear to have imposed any controls against technicians making disparaging statements about competitors’ services, and they openly approve of technicians answering end-user questions about the incumbents’ retail services, even when they are on site for a wholesale installation.
34. Furthermore, no remedy is available to TekSavvy for a lost customer, or for the reputational harm to TekSavvy in the mind of that customer, with whom TekSavvy is attempting to build credibility and trust, especially if TekSavvy is unknown or new to a customer because of its disadvantaged market position.
35. It should be totally unacceptable and never tolerated for technicians to make false or misleading claims about a wholesale-based providers’ services during a wholesale service call or in a retail sales context. These types of misleading claims are unfair. These misleading statements harm consumers by causing confusion about the quality of available services, misleadingly suggests a more limited set of service provider choice in the competitive marketplace, and harm competitors and competition.
- 36. TekSavvy further requests that the Commission 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.**
37. As demonstrated in scenarios 1 and 2, the regulatory requirement for technicians to perform virtually all wholesale-based competitor installs, together with a purported incentive structure to sell the incumbents’ retail services or disincentive structure to

¹⁰ TNC CRTC 2017-49, Intervention #69.

¹¹ TNC CRTC 2017-49, Intervention #17.

¹² TNC CRTC 2017-49, Intervention #21.

¹³ TNC CRTC 2017-49, Intervention #411.

deprioritize non-incumbent retail services, create a significant barrier to wholesale competition. These scenarios ultimately offer insight into how incumbents exercise control over wholesale inputs and significantly complicate the process of onboarding a competitor's end-users, to the benefit of the incumbent and the detriment of both the competitor and, most importantly, the consumer.

Scenario 3: an incumbent's sales employee, third party sales agent, or technician targets TekSavvy's end-user using information that it only knows from its wholesale function

38. Since wholesale-based competitors use wholesale services to connect their retail end-users, the incumbent carriers know almost everything about TekSavvy's customer list: end-users' identities, their chosen TekSavvy services, and order information. Information about TekSavvy's customers could be inappropriately used to directly market the incumbents' own retail services.
39. The Commission has taken steps to require that incumbent carriers' sales and marketing divisions do not misuse competitor end-user information.¹⁴ Carrier Services Groups (CSGs) act as a distinct, functionally separate group within a telecommunications company whose role is to liaise and coordinate with competing service providers when conducting a variety of inter-carrier activities, including wholesale services. Historically, the main purpose of a CSG has been to isolate and safeguard competitively sensitive information pertaining to retail customers and competing companies from other internal groups, such as sales and marketing. The reason for this practice is to prevent sales and marketing groups from misusing such sensitive information to attempt to acquire a competitor's customers.
40. However, despite these safeguards, end-users report to TekSavvy with some regularity questionable targeted marketing practices, where the incumbent's sales or marketing representative targets a TekSavvy end-user using customer contact information or information about the end-user's TekSavvy service subscription. This information would only be held by its CSG and ought to be treated confidentially.
41. For example, end-users have reported to TekSavvy that an incumbent sales representative proactively solicited the customer, and knew some combination of details about the customer, such as:
 - end-user name;
 - end-user address, which may be used to visit the end-user directly for sales or marketing purposes;
 - end-user phone number and email address, which are used to contact the end-user for sales or marketing purposes;
 - that the end-user was a customer of TekSavvy;
 - details about the end-user's TekSavvy service (e.g. package speed);

¹⁴ *Issues related to customer/carrier services groups*, Broadcasting and Telecom Regulatory Policy CRTC 2011-512, 19 August 2011.

- details about the end-user’s upcoming installation appointment for TekSavvy services.
42. Some end-users reported to TekSavvy that they had no prior relationship with the incumbent, and had never previously purchased services from the incumbent directly. They were quite surprised to receive sales calls or sales visits directly from the incumbent, and did not know how the incumbent received their contact information. In some cases, the timing of the incumbent’s contact was suspicious: the end-user received a sales call shortly after they placed an order for new service with TekSavvy.
 43. The incumbent’s sales representative uses the end-user’s information to make a more competitive retail offer. Some end-users report to TekSavvy that the incumbent representative tries to convince the end-user to switch to the incumbents’ service by telling them that TekSavvy service will no longer be available at their service address. For example, an incumbent representative may state that the building will be converted to fibre facilities (information that is usually new to TekSavvy), or because TekSavvy will discontinue service to that area (false information).
 44. These marketing and sales practices erode trust between TekSavvy and its own end-user. End-users may believe that TekSavvy violated their privacy and sold their customer information to the incumbent without the end-user’s consent. If TekSavvy is made aware of these types of targeted sales attempts by an incumbent, we clarify to our customer that we do not sell customer information to third parties.
 45. However, there is no remedy for TekSavvy for the reputational harm or lost customer – it can only escalate the issue to the incumbent’s wholesale carrier services group for investigation. The incumbent CSG typically replies that they will investigate and take “appropriate action”, which usually means coaching.
 46. Misuse of confidential customer information for sales purposes is unfair and harmful to competition. These misleading statements harm consumers by causing confusion and frustration about service providers.
 47. TekSavvy questions the sufficiency of CSG safeguards to maintain the confidentiality of wholesale-based providers’ customer records from its retail sales and marketing groups. **TekSavvy submits that the Commission 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.**

