

FILED / PRODUIT

Date: October 21, 2022

CT- 2022-002

Annie Ruhlmann for / pour
REGISTRAR / REGISTRAIRE

CT-2022-002

OTTAWA, ONT.

457

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, RSC 1985, c C-34,

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

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

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

and

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

Respondents

and

**ATTORNEY GENERAL OF ALBERTA
VIDÉOTRON LTD.**

Intervenors

RESPONSE OF THE COMMISSIONER

(Respondents' Motion to Strike)

PART I – GROUNDS ON WHICH THE MOTION IS OPPOSED

1. In their Notice of Motion, the Respondents advance a series of objections to the Witness Statements filed by the Commissioner. The Respondents seek to strike some portions of the Witness Statements delivered by the Commissioner. The Motion is nothing more than an offensive response to the Commissioner's motion to strike out portions of the Respondents' Witness Statements which contain inadmissible hearsay and opinion evidence.

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2. The Respondents' motion materials does not withstand scrutiny. The Respondents' split hairs on statement, which are misread on a number of occasions, all in an attempt to muddy the waters on the Commissioner's motion.
3. The Respondents have no basis to complain. The Respondents misapprehend the nature of the evidence that they are attacking. They apply, amongst other things, a narrow test to what is admissible opinion evidence from a lay witness. The issues raised go to the weight that is to be given to the evidence—rather than to the admissibility of the —of the evidence in question and should be addressed at trial.
4. The nature of the evidence under attack by the Respondents' pales in comparison what is at issue on the Commissioner's motion. The resulting harm to the Commissioner from the inadmissible hearsay evidence and the inadmissible opinion evidence is far greater than anything that is otherwise identified by the Respondents in this motion.

PART II – ORDERS REQUESTED

5. The Commissioner seeks from the Tribunal the following relief:
 - (a) an Order dismissing the Respondents' motion in its entirety; and
 - (b) costs of this motion

PART III – DOCUMENTARY EVIDENCE TO BE RELIED ON

6. The Respondents will use at the hearing of the motion the following documentary evidence:
 - (a) The Witness Statements that have been served and filed by the parties in this proceeding; and
 - (b) Such further and other evidence as counsel may advise and the Tribunal may permit

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of October, 2022

Alexander M. Gay

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