COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

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CT- 2022-002

Annie Ruhlmann for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT. # 2

PUBLIC

CT-2022-

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.; and

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

- and -

ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.

Respondents

NOTICE OF APPLICATION

TAKE NOTICE THAT the Commissioner of Competition (the "**Commissioner**") will make an application to the Competition Tribunal (the "**Tribunal**"), on a day and place to be determined by the Tribunal, pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34 (the "**Act**") for:

a. an order directing the Respondents not to proceed with the Proposed Transaction;

b. in the alternative, an order requiring the Respondents not to proceed with that part of the Proposed Transaction necessary to ensure that it does not prevent or lessen and is not likely to prevent or lessen competition substantially;

c. an order directing the Respondent, Rogers Communications Inc., to divest such additional assets as are required to eliminate the substantial lessening or prevention of competition;

d. an order directing the Respondents to pay the Commissioner's costs; and

e. such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

AND TAKE NOTICE that if you do not file a response with the Registrar of the Tribunal within 45 days of the date upon which this Application is served upon you, the Tribunal may, upon application by the Commissioner and without further notice, make such order or orders as it may consider just, including the Orders sought in this Application.

AND TAKE FURTHER NOTICE that the Applicant will rely on the Statement of Grounds and Material Facts below in support of this Application.

AND TAKE FURTHER NOTICE that a concise statement of the economic theory of the case is attached hereto as Schedule "A".

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The Applicant proposes that the hearing of this matter be held in Ottawa, Ontario and heard in English and French.

STATEMENT OF GROUNDS AND MATERIAL FACTS

I. OVERVIEW

1. Rogers' proposed acquisition of Shaw seeks to eliminate Shaw as a competitive force, and as a growing significant fourth competitor. The proposed transaction would substantially prevent or lessen competition by eliminating Shaw, a maverick competitor with a proven track record of disrupting wireless services markets and leveraging its wireline business to compete more vigorously.

2. Shaw was poised to continue as an unmatched disruptive force at a key time in wireless market evolution in Canada when the proposed acquisition was announced. Shaw was on the verge of launching 5G wireless services and making other investments to expand wireless services in Canada; these plans were largely shelved with the announcement of the proposed acquisition in March, 2021.

3. Mobile wireless services, or wireless services, are those services provided over a radio network permitting both voice and data communication (including text messaging, internet and mobile application services) without being tethered to a fixed location. "Wireless Services" are wireless services provided to customers other than business customers as described in Section V.A below.

4. Wireless Services play a critical role in supporting economic and social development in Canada. In 2020, Wireless Services reached 99.7% of Canadians and there were 38.7 million Canadian subscriptions for Wireless Services. Wireless Services allow Canadians to maintain and to grow personal and professional connections, to stay informed about the latest news and information, to purchase and to sell products, and to access essential services. They are a gateway to mobile applications, whether for entertainment or for professional purposes. Canadians increasingly depend on Wireless Services for everything from virtual doctors appointments, to proof of vaccination, to financial management, to ride-hailing.

5. Vigorous competition is essential for Canadians to have access to affordable, high quality Wireless Services and for stimulating innovation and diversity in the products and services available by using those services in the growing digital economy.

6. Three national incumbents, Rogers Communications Inc. ("Rogers"), Bell Mobility Inc. ("Bell"), and TELUS Communications Inc. ("TELUS") (collectively, the "National Carriers") dominate Wireless Services markets in Canada, possessing, until only recently, over 90% of the revenues for such services in the country.

7. Persistent intervention by regulatory authorities since 2008 to stimulate competition through measures such as licencing new spectrum acquisitions have finally yielded benefits to Canadians as a result of entry and expansion by the Respondent Shaw Communications Inc. ("Shaw").

8. Shaw, an historic wireline cable operator, entered the Wireless Services market by acquisition of a wireless entrant in 2016. Leveraging its wireline infrastructure to decrease costs and accelerate deployment of services, Shaw has since made substantial network investments, seen significant wireless subscriber growth, and played the role of competitive disrupter. In the geographic markets in which it operates – Ontario, B.C. and Alberta -- Shaw has driven down prices, made wireless data more accessible, and offered innovative services to consumers.

9. Rogers and Shaw are each other's closest competitors. Competition between them is intense, with each gaining and losing more customers to one another than to other wireless carriers. Shaw has brought to the markets where it competes an increased competitive intensity, to the benefit of Canadian consumers, who have historically paid some of the highest prices for Wireless Services in the developed world paired with one of the lowest rates of wireless data consumption.

10. Rogers and Shaw have [redacted] with parties interested in acquiring Shaw's Freedom Mobile wireless business and have claimed that such divestiture would eliminate any substantial lessening or prevention of competition resulting from the proposed transaction. However, the divestiture proposed is not an effective

remedy for the competitive harm the Proposed Transaction has caused and will likely continue to cause.

II. THE PARTIES

11. The Commissioner is appointed under section 7 of the Act and is responsible for the administration and enforcement of the Act.

12. Rogers is a publicly traded Canadian communications and media company headquartered in Toronto, Ontario that provides Wireless Services, cable wireline services and media products to Canadian consumers and businesses.

    a. **Wireless:** Rogers offers mobile Wireless Services nationally. Rogers operates under the brands Rogers, Fido, Chatr and Cityfone. Rogers is the largest Wireless Services provider in Canada, with approximately 11.3 million subscribers and $8.8 billion in annual revenue in 2021.

    b. **Wireline**. Rogers offers wireline services, including Internet access, television distribution, telephony and smart home monitoring services for consumers and businesses in Southern and Eastern Ontario, New Brunswick and Newfoundland.

    c. **Media**. Rogers offers a portfolio of media properties, including sports media and entertainment, TV broadcasting (including conventional, specialty channels, pay-per-view television and video-on-demand services), radio broadcasting, multi-platform shopping and digital media.

