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CT- 2022-002

Annie Ruhlmann for / pour
REGISTRAR / REGISTRAIRE

CT-2022-002

COMPETITION TRIBUNAL

OTTAWA, ONT.

70

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.

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

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

Respondents

**RESPONSE OF THE COMMISSIONER OF COMPETITION TO A REQUEST BY
JOHN ROMAN FOR LEAVE TO INTERVENE**

PART I – OVERVIEW

1. The Competition Tribunal should not grant John Roman’s request for leave to intervene in this application. Mr. Roman has not made a motion for leave to intervene in compliance with section 43 of the *Competition Tribunal Rules*,¹ nor has he met his onus to demonstrate that he meets the test for leave to intervene under subsection 9(3) of the *Competition Tribunal Act*.²
2. The Commissioner of Competition respectfully requests that Mr. Roman’s request be denied.

PART II – FACTS

3. On May 9, 2022, the Commissioner of Competition (“**Commissioner**”) brought an application for an order pursuant to section 92 of the *Competition Act* with respect to the proposed acquisition by Rogers Communications Inc. (“**Rogers**”) of Shaw Communications Inc. (“**Shaw**”). The Commissioner alleges that the proposed acquisition will likely lead to a substantial lessening and prevention of competition in wireless services.
4. On May 18, 2022, Mr. Roman made a request to the Competition Tribunal (“**Tribunal**”) for leave to intervene, copying the respective counsel for the Commissioner, Rogers, and Shaw.
5. According to Mr. Roman, he has no financial, personal or other connection with either Rogers or Shaw, directly or indirectly.³

PART III – ISSUE

6. The issue is whether the Tribunal should grant Mr. Roman’s request for leave to intervene in this application.

¹ [Competition Tribunal Rules](#), SOR/2008-141, s 43. (Book of Authorities, Tab 5)

² [Competition Tribunal Act](#), RSC 1985, c 19 (2nd Supp), s 9(3). (Book of Authorities, Tab 4)

³ Intervention request of John Roman (May 18, 2022), at para 2.

PART IV – SUBMISSIONS

7. Section 9(3) of the *Competition Tribunal Act* allows the Tribunal to grant a person leave to intervene in any proceedings before the Tribunal, other than under Part VII.1 of the *Competition Act*.⁴ If leave is granted, the intervenor may make representations relevant to the proceedings in respect of any matter that affects that person.⁵
8. A motion for leave to intervene is made by the filing and service of a motion for leave to intervene and an affidavit setting out the facts on which the motion is based.⁶ However, Mr. Roman has filed a request comprising argument; Mr. Roman has not filed an affidavit to support his request.
9. Also, Mr. Roman has not complied with paragraph 43(2)(c) of the *Competition Tribunal Rules*, which requires a concise statement of the matters in issue that affect that him and the unique or distinct perspective that he will bring to the proceeding.⁷
10. On a motion for leave to intervene, the onus is on the person seeking leave to intervene to establish the following:
 - a. the matter alleged to affect the person seeking leave to intervene must be legitimately within the scope of the Tribunal's consideration or must be a matter of sufficiently relevant to the Tribunal's mandate;
 - b. the person seeking leave to intervene must be directly affected;
 - c. all representations made by a person seeking leave to intervene must be relevant to an issue specifically raised by the Commissioner; and

⁴ [Competition Tribunal Act](#), RSC 1985, c C-34, s 9(3). (Book of Authorities, Tab 4)

⁵ [Competition Tribunal Act](#), RSC 1985, c C-34, s 9(3). (Book of Authorities, Tab 4)

⁶ [Competition Tribunal Rules](#), SOR/2008-141, s 43(1). (Book of Authorities, Tab 5)

⁷ [Competition Tribunal Rules](#), SOR/2008-141, s 43(2)(c). (Book of Authorities, Tab 5)

- d. the person seeking leave to intervene must bring to the Tribunal a unique or distinct perspective that will assist the Tribunal in deciding the issues before it.⁸
11. Regardless of the procedural defects with his motion for leave to intervene, Mr. Roman does not meet these requirements.
 12. First, Mr. Roman seeks to expand the issues in this proceeding to matters not legitimately within the scope of the Tribunal's consideration. In particular, he raises the statutory authority of the Canadian Radio-television and Telecommunications Commission (“**CRTC**”) and the CRTC’s exercise of that authority. For example, Mr. Roman argues it is “appropriate and correct for the Tribunal to urge the CRTC to exercise its statutory authority to protect Canadians from exactly the concerns raised paragraphs [sic] 59-103 of the Commissioners [sic] submission”.⁹ How the CRTC should exercise its statutory powers is not an issue raised by the Commissioner, nor is it legitimately within the scope of the Tribunal’s consideration under section 92 of the *Competition Act*.¹⁰
 13. Second, Mr. Roman has not provided any basis for finding that he would be directly affected by a matter in this proceeding. This requires that he be affected differently than members of the general public.¹¹ In contrast, Mr. Roman states in his request that he has no financial, personal or other connection with either Rogers or Shaw, directly or indirectly.
 14. While Mr. Roman alleges involvement in proceedings before the CRTC, a particular interest in the area of competition law (or the industry, the Commissioner submits), without more, does not justify leave to intervene.¹² Furthermore, there is no evidence

⁸ [Commissioner of Competition v Direct Energy Marketing Limited](#), 2013 Comp Trib 16 at paras 3 & 12. (Book of Authorities, Tab 1)

⁹ Intervention request of John Roman (May 18, 2022), at para 14.

¹⁰ [Competition Act](#), RSC 1985, c C-34, s 92(1)(f). (Book of Authorities, Tab 3)

¹¹ [Commissioner of Competition v Visa Canada Corporation and MasterCard International Incorporated](#), 2011 Comp Trib 2, at para 12. (Book of Authorities, Tab 2)

¹² [Commissioner of Competition v Visa Canada Corporation and MasterCard International Incorporated](#), 2011 Comp Trib 2, at para 13. (Book of Authorities, Tab 2)

on the record to suggest that this proceeding would affect any CRTC proceedings Mr. Roman is currently involved in.

15. Third, Mr. Roman has not established that he can bring a unique or distinct perspective that will assist the Tribunal in deciding the matter. Beyond his claimed involvement in CRTC proceedings, Mr. Roman has not led any evidence that suggest he has special knowledge or expertise that may assist the Tribunal with respect to the issue on which he seeks to intervene.

PART V – ORDER SOUGHT

16. The Commissioner respectfully requests that the Tribunal dismiss Mr. Roman's request for leave to intervene. The Commissioner does not seek costs on this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of July, 2022.

Ryan Caron

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LIST OF AUTHORITIES, STATUTES, AND REGULATIONS

Authorities

1. [Commissioner of Competition v Direct Energy Marketing Limited](#), 2013 Comp Trib 16.
2. [Commissioner of Competition v Visa Canada Corporation and MasterCard International Incorporated](#), 2011 Comp Trib 2.

Statutes and Regulations

3. [Competition Act](#), RSC 1985, c C-34, s 92(1)(f).
4. [Competition Tribunal Act](#), RSC 1985, c 19 (2nd Supp), s 9(3).
5. [Competition Tribunal Rules](#), SOR/2008-141, s 43.