

PUBLIC

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
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CT- 2022-002

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Annie Ruhlmann for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

Doc. # 43

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the Competition Tribunal Rules, SOR/2008-141;

AND IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to section 92 and an interim order pursuant to section 104 of the *Competition Act*;

AND IN THE MATTER OF the filing and registration of an interim consent agreement pursuant to sections 104 and 105 of the *Competition Act*.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

– and –

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

CONSENT AGREEMENT

RECITALS:

A. Rogers Communications Inc. and Shaw Communications Inc. have entered into an Arrangement Agreement dated March 13, 2021, under which Rogers Communications Inc. proposes to acquire all of the issued and outstanding shares of Shaw Communications Inc. (the “Proposed Transaction”). Rogers Communications Inc. and Shaw Communications Inc. each offer wireless services in parts of Ontario, Alberta and British Columbia (“Wireless Services”).

B. The Commissioner has concluded that the Proposed Transaction is likely to result in a substantial prevention or lessening of competition in Wireless Services, and has applied for an order pursuant to section 92 of the *Competition Act* in respect of the Proposed Transaction (the “Application”).

C. The Commissioner has applied for an order pursuant to section 104 of the *Competition Act* in respect of the Proposed Transaction and has concluded that the implementation of this

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Agreement is necessary to prevent irreparable harm from the Proposed Transaction pending the Tribunal's disposition of the Application.

D. Respondents do not agree with the Commissioner's conclusions, will contest the Application, and will continue to explore options for the consensual resolution of the Application. For greater certainty, any such proposed consensual resolution shall not constitute a change in circumstances for the purposes of section 106 of the *Competition Act*.

E. Respondents and the Commissioner have agreed to seek an expedited hearing of the Application.

F. Respondents do not admit the Commissioner's conclusions, but will not for the purposes of this Agreement, including execution, registration or enforcement, contest the Commissioner's conclusion that the implementation of this Agreement is appropriate.

THEREFORE Respondents and the Commissioner agree as follows:

I. DEFINITIONS

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

- a. "**Act**" means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- b. "**Affiliate**" has the meaning given to it in subsection 2(2) of the Act;
- c. "**Agreement**" means this Consent Agreement, and references to a "Part", "Section", "Paragraph" or "Schedule" are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;
- d. "**Closing**" means the closing of the Proposed Transaction;
- e. "**Commissioner**" means the Commissioner of Competition appointed under section 7 of the Act or any person designated by the Commissioner to act on his behalf;
- f. "**Proposed Transaction**" means the transaction described in the first recital to this Agreement;
- g. "**Respondents**" means Rogers and Shaw collectively, and "**Respondent**" means any one of them;
- h. "**Rogers**" means Rogers Communications Inc., its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by the foregoing entities, and their

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respective directors, officers, employees, agents, representatives, successors and assigns of each; and

- i. “**Shaw**” means Shaw Communications Inc., the Shaw Family Living Trust, and, as applicable, their respective directors, officers, employees, agents, representatives, trustees, beneficiaries, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by the foregoing entities, and their respective directors, officers, employees, agents, representatives, successors and assigns.

II. TERMS

- [2] Respondents agree not to proceed with the Closing until either the Tribunal’s disposition of the Application or with the agreement of the Commissioner.
- [3] Until either the Tribunal’s disposition of the Application or with the agreement of the Commissioner, Rogers agrees not to enforce any covenant in the Arrangement Agreement (or any other agreement entered into in connection with the Proposed Transaction) to the extent that doing so would limit the operation, maintenance, enhancement or expansion of the Shaw Wireless Services business,.

III. GENERAL

- [4] This Agreement shall become effective on the date when it is registered, and shall remain in effect until the Tribunal’s disposition of the Application.
- [5] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Respondents hereby consent to such registration. Respondents will not, for the purposes of this Agreement, including execution, registration or enforcement, contest the Commissioner’s conclusions that: (i) each of the elements required for an order pursuant to section 104 are met; and (ii) the implementation of this Agreement is necessary. Nothing in this Agreement precludes Respondents or the Commissioner from bringing an application under section 106 of the Act.
- [6] Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.
- [7] This Agreement constitutes the entire agreement between the Commissioner and Respondents, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [8] This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.

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- [9] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner or any Respondent may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail. In no event shall any dispute suspend the obligations under this Agreement until the dispute is finally resolved.
- [10] This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.
- [11] Nothing in this Agreement shall preclude any party hereto from seeking, on receiving the Tribunal's decision on the Application, a stay of that decision on grounds applicable to such stay applications before the Federal Court.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

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DATED this 30th day of May, 2022

COMMISSIONER OF COMPETITION

[Original signed by Matthew Boswell]

Name: Matthew Boswell

Title: Commissioner of Competition

ROGERS COMMUNICATIONS INC.

[Original signed by Marisa Wyse]

Name: Marisa Wyse

Title: Chief Legal Officer

SHAW COMMUNICATIONS INC.

[Original signed by Peter Johnson]

Name: Peter Johnson

Title: Executive Vice President & Chief Legal and
Regulatory Officer