13. Shaw is a publicly traded Canadian communications company headquartered in Calgary, Alberta that provides wireline and Wireless Services, as well as television distribution.

    a. **Wireless**. Shaw offers Wireless Services under the Freedom Mobile and Shaw Mobile brands. In 2016 Shaw entered the Canadian wireless market with the purchase of Wind Mobile, soon after rebranded as Freedom Mobile. Freedom Mobile serves customers in Ontario, Alberta and British Columbia. Leveraging its wireline assets, Shaw has grown to become the fourth largest Wireless Services provider in Canada, with approximately 2.1 million subscribers and $1.3 billion in revenue in 2021. In 2020, Shaw launched a second wireless brand, Shaw Mobile, which serves customers in Alberta and British Columbia. Shaw Mobile wireless services have been offered at very competitive rates when bundled with Shaw's internet services.

b. **Wireline**. Shaw's wireline segment serves residential customers and businesses primarily in Western Canada and Northern Ontario. Shaw's wireline services include internet access, television distribution, telephony and smart home monitoring services for consumers and businesses. Shaw also offers direct-to-home satellite television services to consumers across Canada through Shaw Direct, as well as licensed video-on-demand and pay-per-view services.

III. THE PROPOSED TRANSACTION

14. On March 13, 2021, Rogers agreed to purchase all of the issued and outstanding shares of Shaw for approximately $26 billion, inclusive of debt, under an "Arrangement Agreement" made as of that date (the "Proposed Transaction").

IV. INDUSTRY BACKGROUND AND STRUCTURE

A. Historical Background: Consolidation, Concentration and Regulatory Efforts to Stimulate Competition

15. During the late 1990s and early 2000s, several mergers and acquisitions involving both wireline and wireless carriers led to substantial consolidation in the wireline and wireless industries in Canada. During this period, TELUS was formed out of the privatization of Alberta Government Telephones and subsequent acquisitions, including BC TEL, Quebec Telephone and Clearnet. In the same period, Atlantic Canada's four incumbent telephone companies merged and were acquired by what is now BCE Inc., the parent company of Bell Canada, Bell MTS and NorthwesTel. In 2004, Rogers, acquired Microcell Telecommunications Inc, owner of the Fido

brand of Wireless Services. Following this period of consolidation, the Canadian telecom regulators have taken repeated measures to intervene in the wireless market to promote competition and new entry.

16. Those measures have begun to spur greater competition to the benefit of Canadians through growing regional carriers, like Shaw. Shaw has been able to leverage a foundation of existing wireline infrastructure coupled with favourable wireless market policies and regulations to compete more effectively with the National Carriers. The proposed merger threatens to undo more than a decade of competitive progress to the detriment of Canadians.

17. The telecom regulators are the Department of Industry, Science and Economic Development ("ISED", formerly Industry Canada) and the Canadian Radio-television and Telecommunications Commission (the "CRTC"). These organizations share certain authority over mobile wireless service regulation in Canada.

18. In 2007, Industry Canada noted that Canada was one of the most expensive countries for Wireless Services and had one of the lowest subscriber penetration rates of Wireless Services globally. In 2008, it conducted a spectrum auction with the objective of stimulating greater competition in the wireless industry. At the time, the three National Carriers accounted for in excess of 90% of wireless subscribers and revenue in Canada. During this auction, several firms purchased spectrum reserved for new entrants. The entrants included Wind Mobile, Public Mobile, Mobilicity, and Videotron (a subsidiary of Quebecor Media Inc., a diversified media and telecommunications company).

19. The wireless businesses carried on by Wind Mobile, Public Mobile and Mobilicity were each subsequently acquired by incumbent cable and local telephone carriers. TELUS purchased Public Mobile in 2013. Rogers purchased Mobilicity in 2015. As noted above, Shaw purchased Wind in 2016.

20. In 2017, Bell purchased the regional incumbent telecom provider in Manitoba, Manitoba Telecom Services ("MTS").

21. ISED determined that it was necessary to include measures that prevent greater spectrum concentration in the hands of Bell, Rogers and Telus in all major spectrum auctions since 2007, including the most recent 3500 MHz spectrum auction in 2021.

22. The CRTC has also implemented regulatory policies in an effort to increase competition. For example, in 2013, it established a mandatory code of conduct (the “Wireless Code”) for all providers of Wireless Services in Canada, governing such matters as the length of wireless contracts.

23. In addition, in 2015 the CRTC imposed wholesale roaming regulations, after finding the National Carriers possessed market power, to facilitate entry and expansion. The National Carriers possess a considerable competitive advantage over regional competitors, having taken decades to construct their existing nationwide wireless networks and having access to installed wireline infrastructure and networks. The regulations are intended to allow other mobile wireless carriers the ability to compete by offering nationwide mobile wireless coverage through roaming. Specifically, in 2015, the CRTC required Bell, Rogers, and TELUS to offer wholesale roaming.

24. In 2021, the CRTC found that the National Carriers together exercise market power in the provision of Wireless Services in all provinces except Saskatchewan, where SaskTel exercised market power. It also found that Bell exercises market power in the provision of Wireless Services in the Northwest Territories, Nunavut, and Yukon. The CRTC implemented a Mobile Virtual Network Operator (“MVNO”) policy which seeks to facilitate the expansion of facilities-based carriers (carriers that operate their own network) such as Shaw. The National Carriers and Sasktel will be obligated to temporarily provide access to their networks to other wireless carriers for resale if the latter possess spectrum and intend to build out their own network in that geographic area within the next seven years. The stated purpose of the MVNO policy is to accelerate the sustainable competitive discipline that regional competitors like Shaw have brought to the market by assisting them in overcoming the barriers they face to expanding their networks to new areas.

25. In its 2021 decision, the CRTC found signs that competition was intensifying through regional competition, which was led by Shaw among other regional carriers. This progress was hard earned over a period of 10 years, involving investments of more than $3.5 billion.

26. Since 2016, Shaw has more than doubled its subscriber base. To achieve this growth, Shaw has made significant long-term investments to transform the Freedom network from a 3G network into a competitive LTE-Advanced network and 5G-capable network. It has also used wireline infrastructure as a springboard to launch Shaw Mobile and spur competitiveness through innovations such as Wi-Fi hotspots, affording internet access at no extra charge to its wireless subscribers.

