COMPETITION TRIBUNAL
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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

<u>AMENDED</u> RESPONSE OF SHAW COMMUNICATIONS INC.

PART I - OVERVIEW

1. This Application by the Commissioner of Competition (the "**Commissioner**") for an order under section 92 of the *Competition Act* (the "***Act***") blocking a proposed transformative and pro-competitive acquisition (the "**Transaction**") of Shaw Communications Inc. ("**Shaw**") by Rogers Communications Inc. ("**Rogers**") is premised on fundamental misconceptions concerning the business of Shaw, as well as unsubstantiated assertions concerning the Canadian communications

industry. Moreover, the Commissioner's Application essentially ignores the pro-competitive impacts associated with the Divestiture described below.

2. The Canadian communications industry is at an inflection point. To compete successfully in a global future, Canada needs investment to bring technological innovation to all corners of the country, giving all Canadians—including those living in Indigenous, rural and remote communities—an opportunity to participate meaningfully in the digital society of the future.

3. These required investments—which are generational in scale, and concern both wireline and wireless services—are necessary to deliver affordable and ubiquitous access to the next-generation connectivity platforms of all types that are essential to Canada's economic competitiveness.

4. In light of the dynamic and rapidly changing trends in the Canadian communications industry, Shaw and the Shaw Family Living Trust (which controls Shaw) have been carefully exploring strategic options, including a sale of the company. Ultimately, on March 15, 2021, Shaw announced that it had entered into an agreement with Rogers, under which Rogers will acquire Shaw in a transaction valued at $26 billion (inclusive of the assumption of debt).

5. On June 17, 2022, in response to concerns articulated by regulators, including the Commissioner, Rogers and Shaw announced their intention to complete a full divestiture of Shaw's Freedom Mobile business, including all of its spectrum licences, customers, infrastructure, and retail distribution network, to Videotron Ltd. ("**Videotron**"), an experienced, successful and highly sophisticated wireless

company, with a history of growth and market disruption. The divestiture, which includes ancillary agreements for services such as roaming, backhaul, transport, and third party internet access (collectively, the "**Divestiture**"), will occur immediately prior to the acquisition by Rogers of Shaw.

6. The Transaction and Divestiture will enhance competition in numerous tangible and meaningful ways, including in Canadian telecommunications at a critical moment for the industry, delivering more affordable services, long-term investments in resilient next-generation wireless and wireline networks, innovation and economic productivity. This series of transactions offers an unprecedented opportunity to create two new players that can compete in both the Canadian wireline and wireless services markets at a national level.

7. The ~~new~~ combined ~~entity~~ Rogers/Shaw will have the scale, assets and capabilities needed to compete in Canada's dynamic and rapidly changing wireline communications industry. At the same time, the combination of Freedom and Videotron will result in a robust fourth wireless carrier with an expanded geographic reach, greater spectrum holdings, a larger subscriber base, [redacted] than either Freedom or Videotron alone had before.

8. The new Freedom/Videotron that will emerge from these transactions will be in a much stronger position than today's Freedom to invest and compete in 5G, and to expand, including into the enterprise market. In short, completing this series of transactions is a win for consumers, the economy and the public interest. In particular, it allows Canada to achieve its long-standing policy goal of enabling a

strong, national fourth wireless carrier to emerge and compete for decades to come.

9. The Commissioner concedes the absence of any significant negative competitive effects from combining the wireline businesses of Shaw and Rogers. That is a significant concession given that Shaw generates the overwhelming majority of its revenues and earnings from its wireline business, not its wireless business.

10. The Commissioner also ignores the many pro-competitive impacts of the Transaction and Divestiture in both the Canadian wireline and wireless services markets. Instead, the Commissioner's Application focuses solely on alleged anti-competitive effects of the Transaction, and only in discrete geographic markets for wireless services. The Commissioner seeks with this Application to block the entirety of a pro-competitive and transformative Transaction from proceeding based solely on an alleged prevention or lessening of competition in the wireless services market in parts of Alberta, British Columbia and Ontario. There is simply no basis for this extraordinary measure.

11. While Shaw and Rogers both disagree with the Commissioner's concerns regarding the possible impact of the Transaction on Canada's competitive wireless market, Rogers ~~has offered to address~~ and Shaw have fully addressed those concerns through the ~~divestiture of the entirety of Freedom Mobile, including all of its spectrum licences, customers, infrastructure, retail distribution network and other assets~~ Divestiture.

