

Competition Tribunal



Tribunal de la concurrence

Citation: *Canada (Commissioner of Competition) v Rogers Communications Inc. and Shaw Communications Inc.*, 2022 Comp Trib 06

File No.: CT-2022-002

Registry Document No.: 51

IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*, RSC 1985, c C-34 as amended.

BETWEEN:

Commissioner of Competition

(applicant)

and

Rogers Communications Inc. and

Shaw Communications Inc.

(respondents)



Date of case management conference: June 14, 2022

Before: Mr. Justice Andrew D. Little (Chairperson)

Date of Order: June 17, 2022

SCHEDULING ORDER (Application under section 92)

[1] **FURTHER TO** an application filed by the Commissioner of Competition (the “**Applicant**” or the “**Commissioner**”) on May 9, 2022 against Rogers Communications Inc. and Shaw Communications Inc. (the “**Respondents**”) (collectively, the “**Parties**”) under section 92 of the *Competition Act*, RSC, 1985, c C-34 (the “**Application**”);

[2] **AND CONSIDERING** the Tribunal’s *Practice Direction Regarding Timelines and Scheduling for Proceedings before the Tribunal*, and having regard to certain, but not all, aspects of the Tribunal’s *Practice Direction Regarding An Expedited Proceeding Process Before The Tribunal* (January 2019) that have been considered by the Parties and the Tribunal in preparing the schedule in this Order;

[3] **AND CONSIDERING** the discussions at a Case Management Conference (“**CMC**”) held on May 17, 2022; the Parties’ proposed schedules for the pre-hearing steps and the hearing of the Applicant’s section 92 application as submitted by the Parties in a side-by-side comparison on May 24, 2022; the discussions with and representations made by the Parties at a CMC held on May 24, 2022; a revised draft schedule prepared by the Tribunal after the CMC and circulated to the Parties on May 26, 2022; the Parties’ respective responses and proposed revisions to that revised draft schedule, as provided on June 10 and 14, 2022; and the Parties’ representations made at a CMC held on June 14, 2022;

[4] **AND BEING SATISFIED** that the schedule in this Order is appropriate for this particular proceeding, considering (*inter alia*): the merger review process in the *Competition Act* and the steps taken prior to the commencement of the Application (as identified by the Parties and in materials filed in the application under section 104 filed on May 9, 2022); the resources that are being and are anticipated to be devoted to this proceeding by all Parties; the Parties’ requests that this matter proceed to a hearing as soon as practicable; and the process used to arrive at the terms of this Order (described above). The Tribunal is also satisfied that the schedule respects the principles found in subsection 9(2) of the *Competition Tribunal Act*, RSC 1985, c 19 (2nd Supp), which direct the Tribunal to deal with all matters as informally and expeditiously as the circumstances and considerations of fairness permit;

[5] **AND CONSIDERING** that an earlier date to commence the hearing is not practicable in this proceeding, having regard to its scope, the matters discussed with the Parties prior to this Order, all of the steps contemplated by this Order, the principles in subsection 9(2) of the *Competition Tribunal Act* and the overall objective of a just resolution of the issues raised;

THE TRIBUNAL ORDERS THAT:

[6] The schedule for the discovery and pre-hearing disclosure steps of the Application shall be as follows:

June 23, 2022 Parties to advise the Tribunal Registry whether they intend to seek mediation in the first scheduled time period

June 28, 2022 Deadline for Parties to exchange Mediation Briefs and for delivery to the Mediator via the Tribunal Registry (if applicable)

June 28, 2022	Deadline for Parties to approve Discovery Plans
July 4-5, 2022	Mediation (if applicable)
July 7, 2022	Deadline for filing Motions for Leave to Intervene
July 15, 2022	Deadline to serve Affidavits of Documents and production of documents by all Parties
July 21, 2022	Last date to file Responses to Motions to Intervene
July 22, 2022	Deadline for service of Requests to Admit
July 25, 2022	Case Management Conference
July 28, 2022	Last date to file Replies on Motions to Intervene
	Deadline for filing any motions arising from Affidavits of Documents and/or productions, including motions challenging claims of privilege
August 4, 2022	Hearing of any motions arising from Affidavits of Documents, productions and/or claims of privilege (if necessary)
August 5, 2022	Deadline for service of answers to Requests to Admit
August 8, 9 and/or 10, 2022	Hearing of any Motions for Leave to Intervene (if necessary; specific date(s) to be confirmed)
Week of August 8, 2022	Deadline for delivery of any additional productions resulting from any Affidavits of Documents, productions and/or claims of privilege motions
	Case Management Conference
August 15 to August 26, 2022	Oral Examinations for discovery (schedule to be settled amongst counsel)
	The Tribunal will have a judicial member available (on dates to be agreed with counsel) to rule on objections arising during oral examinations for discovery
	Deadline for answers to undertakings made at oral examinations for discovery is the date of the undertaking plus 10 days