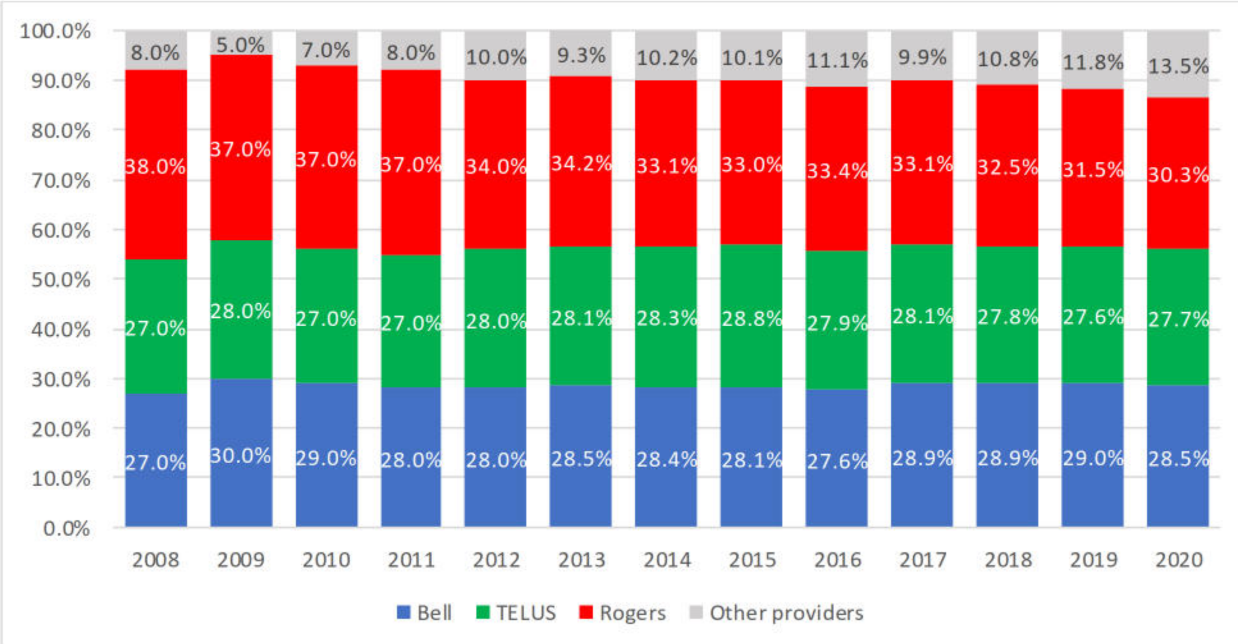
27. Shaw stated its intention during the CRTC hearing to use the MVNO policy to facilitate its expansion. A proceeding to determine the tariffs in relation to the MVNO policy is ongoing (in which the National Carriers have proposed several measures to limit the policy's impact on competition.)

28. The Proposed Transaction threatens to reverse the competitive benefits Shaw has delivered for consumers, and seeks to halt their demonstrated progress, to the detriment of 64% of the Canadian population.

B. The Wireless Services Market is Highly Concentrated

29. Despite the efforts of ISED and the CRTC to promote competition in the supply of Wireless Services, the National Carriers still together account for approximately 87% of all Canadian mobile wireless subscribers. This level of nationwide concentration has been roughly steady in recent years, as shown in Figure 1, which shows market shares by subscribers from 2008-2020.

Figure 1 – National Mobile Wireless Market Shares by Subscribers, 2008-2020



30. The National Carriers have a roughly equal Canada-wide market share. Each has particular regional strengths. These regional strengths affect how they interact with one another across Canada.

31. There are six facilities based regional Wireless Services carriers that remain:

a. Shaw, with the Freedom Mobile and Shaw Mobile brands, provides wireless services alone and bundled with wireline services in Alberta, Ontario, and British Columbia;

b. Videotron, an incumbent cable company, supplies Wireless Services alone and bundled with wireline services to customers, primarily in Quebec;

c. SaskTel, the incumbent telephone company in Saskatchewan, provides wireline and Wireless Services throughout Saskatchewan;

d. Eastlink, an incumbent cable company in parts of the Maritimes, Northern Ontario, Alberta and other communities, provides Wireless Services alone and bundled with wireline services in parts of the Maritimes as well as Sudbury and Timmins, Ontario and Grande Prairie, Alberta;

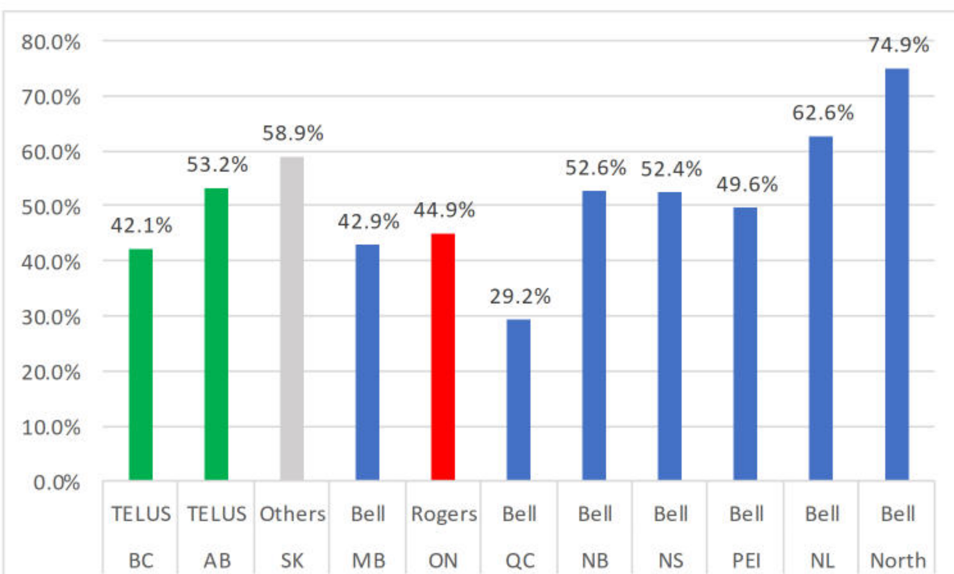
e. Tbaytel, formerly Thunder Bay Telephone Company, supplies wireline and Wireless Services in Thunder Bay, Ontario;

f. Xplore Mobile, operates in parts of Manitoba; and

g. Iristel, operating in the northern territories including Nunavut, Northwest Territories, and the Yukon.