12. The Commissioner's concerns regarding the alleged inseparability of Shaw's wireline and wireless businesses are wholly misplaced. Shaw has by purposeful design managed Freedom Mobile—formerly known as Wind Mobile—as a fully standalone business in every meaningful respect from the time Shaw entered the Canadian wireless market in 2016. Shaw has built and managed Freedom Mobile in a manner that ensures it can be cleanly and easily separated from Shaw.

13. Contrary to the Commissioner's allegations, Freedom Mobile's success under Shaw's ownership has not depended on "leveraging" Shaw's wireline assets. Indeed, Freedom Mobile has been most successful in Ontario, where Shaw does not have any retail outlets or backhaul assets to leverage as well as no wireline customers within its wireless footprint.

14. For these reasons, Shaw submits that the Application is without merit and should be dismissed with costs.

PART II - FACTS ADMITTED AND DENIED

15. Except as expressly admitted herein, Shaw denies each and every allegation in the Commissioner's Statement of Grounds and Material Facts.

16. Shaw has set out below specific grounds on which it opposes the Application. Shaw also adopts and relies on ~~paragraphs 15 to 41 of~~ the Amended Response of Rogers dated ~~June 3~~ August 8, 2022 (the "**Amended Rogers Response**"), except where the Amended Rogers Response contains factual information that is specific to Rogers, and that lies within the knowledge of Rogers rather than Shaw.

PART III - MATERIAL FACTS RELIED ON BY SHAW

A. SHAW

17. Founded in 1966 by JR Shaw as Capital Cable Television Company, Ltd., Shaw has grown meaningfully over the past 50 plus years.

18. Shaw is a public company headquartered in Calgary, Alberta. Its shares are traded on the Toronto Stock Exchange, the Toronto Venture Exchange and the New York Stock Exchange.

19. Through the Shaw Family Living Trust, the family of JR Shaw controls Shaw. The Shaw Family Living Trust indirectly holds approximately 79% of Shaw's voting shares.

20. Shaw has two operating segments: (i) wireline services; and (ii) wireless services. Although the Commissioner's Application is focused on Shaw's **wireless business**, Shaw generates the substantial majority of its revenues and earnings from its **wireline business**. In fiscal 2021, Shaw's wireline business generated approximately 83% of Shaw's service revenues[1] and 84% of Shaw's Adjusted EBITDA.[2]

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[1] As set out in Shaw's most recent Annual Report dated October 29, 2021, Shaw reports wireless revenues in two broad categories: (i) service revenues (which includes revenues from the provision of monthly and other services to subscribers); and (ii) equipment and other revenues (which includes revenues from the direct sale of mobile devices and other equipment to subscribers and dealers). The metrics referenced exclude Shaw's wireless equipment and other revenues. Service revenue is Shaw's primary performance metric and driver of EBITDA. Equipment is generally sold below cost, resulting in negative margins and is dilutive to EBITDA.

[2] In this context, "**Adjusted EBITDA**" means revenue less operating, general and administrative expenses. It is intended to indicate Shaw's ongoing ability to service and/or incur debt and is therefore calculated before items such as restructuring costs, other gains (losses), amortization (a non-cash expense), taxes and interest.

(i) Shaw's Wireline Business

21. Shaw's wireline segment serves both residential and business customers primarily in Western Canada and Northern Ontario.

22. Shaw's wireline offerings for residential consumers include broadband Internet access, Shaw Go WiFi,[3] video (including the BlueCurve TV application) and telephone services. 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.

23. Shaw's wireline offerings for businesses include a full suite of connectivity and managed services, including Internet access, data connectivity for multiple locations, telephone services, video and audio services, broadcast video, as well as its "Smart Suite Services", which include voice, WiFi, remote office, security, surveillance, marketing and network trunking services, offered primarily to small and medium-sized businesses.

24. As explained in the <u>Amended</u> Rogers Response, Rogers also offers wireline services to both residential and business customers. However, Shaw does not compete with Rogers in the market for wireline services. The companies serve different geographic markets. Whereas Shaw operates primarily in Western

3 Shaw Go WiFi is a network operated by Shaw that allows customers to access the Internet outside of their home through WiFi access points. Once customers authenticate their mobile devices on Shaw Go WiFi, the device will automatically connect every time the device enters a Shaw Go WiFi access point.

Canada and Northern Ontario, Rogers operates primarily in Southern and Eastern Ontario, New Brunswick, and Newfoundland and Labrador.

