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CT- 2022-002

Annie Ruhlmann for / pour  
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OTTAWA, ONT.

# 705

**CT-2022-002**

**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 IN THE MATTER OF** an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition*.

**B E T W E E N:**

**COMMISSIONER OF COMPETITION**

Applicant

- and -

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

Respondents

- and -

**VIDEOTRON LTD.**

Intervenor

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**RESPONSES TO QUESTIONS POSED BY THE PANEL ON NOVEMBER 7, 2022**

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**RESPONSES TO QUESTIONS POSED BY THE PANEL  
ON NOVEMBER 7, 2022**

1. Shaw respectfully submits the answers below in response to the questions posed by the Tribunal to Shaw on November 7, 2022. These responses are intended to provide a summary of key points responsive to each question. This summary does not provide a complete account of the evidence that may be provided by witnesses for the Respondents during this proceeding. Nor does it fully set out all of the arguments that Shaw may rely on in its written and oral closing submissions.

**A. What would Shaw likely have done in the wireless market in the absence of the proposed sale to Rogers?**

2. In the absence of the proposed sale to Rogers, Shaw would have continued to focus its efforts in the wireless market on striking an appropriate and sustainable balance between profit and growth.

3. With respect to the investments necessary to continue competing in wireless, Shaw had tentative plans to participate in the upcoming 3500 MHz spectrum auction.

[REDACTED]

[REDACTED] Shaw would likely have faced strong competition in the auction from other well-capitalized bidders that were eligible for set-aside spectrum, such as Videotron. Interest in those set-aside licences had increased with the CRTC's decision of April 15, 2021 requiring operators to hold spectrum licences in order to offer wireless services under the CRTC's new Mobile Virtual Network Operator (or MVNO) access regulatory regime.

4. Besides the increasing investments required by its wireless division for 5G deployment and network expansion, Shaw would have continued facing escalating investment demands from its significantly larger wireline business, as competitive pressure from TELUS has continued to intensify.

5. As elaborated upon in the Witness Statements of Messrs. English, McAleese and Shaw, in the absence of the Proposed Transaction, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**B. What is Shaw likely to do if the Proposed Transaction is not completed?**

6. As explained in the Witness Statements of Messrs. English, McAleese and Shaw, if the Proposed Transaction between Rogers, Shaw and Videotron is blocked, [REDACTED]

[REDACTED]

7. [REDACTED]

**C. If a sale to an alternate purchaser is a likelihood, please identify any documentary evidence on this, especially if it predates the filing of the Application in this proceeding. Further, please discuss whether any alternative sale would be to a strategic purchaser or a financial buyer.**

8. No alternative purchasers for Shaw have been identified in the period since March 2021, when Shaw entered into the proposed transaction with Rogers (after Bell effectively withdrew from the process by advising Shaw that it was not prepared to amend its offer). Moreover, as explained at page 37 of the Information Circular of Shaw issued in conjunction with seeking shareholder approval for the proposed transaction in May 2021, at the time of the sale process engaged in early 2021 the Shaw family concluded that it

was not interested in pursuing a transaction with a financial buyer, “including because an acquisition by a financial buyer did not address the strategic concerns that Company management and the Shaw Family Living Trust had about not being able to compete over the long-term due to the Company’s insufficient scale” (see PDF page 324 of Mr. McAleese’s Witness Statement, Exhibit “6”).

**D. At paragraph 104 of the Commissioner’s Written Opening Statement he states that Shaw decided not to offer bundled services in Ontario. Please explain the rationale for that decision.**

9. Shaw has not pursued bundled wireline-wireless services in Ontario. Shaw has not viewed offering bundled wireline-wireless services as necessary to the success of Freedom, which is the sole Shaw wireless brand that operates in Ontario. As explained at paragraph 14 of Mr. McAleese’s Witness Statement, Freedom has enjoyed the majority of its success in Ontario despite not having any wireline offering there, bundled or otherwise. Residents of Ontario have consistently represented 70% or more of Freedom’s overall subscribers in the period since Shaw acquired Freedom in 2016, as discussed at paragraph 139 of Mr. McAleese’s Responding Witness Statement.

10. Beginning in October 2019, Shaw experimented with a bundled wireline-wireless offering for Freedom, initially launched on a pilot basis in Calgary. As explained in paragraphs 218 to 219 of Mr. McAleese’s Witness Statement, Freedom Home Internet is a “white-label” offering of Shaw’s wireline consumer Internet product (*i.e.*, the service is marketed with a different entity’s branding), created to target Freedom’s wireless customers. In November 2019, the service was launched more broadly in Alberta and British Columbia and, as described at paragraph 222 of Mr. McAleese’s Witness Statement, the bundling of Freedom wireless and Freedom Home Internet [REDACTED]

██████████. With the benefit of this experience, there was no viable or compelling business case for prioritizing the introduction by Freedom of a bundled offering in Ontario.

11. If the Proposed Transaction is permitted to proceed, however, Videotron would stand in a markedly different position than Shaw, both in Ontario and in Western Canada. With respect to Ontario, Videotron has secured uniquely favourable TPIA arrangements with Rogers as part of the Proposed Transaction. Videotron would be able to offer a bundled wireline-wireless service with different economics. We also understand that Videotron has a fundamentally different business plan for Freedom, including by offering 5G products and services using the substantial block of 3500 MHz spectrum it acquired in the most recent spectrum auction to reposition the brand to compete more aggressively with premium brands of Bell, Rogers and TELUS. Videotron will be well positioned to do so, including because it will be able to offer wireless customers 5G services that Freedom cannot under the ownership of Shaw. At the same time, we believe that Videotron would not face the risk that Shaw currently faces of cannibalizing or repricing its wireline Internet base—because Videotron currently does not have such a wireline Internet base—with highly competitive wireline offers as part of a wireline-wireless bundle or otherwise.

**E. Please explain any arrangements that may exist between Rogers and Shaw regarding the transfer of any spectrum in the event that the Proposed Transaction does not proceed, and regarding the approval process applicable to such transfer, if any.**

12. There is no agreement between Rogers and Shaw regarding the transfer of spectrum in the event the Proposed Transaction does not proceed. If the Arrangement Agreement is terminated, Rogers is in certain circumstances (such as regulatory approval being denied) contractually obligated to pay a reverse termination fee to Shaw in the



amount of \$1.2 billion, which, net of tax, would actually amount to proceeds of \$900 million. While Shaw is permitted under the terms of the Arrangement Agreement to request that all or a portion of this termination amount be paid in the form of assets or other alternative consideration, Rogers has no obligation to provide spectrum or other assets to Shaw. Rogers' obligations are limited instead to reviewing such a request from Shaw in good faith.

13. Even assuming Shaw were to request and Rogers were to agree that a portion or all of any termination fee be paid in the form of spectrum licences, and even if the parties were to agree on the amount and types of spectrum licences in question, any transfer of spectrum licences would require the approval of the Minister of Innovation, Science and Industry. The prospects of and timing for such approval are unknown at this time.