32. Figure 2 shows the market share by subscribers of the largest carrier in each Canadian province for 2020. It indicates that Bell is particularly strong in the North, Manitoba and the Atlantic provinces, whereas TELUS is strong in the western provinces of Alberta and British Columbia, and Rogers is strong in Ontario. In Saskatchewan, on the other hand, SaskTel, a regional wireless carrier and the wireline incumbent in that province, has the largest market share.

Figure 2 – Market Share of the Largest Carrier by Province, 2020



33. The market share patterns in each Province and the North correlate to the historical origins of each of the National Carriers, and have been consistent over many years

with the exception of the growth of Shaw in Alberta, British Columbia and Ontario; the growth of Videotron in Quebec; and the acquisition of MTS by Bell.

34. In certain cities such as greater Toronto ("GTA") and greater Vancouver ("GVA"), the combined market share of a merged Rogers-Shaw would exceed [redacted] (see Figure 3).

Figure 3 – Shares of Wireless Services Providers by Region, as of June 30, 2020

Region	Bell	Rogers	TELUS	Quebecor	Shaw	Others	Rogers/Shaw
National	[redacted]						
BC							
GVA							
AB							
Calgary							
ON							
GTA							

35. Shaw has been a growing competitive force, winning a significant share of subscribers. Since Shaw acquired Wind in 2016, it has increased its wireless subscribers by 101% compared to a 9% increase over the same period for the National Carriers.

C. Canadians Have Experienced High Prices, Low Data Usage

36. In 2021, the CRTC found that Wireless Services prices were higher in Canada than in other comparable jurisdictions, that factors such as network costs or network quality do not explain the price differentials and that it is likely that insufficient competition in Canada contributes to higher prices in comparison to other countries.

37. Wireless Services data usage in Canada has similarly been found to be among the lowest on a per subscriber basis in the world. This pent-up demand for access to wireless data, a function of the high data prices and overage charges offered by the National Carriers, was addressed by Shaw's innovative service offerings described below, which made available liberalized data terms and stimulated such competitive benefits as the introduction of unlimited data plans in Canada.

D. Barriers to Entry are High

38. Barriers to entry faced by a prospective Wireless Services provider are high. These barriers include, among other things, access to radio spectrum, negotiating access to the networks of established carriers, significant sunk costs such as investments in infrastructure, economies of scale and scope, and client acquisition costs and delays.

39. First, a new entrant must acquire sufficient (and appropriate) radio spectrum over which it can transmit its wireless signals. Because spectrum is limited, the government allocates only certain bands for mobile wireless services, and it limits spectrum licenses to specific geographic areas. Spectrum auctions only occur periodically. Any new entrant seeking to provide Wireless Services must either obtain a spectrum license from the government (i.e. through auction) or purchase a license from an existing spectrum holder after obtaining approval from ISED. These steps involve delay and significant uncertainty.

40. In addition to obtaining spectrum, a carrier also needs to build a network in the service area within which it has a license, a process which takes considerable time and involves significant risk. The essential network investments include building wireless towers equipped with radio transmitters and antennae and connecting those towers to mobile wireless switches using fiber or microwave.

41. Because no carrier has a network that provides truly ubiquitous coverage in Canada, carriers also enter into wholesale roaming arrangements (which are mandated by the CRTC) with other carriers so that their customers can continue to use their phones even when travelling outside the range of the facilities owned by their carrier. Other essential contractual arrangements include those affording access to international networks.

42. Other steps which delay or limit entry are the need to purchase computer systems and to construct databases to handle customer information, telephone portability issues, billing, and other back-office functions, and to hire and to train support, sales

and marketing personnel. An entrant must also develop a system of retail distributors to sell its services and handsets as well as invest in advertising and other marketing activities to develop a brand accepted and trusted by consumers.

43. As a result of the costs, time delays and difficulties of entering the markets for Wireless Services, barriers to entry are high.

44. To serve business customers, additional barriers exist such as multi-line billing capabilities, reporting requirements, analytics, and competitive international roaming agreements.

45. To replace the competition that would be lost from the elimination of Shaw as a strong regional competitor in the markets in which it operates, a new entrant would need to have a portfolio of spectrum similar to that possessed by Shaw, the significant investments and other elements noted above as well as an established brand. Such entry is unlikely to occur in a sufficiently timely fashion to restrain the exercise of increased market power Rogers would enjoy from the Proposed Transaction.

46. All significant suppliers of Wireless Services (in terms of market share) who remain in operation in Canada are also suppliers of wireline services such as internet, television and home phone. In their wireline operating areas, providers typically offer service plans that bundle Wireless Services with wireline services. Barriers to expansion are lower for carriers which operate a pre-existing wireline network in that geographic area as a result of:

    a. brand recognition and the ability to cross-sell wireless products to pre-existing wireline customers;

    b. reduced churn rates associated with bundled accounts; and

    c. reduced fixed and operating costs.

47. While the National Carriers have in some limited circumstances provided wholesale services to enable certain other companies to provide Wireless Services as MVNOs

under operating constraints they specify, a competitively effective wholesale market has not developed in Canada. Where MVNOs provide services, their ability to compete is significantly constrained by the incentive of the National Carriers not to undercut their own profitability.

48. To the extent they operate, MNVOs are confined to niche markets and attract few customers. Regulatory rules governing MVNOs are under revision and there is considerable uncertainty surrounding them.

49. Significant MVNO entry is not likely in a time period or on a scale that is likely to constrain the likely increase in market power attributable to the Proposed Transaction. While the National Carriers are building out their 5G networks, an MVNO entrant would be starting from scratch, and would remain beholden to National Carriers for network access for years, face significant cost disadvantages, and be unable to compete effectively for bundled subscribers.