25. Accordingly, Shaw's business that generated the overwhelming majority of its revenues and Adjusted EBITDA in fiscal 2021 does not compete with Rogers.

26. The Commissioner does not allege that the Transaction will prevent or lessen competition substantially in the wireline services market in Canada. Nevertheless, the Commissioner seeks, among other things, to block the entire Transaction from proceeding based solely on the alleged substantial prevention or lessening of competition in the wireless services market in parts of Alberta, British Columbia and Ontario.

(ii) Shaw's Wireless Business

27. Shaw's wireless segment provides wireless voice and data services to approximately 2.2 million subscribers in Alberta, British Columbia and Ontario. In fiscal 2021, Shaw's wireless segment generated approximately $891 million in service revenues, which was approximately 17% of Shaw's total service revenues for the fiscal year.

28. Shaw offers its wireless services under both the Freedom Mobile and Shaw Mobile brands. Freedom Mobile is headquartered in Toronto, Ontario.

29. Shaw entered the Canadian market for wireless telecommunications services following its acquisition of Wind Mobile in March 2016. Shortly after that acquisition, in November 2016, Shaw rebranded Wind Mobile as Freedom Mobile.

Freedom Mobile offers services to customers in parts of Alberta, British Columbia and Ontario.

30. In the period since it acquired Wind Mobile in 2016, Shaw has completed a multi-year investment cycle in the Freedom Mobile network. In particular, Shaw has invested over $4.5 billion in acquiring and building Freedom Mobile. These investments have included the transformation of the Freedom Mobile network from a 3G network (or third generation wireless network) into a more competitive LTE-Advanced network and 5G-capable network.

31. As a result of Shaw's investments, Freedom Mobile now utilizes a modern wireless network with robust distribution that will provide it with the ability to continue to invest, innovate, compete and grow.

32. Although Shaw has invested heavily in Freedom Mobile over the past five or so years and has enjoyed substantial success in many respects, Shaw's wireless business has yet to become free cash flow positive. Instead, the wireless business of Shaw still seeks to recoup the significant capital investments referred to above.

33. Wind Mobile was a standalone business when Shaw acquired it in 2016. Since that time, Shaw has by purposeful design continued to manage this business on a fully standalone basis in every meaningful respect. From spectrum, infrastructure, back office, billing systems and IT to retail distribution and customer care, Shaw has built and managed Freedom Mobile in a manner that ensures it can be cleanly and easily separated from Shaw.

34. Freedom Mobile derives a substantial majority of its revenue from the retail distribution channel. There are approximately 800 Freedom Mobile bricks-and-mortar retail locations across Alberta, British Columbia and Ontario, plus another 600 prepaid distribution focused outlets. In addition, Freedom Mobile products are available for sale online through FreedomMobile.ca.

35. On July 30, 2020, Shaw launched a second wireless brand under the trade name Shaw Mobile. This recently introduced offering, which was launched during the COVID-19 pandemic, serves customers solely in Alberta and British Columbia.

36. Shaw Mobile was launched by Shaw as a wireline customer retention tool in the face of intense competition from Telus in consumer wireline services.

37. Considering Shaw's deliberate strategic positioning of Shaw Mobile, the introductory pricing was offered only to select wireline customers of Shaw in Alberta and British Columbia and has had no appreciable downward pricing pressure on wireless prices generally—either in those provinces or nationally.

38. Although Shaw Mobile is available only in Alberta and British Columbia (and not in Ontario), the majority of Shaw's wireless customers continue to be based in Ontario, where they are serviced exclusively by Freedom Mobile.

B. BACKGROUND TO THE TRANSACTION

39. Shaw has been carefully considering its strategic options in light of the current and potential future state of the Canadian telecommunications and broadcasting sectors, including the near term generational network investments required within

the industry to meet the demands of consumers and businesses in future years. This has included assessing the company's strengths and challenges across all of its segments in light of key sector trends and developments (including future wireline and wireless network strategies and capital requirements).

40. The advent of fifth generation wireless networks (so-called "**5G**" networks) will require significant and ongoing levels of investment that are different in kind and in scale from the investments that were required in respect of prior generations of wireless technology.

41. At the same time, wireline connectivity is rapidly evolving with increasing consumer and business demands, technological developments and intensifying competition. This will also drive significant, long-term and transformative investments in the coming years.