September 7, 2022	Deadline for filing any motions arising from examinations for discovery, answers to undertakings or refusals
September 9, 2022	Case Management Conference Parties to exchange proposed Agreed Statements of Fact
September 13, 2022	Hearing of any motions arising from examinations for discovery, answers to undertakings or refusals
September 16, 2022	Last day for follow-up examinations for discovery
September 19, 2022	Deadline to agree upon Agreed Statement of Fact
September 23, 2022	All Parties serve lists of documents relied upon and the documents, and witness statements All Parties serve and file expert report(s), including Respondents' expert report(s) on efficiencies, and short written statements as to the area(s) of expertise for each expert Applicant serves list of documents proposed to be admitted without further proof All documents to include confidentiality designations
September 28, 2022	Case Management Conference
October 5, 2022	Deadline for filing any motions relating to challenges to confidentiality designations Deadline for raising objections to the experts, including qualifications and areas in which the experts are proposed to be qualified Deadline for Respondents to advise any objections to the Applicant's list of documents proposed to be admitted without further proof
October 11, 2022	All Parties to file read-ins from examinations for discovery
October 12, 2022	Hearing of any motions relating to challenges to confidentiality designations, objections to Applicant's list of documents proposed to be admitted without further proof and objections to the experts

	Parties to advise Tribunal Registry whether they intend to seek Mediation in the second scheduled time period
October 20, 2022	All Parties to serve additional documents relied upon and responding witness statements All Parties to serve and file responding expert report(s), including Applicant's responding expert report(s) on efficiencies, and short written statements as to the area(s) of expertise for each new responding expert
October 21, 2022	Deadline for Parties to exchange Mediation Briefs and to deliver them to the Mediator via the Tribunal Registry (if applicable)
October 24, 2022	Parties to file Joint Statement of Issues Parties to file a joint list of witnesses for the hearing, including the order, date and duration of each witness
October 26, 2022	Case Management Conference
October 27, 2022	Deadline to file motions related to the proposed hearing evidence (documents relied upon, witness statements, objections to the responding experts, and expert reports)
October 27-28, 2022	Mediation (if applicable)
October 31, 2022	Parties to file written Opening Statements Hearing of motions, if any, related to the proposed hearing evidence (documents relied upon, witness statements and expert reports)
November 1, 2022	Pre-hearing Case Management Conference

[7] The hearing format for motions and CMCs contemplated in paragraph 6 will be by videoconference. However, should the Tribunal decide to modify the conduct of its regular operations and to resume holding in-person hearings, the hearing format could be modified to be in-person in the Hearing Room of the Tribunal located at 600-90 Sparks Street, Ottawa, after consultations with the Parties.

[8] The evidentiary portion of the hearing of the Application shall commence at 10 a.m. on November 7, 2022, and is currently expected to be held by videoconference. However, should the Tribunal decide to modify the conduct of its regular operations and to resume holding in-person hearings, the hearing format could be modified to be in-person in the Hearing Room of the Tribunal

located at 600-90 Sparks Street, Ottawa, after consultations with the Parties. The hearing schedule is as follows:

November 7, 2022 – November 10, 2022	First week of hearing (4 days)
November 14, 2022 – November 17, 2022	Second week of hearing (4 days)
November 21, 2022 – November 24, 2022	Third week of hearing (4 days)
November 28, 2022 – December 1, 2022	Fourth week of hearing (4 days)
December 5, 2022 – December 8, 2022	Fifth week of hearing (4 days) (if needed)

[9] The Tribunal directs the delivery of written arguments from each Party (including a compendium of key documents) and will hear oral arguments after the completion of the evidentiary portion of the hearing. The oral argument portion of the hearing is also expected to be held by videoconference.

[10] If the evidentiary portion of the hearing is completed in four weeks, then the argument will occur as follows:

December 8, 2022	Written Arguments and Document Compendia Filed
December 13-14, 2022	Oral Arguments

[11] If the evidentiary portion of the hearing takes more (or less) than four weeks, the written and oral argument will take place after the completion of the evidence on a schedule to be determined by the Tribunal, having regard to the following:

Date to be confirmed	Written Arguments and Document Compendia Filed (end of hearing + 7 days)
Date to be confirmed	Oral Arguments (end of hearing + 12 days)

DATED at Toronto, this 17th day of June 2022.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Andrew D. Little

COUNSEL OF RECORD:

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