V. THE PROPOSED TRANSACTION IS LIKELY TO SUBSTANTIALLY PREVENT OR LESSEN COMPETITION IN WIRELESS AND BUSINESS SERVICES IN B.C., ALBERTA AND ONTARIO

A. The Relevant Markets

a. Product Market

50. The relevant product markets for assessing the effects of the Proposed Transaction are the provision of Wireless Services:

    a. to consumers other than business customers (referred to as Wireless Services, as defined above); and

    b. to business customers (“Business Services”).

51. There are no close substitutes for Wireless Services or Business Services.

52. Business Services customers are a distinct set of business and government customers who purchase multiple mobile lines and devices. These customers have

distinct needs and seek distinct features and terms and conditions such as data allocations that are pooled amongst a large number of mobile phone lines, affordable international roaming, and multi-line reporting and billing.

b. Geographic Market

53. The relevant geographic markets for assessing the effects of the Proposed Transaction on Wireless Services are each of the provinces of B.C., Alberta and Ontario.

54. Because most customers use Wireless Services at and near their workplaces and homes, and in areas where they travel frequently, customers typically purchase services from providers that offer and market services where they live, work, and travel on a regular basis. Furthermore, a Wireless Services provider can only sell to customers living within its network coverage area, because CRTC regulations prohibit customers from permanently roaming on another service provider's network. Practically speaking, these factors mean that an individual consumer's wireless options are limited to those offered by companies which operate a network in the geographic area where that consumer lives.

55. Rogers and Shaw both offer Wireless Services throughout Alberta, British Columbia and Ontario. Bell and Telus also operate a Wireless Services network in those provinces. Videotron operates a network in the Ottawa-Gatineau area.

56. While wireless carriers offer province-wide prices on their websites, they also offer promotions for Wireless Services alone or bundled with Wireline Services which can be targeted at a group of provinces, a single province, a city, or even to specific outlets in certain shopping malls. As a result, competitive activity can vary in areas as narrow as a city or local area.

57. Wireless Services markets however can be assessed provincially because the competitive dynamics are generally similar across a province.

58. The relevant geographic markets for assessing the effects of the Proposed Transaction on Business Services are also each of the provinces of B.C., Alberta and Ontario. There are certain regional competitors and other differences in the competitive conditions in different provinces. The same permanent roaming restrictions that apply to Wireless Services apply to Business Services, resulting in the same list of competitors namely, the National Carriers in all regions except Ottawa-Gatineau, where Videotron is also a competitor.

B. Prevention or Lessening of Competition

a. Prevention or Lessening of Competition: Eliminating a Direct, Disruptive and Growing Competitor

59. Shaw has been a persistent disruptive force in Wireless Services and a vigorous and effective competitor. Shaw – a self described "disruptor" – has attracted customers through aggressive price competition, bigger data allowances than those available from the National Carriers, and service innovations such as the elimination of data overage fees. It has employed bundling by offering its existing Shaw wireline customer base Wireless Services at low prices. Shaw was poised to continue this pattern of disruption with plans to enter new areas, fill coverage gaps on major roadways, launch 5G, and expand into Business Services.

60. Prior to Shaw's acquisition of Wind Mobile, Wind experienced a difficult time expanding its customer base after its entry in 2008.

61. Shaw acquired Wind in 2016 and began investing heavily to improve network quality and product offerings, culminating in obtaining access to the iPhone in advance of its launch of "Big Gig" plans in 2017. These plans consisted of a large block of data for a reasonable price, with no data overage fees. Since then, Shaw has placed continued competitive pressure on the National Carriers.

62. With its Big Gig promotion in 2017, Shaw's Freedom Mobile brand increased its market share substantially.

63. Shaw has been a force of innovation and dynamic competition. It has been responsible for numerous “firsts” in the relevant Wireless Services markets, such as being the first carrier to eliminate overage fees, the first carrier to offer devices for free on term contracts, the first carrier to offer Wi-Fi offloading (access to numerous locations for free Wi-Fi by its customers), and the first and only carrier to offer $0 phone plans with internet bundles.

64. Shaw’s wireline assets have enhanced its ability to build and maintain a strong customer base through cross selling and bundling opportunities and the ability to leverage its established brand. Its wireline assets have also reduced the cost and time associated with building and operating its wireless network.

65. The National Carriers have responded to Shaw’s new plan offerings and low pricing in numerous ways, including by offering enhanced plans and promotions and targeting customers lost from Shaw’s competitive behaviour.

66. Rogers has felt the competitive pressure exerted by Shaw. For example, Rogers launched unlimited data plans in response to competitive pressure from Shaw. Such plans offered customers Wireless Services for a fixed monthly fee while eliminating overage charges for data consumption.

67. The Proposed Transaction will eliminate head-to-head competition between Rogers and Shaw. Before the merger, significant substitution took place between Rogers and Shaw, with customers frequently leaving one company to obtain better deals with the other. This direct competition is shown in porting (switching between carrier) data that discloses the comparatively higher level of switching between Rogers and Shaw compared to levels of switching between other firms. The two firms have frequently targeted their marketing activities at one another.

68. The Proposed Transaction will also reduce product differentiation. Shaw, through its Freedom brand, has provided a low-priced option in the market. Shaw Mobile has likewise provided an innovative and attractively priced bundle of services to consumers in Alberta and British Columbia. The merged entity will lack the

incentives possessed by Shaw to offer each of these brands as distinctive competitive offerings because they cannibalize Rogers' high-margin sales.

69. The removal of Shaw as a competitor will result in the loss of the competitive pressure it has placed on the market, resulting in a likely substantial lessening of both price and non-price competition.

70. Since the Proposed Transaction was announced, competition between Rogers and Shaw has already been lessened. Shaw has reduced marketing and promotional activity and reduced the investment necessary to continue to compete aggressively. The result has been a loss of customers in favour of Rogers. This reduction in competition will only increase if the Proposed Transaction is permitted.

b. Future Wireless Services Competition will be Prevented by the Proposed Transaction

71. Prior to the merger announcement, Shaw showed no signs of slowing competitively. Relying on its strategy to "disrupt the market", its significantly improved LTE network, and acquisition of 600 MHz spectrum in 2019, Shaw was poised to make a 5G network announcement and had projected to grow its market share within the next several years.