42. Against this backdrop, and given the continued industry evolution, regulatory uncertainty and sector trends across the Canadian telecommunications sector in the period prior to the announcement of the Transaction, Shaw had been carefully considering various standalone and strategic alternatives available to it.

43. Throughout the Fall of 2020, the Board of Directors and senior management of Shaw, as well as the Shaw Family Living Trust, regularly considered and evaluated the strategic direction of the company.

44. By early 2021, the Shaw Family Living Trust had decided to explore the possibility of engaging in a strategic transaction, including a potential sale of the company.

45. Ultimately, Shaw engaged in a competitive sales process that involved the most likely buyers of the company.

C. DESCRIPTION OF THE TRANSACTION

46. On March 15, 2021, Shaw announced that it had entered into an arrangement agreement (the "**Arrangement Agreement**") with Rogers, under which Rogers will acquire Shaw in a transaction valued at approximately $26 billion (inclusive of the assumption of debt).

47. The business combination of Shaw and Rogers builds on the strong legacy of two family-founded Canadian companies. The new combined entity will be well positioned to compete effectively in Canada's dynamic and rapidly changing communications industry. It will also be positioned to deliver leading-edge advanced connectivity solutions to consumers and businesses nationally, positioning Canadians to compete effectively and efficiently in the global marketplace.

48. The Transaction is subject to customary closing conditions, including: (i) approval by the shareholders of Shaw; (ii) court approval in Alberta; (iii) clearance under the *Act*; (iv) the receipt of approval from the Canadian Radio-television and Telecommunications Commission ("**CRTC**") under regulations made pursuant to the *Broadcasting Act*; and (v) approval by the Minister of Innovation, Science and Industry (the "**Minister**") under the *Radiocommunications Act* in order to transfer spectrum licences.

49. As of the date of this Response, the Transaction has been approved overwhelmingly by the shareholders of Shaw, and has been determined to be fair and reasonable by the Court of Queen's Bench of Alberta. In addition, the CRTC has concluded its comprehensive review and approved the transfer of Shaw's licenced broadcasting undertakings to Rogers, subject to several conditions and safeguards designed to ensure that Canadian consumers benefit from the Transaction. The waiting periods for clearance under the *Act* have also expired.

50. Pursuant to the conditions that apply to the Freedom Mobile spectrum licences, prior approval of the Minister is required for any direct or indirect transfer of those licences<u>, including the Divestiture</u>. That approval has not yet been provided.

D. DESCRIPTION OF THE DIVESTITURE

51. Although Shaw and Rogers disagree with the Commissioner's concerns regarding the possible impact of the Transaction on Canada's competitive wireless market, Rogers ~~has~~ offered to address those concerns by proposing the full divestiture of Freedom Mobile, including all of Freedom Mobile's spectrum licences.

52. <u>On June 17, 2022, Rogers, Shaw and Quebecor Inc. (Videotron's parent company) entered into a letter agreement and term sheet concerning the Divestiture (the "**Divestiture Agreement**"). The Divestiture Agreement provides for: (i) the transfer to Videotron of Freedom's entire wireless business and wireline subscribers; (ii) transitional services from Rogers and Shaw, which will ensure a seamless transfer of ownership to Videotron without operational or service disruptions; and (iii) the provision by Rogers of ongoing ancillary network access services [redacted].</u>

[redacted], making it a stronger and more effective competitor than it was prior to the Divestiture.

53. Shaw adopts and relies on the relevant paragraphs of the Amended Rogers Response that describe the key terms of the Divestiture Agreement.

E. THE COMMISSIONER'S APPLICATION

54. On May 9, 2022, the Commissioner filed this Application alleging, among other things, that the Transaction would substantially prevent or lessen competition. Shaw specifically denies each of the Commissioner's allegations.

F. THE RELEVANT MARKETS

55. Shaw adopts and relies on ~~paragraph 29 of~~ the Amended Rogers Response with respect to the relevant markets at issue in this Application. Shaw denies that the Transaction is likely to result in a substantial lessening or prevention of competition in any of the relevant markets identified by the Commissioner.

G. BACKGROUND ON WIRELESS SERVICES

56. As a "facilities-based" operator, Shaw provides its wireless services through wireless networks. A main component of Shaw's and other Canadian wireless networks is "spectrum", which refers to the radio frequencies that are licensed by Innovation, Science and Economic Development Canada ("**ISED**") to carry communications between a customer's mobile device and various "cell sites".