Scenario 4: selling a service as “fibre” when it is actually “fibre-to-the-node”

48. A March 2018 CBC Marketplace investigation into misleading sales practices revealed that Bell employs third-party companies to sell Bell’s “fibre optic network” services door-to-door.¹⁵ As described in the investigation, sales representatives told potential

¹⁵ CBC News, “CBC hidden camera investigation captures misleading sales tactics for Bell”, 2 March 2018, <https://www.cbc.ca/news/business/hidden-camera-reveals-misleading-sales-tactics-for-bell-1.4556536>.

customers that Bell had recently upgraded a whole neighbourhood to fibre optics. Consumers assumed that that meant they were getting fibre optic technology right to their homes, but in most neighbourhoods visited by CBC's undercover producer, Bell fibre optic cables only went to a box known as a "node" located nearby, or possibly several streets away, before continuing to consumers' homes via copper cables.

49. The product described by the CBC Marketplace investigation is known as "fibre-to-the-node" (FTTN) service, which is a product available to wholesale-based providers like TekSavvy on a wholesale basis. The investigation suggests that third-party sales representatives misleadingly sold fibre-to-the-premise (FTTP) service. Under the current regulatory regime, wholesale-based competitor service providers like TekSavvy do not yet have meaningful access to FTTP infrastructure.¹⁶ Meanwhile, incumbents have a head start on retail sales for fibre-to-the-premises.
50. Wholesale-based competitors are disproportionately impacted if incumbents are falsely selling FTTN services (which are currently available to competitors on a wholesale basis under the aggregated model) as FTTP services. If a consumer were to ask TekSavvy to match the incumbents' false claim for FTTP service, TekSavvy could not offer the customer a comparable service, as it does not have access to FTTP services on a wholesale basis. TekSavvy would lose the competitive opportunity to sell its FTTN service, not because it does not offer the equivalent FTTN service but because it cannot position its equivalent service to the falsely sold service.
51. This incumbent retail sales practice is unfair and harms consumers by misleading the consumer to believe that they have no service provider choice.

Scenario 5: consumers do not know that flanker brands are an extension of the incumbent's primary brand

52. Beginning in the late 2015, two incumbents used their flanker brands to market and offer services for wireline Internet services, creating the illusion of more competitive choice for wireline Internet services:¹⁷ Bell's Virgin Mobile brand, and Rogers' Fido brand. Flanker or fighter brands are secondary brands often created to combat and eliminate low-price competitors while protecting a company's premium-price offerings. For wireline Internet services, incumbents operate their flanker brands outside the regulated wholesale market without the limitations of wholesale rates and wholesale processes put on TekSavvy and other wholesale-based competitors.

¹⁶ Competitors do not have mandated wholesale access to incumbent carriers' FTTP infrastructure through the aggregated network configuration model. While the Commission mandated disaggregated wholesale access to incumbents' FTTP infrastructure in 2015, the incumbents have proposed costing and technical implementation so flawed that competitors' meaningful access to FTTP infrastructure has been significantly delayed.

¹⁷ In the 2017 Communications Monitoring Report, the Commission defines "primary brand" as the brand most recognizable by consumers and is directly associated to the parent company that owns and operates the facilities to provide services. The CRTC stated that "flanker brand", also known as an extension or a secondary brand, is "used by the primary brand wireless service provider to market and offer varying services and plans to consumers."

53. These flanker brands began offering wireline Internet services on a discount basis, with aggressive retail pricing that is not possible for TekSavvy to match given the wholesale rates it is subject to. Flanker brands also offer services or features that TekSavvy does not have access to on a wholesale basis, like DIY installations, same-day and next-day installations, and fibre (FTTP) broadband services.
54. Fido directly compares its offering to TekSavvy on its website: “with TekSavvy the modem and activation charges can add up to \$219.90 in upfront costs and requires technician install”¹⁸ [emphasis added]. This advertisement is designed to create the general impression that the flanker brand operates on equal footing as TekSavvy, when the reality is that the regulatory regime requires TekSavvy to use an incumbent technician for each install, and this requirement was created and is now operationalized by the incumbent carrier behind that flanker brand. This advertisement underlines that the flanker brand is designed to compete directly with TekSavvy and similar wholesale-based competitors, but does not compete against its own incumbent brand.
55. Moreover, consumers may not understand or be made aware that flanker brands are an extension of incumbents, and are not subject to the same restraints of TekSavvy and other competitive ISPs. This affects TekSavvy’s competitive position in the marketplace, as consumers may have the impression that they have more service provider choice, assume that TekSavvy and other competitive ISPs are equally footed to compete with flanker brands, and expect that TekSavvy will be able to deliver the same services or installation features at the same price.