72. Shaw's presence as a facilities-based competitor in the 5G market would provide a spur to adoption and expansion of use of this new technology.

73. Shaw also had expansion and network improvements planned. This expansion would have led to increased competition with the National Carriers, both within and outside Shaw's current geographic markets.

c. Remaining Competition Will not Constrain Post-Merger Market Power

74. The other National Carriers, Bell and Telus, will not effectively constrain Rogers' increased post-merger market power.

75. While the other National Carriers operate in Ontario, B.C. and Alberta, they have not historically played the vigorous and disruptive competitive role that Shaw has played in those markets. This is because, for example, when the other National Carriers are deciding whether to undertake promotional activity, they must weigh the benefit of gaining a new customer against the risk that their promotion will also reduce the prices they can charge their pre-existing base of customers or that retaliation by other National Carriers will result in switching and loss of customers.

76. Before Shaw's "Big Gig" promotion forced the National Carriers to compete to retain their customers, prices were increasing year-over-year. They have since decreased in terms of price per unit of data purchased.

77. Shaw has different competitive incentives from those of the National Carriers. Given Shaw's smaller market share, the relative risk to Shaw of its competitive initiatives reducing the prices of its existing base of customers is lower than the upside from market share gains from the larger portion of the market possessed by rivals. If Shaw is eliminated as a competitive force, neither Bell, Telus nor Rogers are therefore likely to replace its competitive impact and presence.

78. These dynamics mean that the stable, high priced competitive environment that was in place prior to Shaw's Big Gig initiative in 2017 is likely to return if the merger is permitted.

d. Increased Likelihood of Coordinated Behaviour

79. Coordination refers to non-competitive behaviour by a group of firms, such as parallel or follow-the-leader conduct, that is profitable for each firm due to the accommodating reactions of the other firms in the group. Markets for Wireless Services in Canada are highly susceptible to coordination.

80. The relevant markets for Wireless Services are highly concentrated. The four-firm concentration ratio in every region of Canada except Ottawa is virtually 100%, and even in Ottawa it is very high at [redacted] Three-firm concentration ratios are also very

high, with the National Carriers accounting for approximately 87% of the total number of subscribers nationally.

81. The National Carriers are roughly symmetric in their national market shares. Each is relatively stronger in some provinces and weaker in others. These shares have generally been stable for years.

82. The supply of Wireless Services involves a large number of small-sized transactions. The wireless carriers, particularly the National Carriers, generally offer similar, though not identical, products, plans and bundles. Trends in cost and demand are relatively stable and well known among these players at this point in the industry's evolution.

83. Pricing is transparent to wireless carriers and especially the National Carriers who actively monitor their competitors' plans, prices and promotions.

84. National Carriers can and do signal their future pricing intentions by such tactics as using promotional pricing with pre-specified end dates, or by publicly announcing their future pricing. They sometimes interpret price movements as signals about competitor intentions and react with their own price signals meant to communicate their intention to accede to a price increase, or to punish a competitor for lowering its price.

85. National Carriers each recognize that they mutually benefit when they enjoy a period without vigorous competition. They often refer to the need to maintain "price discipline" and to avoid "irrational pricing". As a result, there is a history of parallel or coordinated behaviour in this industry.

86. The threat of retaliation from competitors is a significant factor in pricing decisions by the National Carriers. Wireless Services are a significant source of revenue for the National Carriers, who compete with each other across many product and geographic markets. Multi-market exposure among the National Carriers is significant, and encompasses a number of geographies and business lines at the retail level. This multi-market exposure leads them to weigh the risk of a national

competitor retaliating in not only the same areas in which a promotion is offered, but also in other areas where they operate.

87. As referred to above in respect of remaining competition, the risk that lowering prices or enhancing offers will re-price their existing customer base or result in a loss of customers due to their switching to competitors also contributes to the likelihood of coordination by the National Carriers. It discourages both the likelihood and scale of competitive initiatives and responses.

88. The following additional factors mean that there would be a substantial increase in the likelihood of successful coordination post-merger:

a. consumers of Wireless Services lack buyer-side market power;

b. there are high barriers to entry and expansion;

c. there will be a substantial increase in concentration that would result from this merger;

d. there will be an increase in cost symmetry among the National Carriers;

e. underlying service costs of competitors are generally well known to these players;

f. the number of competitors in Shaw's service area will reduce from four to three, facilitating coordination; and

g. the Proposed Transaction will eliminate a maverick competitor.

89. With the respect the last factor above, Shaw has a relatively smaller customer base and therefore different incentives than the National Carriers. Before the parties announced their proposed merger, Shaw positioned itself as a disruptor of coordination, driving down prices and fostering service enhancements such as higher plan limits. The Proposed Transaction is likely to lead to enhanced

anticompetitive coordination by removing this highly disruptive player from the market.

90. In summary, given the foregoing factors, the Proposed Transaction is likely to prevent or lessen competition substantially in the relevant markets by increasing the likelihood of coordinated behaviour post-merger.

C. Prevention of Competition in Business Services

91. Prior to the announcement of the Proposed Transaction, Shaw had planned to enter the Business Services market. The Proposed Transaction has prevented, or is likely to prevent, Shaw from entering, expanding and becoming a vigorous and effective competitor in that market.

92. Shaw was a poised or emerging competitor in that market. [redacted] By marketing to that base using such approaches as cross-selling and bundling of wireline and wireless services, Shaw would have likely played a disruptive competitive role in this market.

93. The Proposed Transaction prevents or is likely to prevent competition substantially by eliminating Shaw as a competitive threat and participant in the Business Services markets in Ontario, B.C. and Alberta.

D. The Parties' Proposed Divestiture(s) Fail to Remedy the Substantial Lessening or Prevention of Competition Resulting from the Proposed Transaction

94. In order to address competition concerns in the market for Wireless Services, Rogers and Shaw have proposed certain divestitures. These exclude certain assets and interests, including assets Shaw has used to provide Wireless Services and/or wireless subscribers.