57. The "cell sites," which include radio antennae, towers and other facilities and infrastructure, are connected to "backhaul" facilities that carry the voice and data

traffic to the “core” of the network, where traffic is routed appropriately (for example, to the public Internet or across public switched telephone networks).

58. There are various forms of “backhaul”, including fibre optic cables (or more traditional copper and coaxial cables) or wireless microwave transmissions.

59. The Canadian wireless market is heavily regulated. Under the authority of the *Radiocommunications Act*, ISED sets terms and conditions in spectrum licences that require, among other things, mandatory roaming (where one carrier’s subscribers can roam outside of that carrier’s footprint on the network of another carrier) and tower and site sharing (where one carrier must share access to radio sites where feasible).

60. Under the authority of the *Telecommunications Act*, the CRTC regulates certain aspects of retail services and various wholesale services of wireless carriers, including the rates and other terms and conditions of incidental roaming on the networks of Bell, Telus and Rogers.

61. The CRTC has also established a new framework for regulated mobile virtual network operator (“**MVNO**”) access services, the details of which are in the process of being finalized. This MVNO framework will enable certain eligible wireless service providers to activate new customers on the networks of Bell, Telus and Rogers (in contrast to roaming, which allows only for incidental access to their networks). Competitors that provide their services using MVNO access are often referred to as “service-based” competitors, or “resellers”, in contrast to “facilities-based” operators.

H. THE TRANSACTION WILL NOT SUBSTANTIALLY PREVENT OR LESSEN COMPETITION IN THE WIRELESS SERVICES MARKET

62. As noted above, the Commissioner does not allege that the Transaction will prevent or lessen competition substantially in any market in Canada other than the market for wireless services. The Commissioner thus concedes the absence of any significant anti-competitive effects from combining Shaw's wireline business with Rogers' wireline business.

63. Nor does the Commissioner allege that the Transaction will prevent or lessen competition substantially in wireless services in Ontario if Freedom Mobile were to be divested ~~(as Rogers has proposed)~~, as the Divestiture now contemplates.

64. The Commissioner therefore concedes that, with ~~a divestiture of Freedom Mobile~~ the Divestiture, there will be no significant anti-competitive effects in respect of the portions of Shaw's business that together generated approximately 95% of Shaw's total revenues in fiscal 2021.

65. The Commissioner's allegations of anti-competitive effects that would remain following ~~a divestiture of Freedom Mobile~~ the Divestiture are confined to Shaw's wireless business in Alberta and British Columbia, which generated approximately 5% of Shaw's revenues in fiscal 2021.

66. In any event, Shaw denies that ~~a divestiture of Shaw's wireless business fails~~ the Divestiture will fail to eliminate any possible substantial lessening or prevention of competition resulting from the Transaction.

67. The allegations in the Commissioner's Application concerning both (i) the competitive effects of the Transaction in the wireless market; and (ii) the viability of divesting ~~Shaw's wireless business~~ Freedom Mobile to address any potential competitive effects are flawed and incomplete for a host of reasons, including because the Commissioner's Application fails to account properly, or at all, for the Divestiture. Moreover, the Commissioner's Application:

(a) ignores current market conditions and realities;

(b) proceeds on the mistaken assumption that Shaw's wireless services business cannot be separated from Shaw in an effective manner that will ensure the continuing competitiveness of the wireless services business;

(c) misunderstands and mischaracterizes the importance and role of Shaw Go WiFi in relation to Shaw's wireless network and in the competitiveness of Freedom Mobile;

(d) overstates and mischaracterizes the relevance of Shaw's wireline assets to the competitiveness of Shaw's wireless services business;

(e) overstates and mischaracterizes the role and significance of Shaw Mobile in relation to the competitiveness of Shaw's wireless services business;

(f) overstates and mischaracterizes the potential role that, in the absence of the Transaction, Shaw would likely play in a business wireless market that Shaw has never, in fact, entered; and

(g) wrongly asserts that, since the Transaction was announced, competition between Rogers and Shaw has lessened.

68. Each of these matters is addressed in the sections that follow.

(i) The Commissioner's Application Ignores Current Market Conditions

69. The Commissioner's analysis of the competitive effects at issue in this Application is flawed because it is based on a retrospective view of market conditions. The Commissioner assumes—without proper foundation—that Shaw's past impact in the wireless market based on historical market conditions will continue unabated and indefinitely in the current market. This flawed assumption undermines the Commissioner's entire analysis of the competitive effects that are supposedly associated with the Transaction.