D. Existing consumer protections

Question 14: Are existing consumer protections sufficient to ensure that Canadian consumers are treated fairly in respect of retail sales practices? If so, how? If not, why not?

56. Existing consumer protections are not sufficient to ensure that Canadian consumers are treated fairly in respect of retail sales practices, especially where misleading or aggressive retail sales practices occur in the context of providing wholesale service to a competitor’s end-user.
57. These practices are unfair to the consumer, alter consumers’ understanding of telecommunications services and service providers, and harm healthy competition and small wholesale-based service providers to the benefit of incumbents who already have market power.
58. Existing consumer protections do not offer consumers or TekSavvy any remedy for inappropriate sales or promotion of incumbent services during a TekSavvy install or repair appointment, for any false or misleading statements made about TekSavvy’s service quality or performance, or for any sales misusing confidential records about TekSavvy’s end-users.
59. As noted above, the only remedy available to TekSavvy is an escalation to the incumbent’s wholesale carrier services group, reporting the incident. The CSG will reply to state that they will investigate and take “appropriate action”. There are no further

¹⁸ See for example: <https://offers.fido.ca/>

consequences for inappropriate sales or misleading claims, only reputational harm to TekSavvy and potentially lost customers.

60. TekSavvy also questions the sufficiency of CSG safeguards to maintain the confidentiality of wholesale-based providers' customer records from its retail sales and marketing groups.

E. Feasible and effective ways to strengthen or expand existing consumer protections

Question 21: Should the Commission consider the creation of further codes of conduct or the review of existing codes of conduct? If so, what would be the objective and scope of these codes?

61. TekSavvy notes that the Commission has now rendered various codes of conduct governing retail telecommunications services:
- Deposit and Disconnection Code (telephone services);
 - Wireless Code;
 - Television Service Provider Code; and
 - Prohibition of 30-day cancellation policies.
62. To the extent that the Commission considers creating further codes to address retail sales practices or the offer and sale of retail Internet services, it ought to ensure that the code is crafted in a way that considers the wholesale framework for wireline Internet services.
63. There are examples of codes of practice for installations in other jurisdictions and other industries. Codes of practice of installations may prohibit sales transactions to be concluded during installation visits, and prohibit high pressure tactics.¹⁹

¹⁹ See for example, the Smart Metering Installation Code of Practice (June 2018) in the UK at 3.9, <http://www.smicop.co.uk/SitePages/Home.aspx>. Consumer Focus, "Installation Code of Practice" – a consumer perspective (September 2010), <https://www.ofgem.gov.uk/ofgem-publications/63921/smart-metering-workshop-installation-code-practice-consumer-focus-presentation.pdf>. See also the UK Renewable Energy Consumer Code (October 2016) at 4, <https://www.recc.org.uk/scheme/consumer-code#tag7>. In jurisdictions like Australia, where wholesale access network service providers are structurally separated from retail service providers, there is no need to implement or address prohibitions on sales practices, as there would be no conflict of interest or incentive to sell retail services during an installation appointment. See for example, Australia's National Broadband Network's Quick Reference Guide for Installers: <https://www.nbnco.com.au/content/dam/nbnco/documents/NBN589%20First%2010%20Minutes%20Guide%20Update%20NOV13.pdf>.

64. G. Conclusion

65. TekSavvy's submission describes misleading and aggressive sales practices experienced by its end-users that are possible because of incumbent carriers' conflict of interest and opportunity to sell retail services during a wholesale installation appointment.
66. These scenarios are examples of how the 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.
67. TekSavvy is not able to avoid these misleading claims about its services, as every wholesale install requires an incumbent technician to be dispatched to the customer's premise to install service. The technician's presence at the customer's home gives the incumbent a touchpoint to mislead and inappropriately poach TekSavvy's end-user to the incumbent's retail services.
68. Misleading statements about wholesale-based competitors are harmful to competition and over time, these kinds of misleading and deceptive practices can drive competitors from the market or force competitors to compete in similarly dishonest ways. Consumers also lose, as these statements distort consumer understanding about the availability or quality of competitor service options and impair consumers' ability to make informed choices about their desired telecommunications service provider.
69. To have a whole view of the retail sales practices of Canada's large telecommunications carriers and the harm to consumers, the Commission must consider retail sales practices that are directed at wholesale-based providers' end-users, and the impact of these practices on the competitive marketplace. In order to do so, the Commission ought to have full information about retail sales targeting its wholesale customers' end-users. TekSavvy submits that the Commission ought 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.

Yours truly,

[transmitted electronically]

Janet Lo
VP, Privacy & Consumer Legal Affairs

cc: Andy Kaplan-Myrth, TekSavvy (akaplanmyrth@teksavvy.ca)
Scott Shortliffe (scott.shortliffe@crtc.gc.ca)
Guillaume Leclerc (guillaume.leclerc@crtc.ca)
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