95. The proposed divestitures will not eliminate the substantial lessening or prevention of competition resulting from the Proposed Transaction ("SLPC"). Among other things, with the creation by divestiture of this new entity ("New Freedom"):

a. the proposed new owners are likely to provide less effective financial, managerial, technical or other support for the Wireless Services business;

b. the proposed divestitures do not provide the assets necessary to effectively replicate the competitive presence of Freedom Mobile and Shaw Mobile in order to eliminate the SLPC; and

c. the other Wireless Services providers, including Rogers, are not likely to compete with the same vigour as they would have but for the Proposed Transaction, given the pre-merger presence of Freedom and Shaw Mobile in the market.

96. Separating Freedom Mobile from Shaw will reduce New Freedom's competitiveness. Among other things:

a. the reduction in scale of Freedom Mobile's operations will limit its ability to invest in and expand its network, and result in slower deployment of 5G;

b. the separation of Freedom Mobile from the Shaw network infrastructure on which it relies will reduce its ability, for example, to offer bundled services by cross-subsidizing and cross-marketing between its product lines with promotions and discounts;

c. the separation of Freedom from Shaw's integrated network severs its ability to offer customers access to more than 450,000 "Go Wi-Fi" hotspots. Losing these hotspots would result in inferior network coverage by Freedom Mobile as well as increased costs to provide the same level of service. Their loss would also increase costs and hurdles to effect future 5G deployment; and

d. removing New Freedom's products from Shaw's retail locations and distribution would weaken New Freedom's retail network.

97. New Freedom is unlikely to have adequate access to the devices, network equipment and spectrum it needs to successfully operate and expand its wireless business.

98. New Freedom will face substantially greater hurdles to expand its network and deploy a 5G network than would have been the case for Shaw but for the Proposed Transaction. [redacted] Since the announcement of the Proposed Transaction, Shaw's investment in its network has declined and it did not acquire 5G-critical 3500 MHz spectrum, placing New Freedom in a more disadvantageous position for future expansion.

99. These challenges are heightened by New Freedom's loss of access to Shaw's network, which provides support for small cells and connectivity for the radio access network. As a result, New Freedom will require the infusion of substantially greater investment in order to successfully deploy a 5G network compared to that required by Shaw in the absence of the merger.

100. The divestitures proposed by Rogers and Shaw [redacted]

101. New Freedom will be unable to replace competition from Shaw Mobile in Alberta and British Columbia. The majority of Shaw Mobile customers are currently bundled customers, who tend to have a lower churn rate and a higher expected lifetime value than customers who only subscribe to a single service.

102. New Freedom would no longer have the same level of access to Shaw's wireline assets in Alberta and British Columbia, and would therefore be unable to provide bundled services, or to provide such bundles as competitively. This will limit New Freedom's ability to offer discounted bundled wireless plans and attract new

customers. Furthermore, it is unlikely that New Freedom will be able effectively to maintain the bundled offers to divested customers and therefore retain them. This will likely lead to higher customer churn and lower customer lifetime value for New Freedom, undermining its ability to invest in its network in the future.

103. Following the Proposed Transaction, Wireless Services providers, including Rogers, are unlikely to compete with substantially similar vigour as they would have but for the Proposed Transaction. Shaw, with its regional base as an established wireline service provider in Western Canada with an integrated Wireless Services business, was a maverick competitor with the ability and incentive to grow its business and gain market share. It had an incentive to offer aggressive wireless discounts to its existing base of internet subscribers with a lower wireless re-price risk in those markets. Post-transaction, Rogers would not share that incentive given its relatively high share of the Wireless Services market and greater risk of re-pricing its existing base of subscribers.

104. The divestitures proposed by Rogers and Shaw fail to substantially replicate this disruptive incentive and therefore the benefit of Shaw's competition brought to consumers in the relevant markets.

VI. RELIEF SOUGHT

105. The Commissioner therefore seeks the relief set out above.

DATED AT OTTAWA, ONTARIO, this 8th day of May, 2022.

Original signed by Matthew Boswell

Matthew Boswell
Commissioner of Competition
Competition Bureau
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Gatineau, QC K1A OC9

Schedule "A"

CONCISE STATEMENT OF ECONOMIC THEORY

WIRELESS SERVICES

1. The Respondents each provide Wireless Services in British Columbia, Alberta, and Ontario. Prior to the announcement of the Proposed Transaction, Shaw had planned to enter the Business Services market, which Rogers currently serves.

2. Wireless Services and Business Services are the relevant product markets.

3. The relevant Wireless Services and Business Services geographic markets are no broader than each of British Columbia, Alberta, and Ontario. Narrower areas may constitute relevant geographic markets for Wireless Services and Business Services and some competitive activity is local; however, the competitive dynamics are generally similar within a province. Competition can be analyzed at a provincial level in general.

4. Rogers, Bell, and TELUS provide wireless services across Canada and collectively account for almost 90% of national industry revenues. The National Carriers have historically dominated the provision of wireless services in most parts of Canada, each with roughly a one third share of national revenues. While the National Carriers have traditionally had similar shares of national revenues, each has had historic 'home markets' with greater shares. For example, Rogers is particularly prevalent in Toronto.

5. In some parts of Canada, the incumbent telephone company is also an incumbent provider of Wireless Services. Examples include SaskTel in Saskatchewan and Tbaytel in North Western Ontario. These carriers have a high share in their service area but do not account for a large share of national revenues.

6. Beginning in 2008, regulatory authorities have set aside spectrum for bidders with less than a 10% share of national wireless subscribers. The CRTC has also implemented policy measures to protect consumers and promote competition. Even

with such policy action, effective entry has been challenging and the National Carriers have maintained their high shares. Only recently has their share of national revenues dipped below 90%.

7. Shaw entered the wireless market in 2016 by acquiring a carrier that entered in 2008 and, following substantial investments, began to increase its share of new subscriber additions. Today, Shaw serves over 2 million subscribers and Rogers and Shaw are each other's closest competitor as measured by the number of subscribers won and lost from each carrier. But for the Proposed Transaction, Shaw would likely continue growing in competitive significance. Shaw's likely competitive growth includes expanding and upgrading its network, including to 5G.