70. The Commissioner's analysis of competitive effects does not properly account for the dynamic and rapidly changing nature of the wireless industry in Canada.

71. As set out above, the wireless communications industry in Canada is at an inflection point due to the advent of 5G networks. These revolutionary new networks will require significant ongoing levels of investment that are different in kind and in scale from prior generations of wireless technology. The circumstances in the past that permitted Shaw to grow its wireless business successfully are markedly different from the present situation.

72. ~~But for the Transaction~~ In the face of these pressures, Shaw's continued competitive significance in Canada's wireless market could not be assured. By

contrast, once the Divestiture has been completed, the business that the Commissioner in his Application calls “New Freedom” will stand in a fundamentally different and stronger competitive position because of the significant advantages that New Freedom will enjoy as a result of its integration with Videotron. Shaw adopts and relies upon the pleadings of Rogers in this regard, as set out in the Amended Rogers Response.

73. Moreover, the Commissioner’s Application fails to acknowledge and consider that Shaw was prevented by the auction rules promulgated by ISED from participating in the June 2021 auction for 3500 MHz spectrum licences.

(ii) Severability of Freedom Mobile from Shaw’s Wireline Business

74. The Commissioner’s Application is premised on a misunderstanding and mischaracterization of the ability of Shaw’s wireless services business to “leverage” the company’s wireline assets. This, in turn, has led the Commissioner to mistakenly conclude that Shaw’s wireless services business cannot be separated from Shaw in an effective manner that will enable its continuing competitiveness.

75. Contrary to the allegations of the Commissioner, Shaw’s wireless services business can be easily and effectively separated from Shaw in a manner that will enable the competitiveness of “New Freedom”.

76. As noted above, Freedom Mobile was a standalone business when Shaw acquired it in 2016, and Shaw has by purposeful design built and managed Freedom Mobile as a fully standalone business in every meaningful respect since that time.

Contrary to the allegations of the Commissioner, the Freedom Mobile wireless network—along with every other meaningful element of Freedom Mobile—is easily severable from the Shaw wireline operations.

77. While Shaw and other third parties provide wireline backhaul to Freedom Mobile, those services are provided on commercial terms. ~~Any purchaser of~~ As the Divestiture Agreement confirms, in the period following the completion of the Divestiture, ~~“~~New Freedom~~”~~ ~~would~~ will not be required to purchase backhaul services from Rogers, [redacted]. Instead, ~~the purchaser would~~ New Freedom will have access to several other options to procure backhaul services. This is particularly true given that Freedom Mobile operates predominantly in urban areas where multiple third parties compete to provide backhaul services. Every route that serves Freedom Mobile’s network is forborne from regulation, which means that the CRTC has determined that there is sufficient competition for the provision of backhaul services on these routes.

78. Shaw specifically denies the allegation in paragraph 100 of the Application.

79. In this regard, the Commissioner has never challenged the longstanding, extensive and indeterminate wireless network sharing arrangements between Bell and Telus, which are among Shaw’s principal competitors. The combined market share of Bell and Telus in the wireless services business in Canada exceeds 60%, and

they have been sharing their respective wireless networks throughout Canada for more than 20 years.

80. For these reasons, there is no merit to the Commissioner's allegations of inseparability of Shaw's wireless business from its wireline business.

(iii) Shaw Go WiFi

81. The Commissioner alleges that separating Freedom Mobile from Shaw will reduce competitiveness because it will sever Freedom Mobile's ability to offer customers in Alberta and British Columbia access to the Shaw Go WiFi access points. This allegation is based on a misunderstanding and mischaracterization of the business of Shaw.

82. As noted above, Shaw Go WiFi allows customers to access Shaw's wireline Internet outside of their home through WiFi access points. Shaw Go WiFi was initially launched in 2011—several years before Shaw's acquisition of WIND (and Shaw's consequent entry into the wireless market). As an extension of Shaw's wireline network, Shaw Go WiFi was designed to enable wireline customers to opt in to obtaining WiFi connectivity when in the limited physical range of the WiFi access points.

83. While the connectivity offered by Shaw Go WiFi is also available to Shaw wireless customers, this usage is not reflective of any dependency by Freedom Mobile on the Shaw wireline business or assets. Freedom Mobile's network design and deployment are not integrated with Shaw Go WiFi's fixed network. The Shaw Go WiFi access points do not provide any supplemental network coverage for

Freedom Mobile. Nor do they reduce costs for Freedom Mobile or Shaw Mobile to provide the same level of service.

84. Any meaningful role that Shaw Go WiFi could have potentially played in supporting Shaw's wireless business has been virtually eliminated by Shaw's recent acquisitions and deployment in 2020 of low-band spectrum. For example, this low-band spectrum supplants the potential utility of Shaw Go WiFi in urban areas within large buildings, where Shaw Go WiFi might have previously provided superior coverage.

85. Further, and contrary to the allegations of the Commissioner in paragraph 96 of the Application, Shaw had no intention of relying on the Shaw Go WiFi fixed network for future 5G deployment. Nor would that network have accelerated Shaw's ability to deploy 5G.

86. In any event, even assuming Shaw Go WiFi plays a valuable role in supporting Freedom Mobile's wireless business, pursuant to the terms of the Divestiture, New Freedom will have access to Shaw's public Go WiFi hotspots for Freedom subscribers [redacted].

[redacted]

(iv) The Commissioner Overstates the Relevance of Cross-Selling and Bundling

87. In the Application, the Commissioner alleges repeatedly that Shaw's wireline assets have enhanced its ability to compete more vigorously in the wireless services market, including through cross-selling and bundling opportunities. There

is no merit to these allegations. Here again, the Commissioner's allegations are based on a misunderstanding and mischaracterization of Shaw's business.

88. Contrary to the Commissioner's allegations in the Application, Freedom Mobile has been most successful under Shaw's stewardship in Ontario, where over 70% of Freedom Mobile's wireless customers reside. Unlike in Alberta and British Columbia, Shaw does not have any wireline customers, retail outlets or backhaul assets in those parts of Ontario where it offers wireless services. As a result, Shaw cannot and does not engage in Ontario in the type of cross-selling and bundling referred to by the Commissioner in the Application.

89. Cross-selling and bundling is also an immaterial part of Freedom Mobile's business in Alberta and British Columbia.

90. Under Shaw's ownership, Freedom Mobile launched a competitive LTE network, and was then able to acquire and deploy important low-band (700 MHz) and mid-band (2500 MHz) spectrum in Ontario. This set the stage for Freedom Mobile's competitive initiatives, such as Big Gig. Significantly, this occurred in the absence of any integration with Shaw's wireline business.

91. Moreover, contrary to the Commissioner's allegations in paragraph 96 of the Application, Shaw-branded retail locations do not currently sell Freedom Mobile products. Rather, Freedom Mobile has its own retail network, which includes corporate locations and retail partners.

92. In any event, as a result of the Divestiture, New Freedom will be better placed to sell bundled and other discounted services than Freedom under Shaw's ownership, including because of discounted third-party internet services ("**TPIA**") available to it in a broader geographic area (including Ontario, where Freedom's largest markets are) as part of the Divestiture Agreement, together with Videotron's prior success in offering internet-related services on a resale basis.

(v) Shaw Mobile

93. The Commissioner alleges in the Application that a "New Freedom" will be unable to replace competition from Shaw Mobile in Alberta and British Columbia because a majority of these customers are currently bundled customers. There is no merit to this allegation.

94. As explained above, Shaw introduced Shaw Mobile during the COVID-19 pandemic as a value-added service for Shaw's wireline Internet customers. It was conceived as a means of retaining those wireline customers in the face of strong wireline competitive pressure.

95. Contrary to the allegations of the Commissioner, the competitive significance of Shaw Mobile is not material and is diminishing. From the beginning, the strategy regarding Shaw Mobile was to shift from launch-driven growth to profitability, given that the introductory promotional pricing was not sustainable in the long term. Shaw Mobile's continued growth is both time limited and unlikely to persist in its current form.

96. Moreover, as noted above, the bundled pricing offered to certain Shaw customers in Alberta and British Columbia has had no appreciable downward pressure on wireless prices generally.

97. <u>Finally, as stated above, in the period following the completion of the Divestiture, New Freedom will be well placed to offer bundled options to consumers in British Columbia and Alberta as a result of the terms of the Divestiture Agreement and Videotron's successful history of offering internet-related services on a resale basis.</u>

(vi) Wireless Services for Business Customers

98. Contrary to the allegations of the Commissioner in paragraph 91 of the Application, Shaw had not planned to enter the Business Services market (as defined in the Application) prior to the announcement of the Transaction. Accordingly, the Transaction has not prevented, and is not likely to prevent, Shaw from entering or expanding in that market.