8. A merger may harm competition in two ways: through unilateral effects and/or through coordinated effects.

9. Shaw and Rogers are significant head-to-head competitors of Wireless Services and, but for the Proposed Transaction, would be significant head-to-head competitors of Business Services. Each company unilaterally constrains the ability of the other to raise prices and otherwise exercise market power. Following the Proposed Transaction, that constraint would be lost, and Rogers would exercise increased market power, including charging customers higher prices for Wireless Services and Business Services in British Columbia, Alberta, and Ontario. Rogers may also adversely change the terms of its provision of Wireless Services and Business Services, such as by reducing data allowances in mobile plans. This exercise of market power (and reference to price changes herein) may include other adverse changes to the quality or service offerings for the product.

10. Rogers has [redacted] following closure of the Proposed Transaction. If it does so, Rogers would find it profitable to unilaterally increase its prices following the Proposed Transaction. This is because some of the sales that it would have lost had Shaw Mobile and Freedom Mobile still been available options would instead be retained by Rogers. This sales retention makes increasing prices profitable following the

Proposed Transaction when it would not have been profitable prior to the Proposed Transaction. In addition, the loss of brand choice is itself a significant anticompetitive effect.

11. [redacted] then Rogers would find it profitable to unilaterally increase their prices on each of their brands following the Proposed Transaction because some of the sales lost by each brand in response to a price increase would be diverted to its other brands. This sales recapture by its additional own brands makes increasing prices profitable following the Proposed Transaction when it would not have been profitable prior to the Proposed Transaction.

12. This incentive is significant because of the high diversion between Rogers and Shaw and because of the high incremental margins each firm earns. The Respondents have the unilateral incentive and ability to raise prices by a material amount, and this is likely to lead to a material overall industry price increase.

13. In addition, greater coordination is more likely if the merger is permitted. Coordination refers to the strategic behaviour (such as in regard to pricing) of a group of firms that is profitable for each firm because of each firm's accommodating reactions to the conduct of the others. Absent the merger, the National Carriers are better positioned to take advantage of mutually beneficial terms of coordination, monitor and detect deviations from coordinated behaviour, and effectively punish deviations, without the disruption of a competitor like Shaw. In particular:

    a. The National Carriers recognize mutually beneficial terms of coordination due to their symmetries. Each National Carrier has a roughly equal share of national revenues. However, each also has certain areas they consider to be their home markets, in which they possess a substantial share of subscribers. While the National Carriers could benefit from initiating increased competition outside these markets, they risk retaliation in their home markets if they were to do so. This renders them less likely to seek out competition outside their home markets;

b. The National Carriers are able to monitor and detect deviations from coordinated behaviour. The supply of Wireless Services and Business Services involves a large number of small transactions and the National Carriers can monitor customer wins and losses daily. The National Carriers monitor both “above the line” (publicly visible), and “below the line” (not broadly publicised) pricing. Moreover, industry trends are well known to the National Carriers, allowing them to distinguish between changes in product offerings due to changes in demand or supply conditions compared to changes in product offerings due to changes in competition.

c. The National Carriers are able to effectively punish deviations and signal a return to coordination. They may signal their future pricing intentions by using promotional pricing with prespecified end dates and making public announcements of their future pricing. National Carriers can react to such initiatives by communicating their intent to match a price change or by punishing a deviation from coordination. National Carriers fear retaliation if they compete too vigorously and win too many subscribers at the expense of another National Carrier.

14. The Proposed Transaction would eliminate a maverick competitor and permit a return to enhanced coordination.

15. Shaw is a disruptive entrant into an otherwise comfortable oligopoly. In addition to changing the unilateral incentives of firms to raise prices, the Proposed Transaction also threatens to change the nature of competition between the remaining suppliers in favour of greater coordination. As a capable entrant, Shaw is more strongly incented to gain subscribers than the National Carriers, even at the potential cost of diminishing margins for the whole market.

16. Shaw has made large investments which allow it to offer sufficiently attractive products to disrupt coordination among the National Carriers. But for the Proposed Transaction, it would continue to make such investments. The National Carriers have been, and but for the Proposed Transaction would continue to be, forced to

respond to Shaw's disruptive entry by introducing better offerings themselves, lest they lose too many subscribers to Shaw.

17. Enhanced coordination can have a significant impact on market outcomes. If the industry were to coordinate or coordinate more effectively following the Proposed Transaction, market prices would increase even more than predicted under an assumption of unilateral competition.

18. Shaw's competitive impact goes beyond lowering prices. Shaw has greatly improved data availability to consumers of Wireless Services. Shaw has also played an important role in introducing innovative service offerings, especially those that leverage its wireline assets, such as Wi-Fi hotspots. [redacted] Shaw was well positioned to play a disruptive role in Business Services as well, [redacted] and other competitive tactics to gain market share.

19. Entry, expansion, or repositioning by competitors is unlikely to occur in a timely and sufficient manner to prevent the maintained and enhanced market power created by the Proposed Transaction. A new carrier would face many challenges entering the territory served by Shaw, the most obvious is access to sufficient spectrum to operate a network. Even if spectrum set asides continue there is not a timely path for a new entrant to acquire sufficient spectrum at auction. Additionally, existing spectrum holders are unlikely to sell an adequate mix of spectrum to an entrant.

20. The remaining National Carriers will not effectively constrain Rogers' increased post-merger market power. On the contrary, they will benefit from it. The National Carriers' incentives to compete vigorously are also diminished by the high margins they earn on their large installed base of customers. Vigorous competition risks cannibalizing those sales, which would be costly because each such sale is lucrative and there are many of them.

21. Therefore, the Proposed Transaction will likely lead to a substantial lessening and prevention of competition in Wireless Services and a substantial prevention of competition in Business Services.

22. The divestitures Rogers and Shaw propose fail to eliminate the substantial lessening and prevention of competition resulting from the Proposed Transaction.