99. Shaw considered launching Shaw Mobile for Business as a pilot at the time of the launch of Shaw Mobile in early 2020. However, before even reaching the pilot phase, Shaw deprioritized the initiative for various operational and strategic reasons.

100. Ultimately, in February 2021 (prior to Shaw's decision to enter into the Arrangement Agreement with Rogers), Shaw decided against launching Shaw Mobile for Business given, among other things, the costs associated with creating

and integrating a new billing system and the inability to develop a viable overall business case.

101. By contrast, New Freedom is well poised to offer wireless services to business customers. Videotron's Fibrenoire business has an expansive fibre network [redacted]

(vii) Ongoing Harm

102. Shaw denies the Commissioner's allegation at paragraph 70 of the Application that competition between Rogers and Shaw has been lessened in the period since the announcement of the Transaction.

103. Contrary to the Commissioner's allegation, Shaw continues to compete vigorously with Rogers and other competitors in the wireless services market. The Commissioner's allegations to the contrary demonstrate an unfortunate and significant absence of appreciation of Shaw's wireless business and how it differs from the business of other wireless carriers. Any decreases (or absence of increases) in Shaw's performance since the announcement of the Transaction in March 2021 are unrelated to the Transaction and are the result of industry-wide events and trends.

104. Most significantly, Freedom Mobile has been impacted in a highly disproportionate manner relative to its competitors by the COVID-19 pandemic for a variety of reasons. For example, unlike Rogers and many other wireless competitors, Freedom Mobile derives a substantial majority of its revenues and growth from the

bricks-and-mortar retail channel, which has been particularly impacted by the COVID-19 pandemic and the associated dramatic decline in the consistent opportunity (and consumer willingness) to conduct business in person.

105. The decline in new immigrants, transient workers and international students entering or remaining in Canada since the onset of the COVID-19 pandemic has also disproportionately impacted Freedom Mobile.

106. In addition to the significant impacts of COVID-19, Freedom Mobile has been directly and disproportionately impacted by other market trends since the announcement of the Transaction in March 2021, including ongoing regulatory intervention.

107. Shaw has continued to aggressively market and promote its wireless offerings in the period since the announcement of the Transaction in March 2021. Shaw's projected overall wireless advertising spend and media value for fiscal 2022 is consistent with its fiscal 2021 advertising spend (which was established prior to the announcement of the Transaction). Wireless advertising for Freedom Mobile has, in fact, increased since the Transaction was announced. While advertising spend on Shaw Mobile has levelled out in fiscal 2022, that is the result of a planned retraction of launch-period spending levels.

108. Shaw has also adopted a prudent approach to ongoing network investment since the announcement of the Transaction. While capital spending has decreased somewhat, that decrease has to be put into its proper context. As described above, in the period prior to the announcement of the Transaction in March 2021, Shaw

had undertaken a series of highly material capital investments, including in its wireless business. The company has referred to this pre-Transaction period as the completion of an investment “super-cycle”. Moreover, Shaw’s capital expenditures have been impacted by the company’s inability to participate in the 3500 MHz auction, as noted above.

109. For all of these reasons, there is no merit to the Commissioner’s allegation concerning a lessening of competition between Shaw and Rogers in the period since the announcement of the Transaction in March 2021.

I. THE TRANSACTION GIVES RISE TO SIGNIFICANT EFFICIENCIES

110. Shaw relies upon the submissions made by Rogers in the Amended Rogers Response with respect to the efficiencies that will arise from the Transaction.

PART IV - RELIEF SOUGHT

111. The Commissioner is not entitled to any of the relief he seeks in his Application.

112. Shaw respectfully requests that the Tribunal dismiss the Commissioner’s Application in its entirety, with costs payable to Shaw in an amount to be determined by the Tribunal after hearing submissions from the parties.

113. In the alternative, Shaw requests an Order allowing the Transaction to proceed, subject only to any divestiture or other relief that may be required to address any alleged anti-competitive effects.

PART V - CONCISE STATEMENT OF ECONOMIC THEORY

114. Shaw adopts and relies on the Concise Statement of Economic Theory set out in Schedule "A" of the Amended Rogers Response, all of which should be read in conjunction with the Amended Rogers Response.

PART VI - LOCATION AND CONDUCT OF THE HEARING

115. Shaw respectfully submits that this Application be heard in English in Ottawa or Toronto, Ontario.

June 3, 2022

Amended August 8, 2022

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