



INFORMATION NOTE

The Tribunal is dismissing the Commissioner's application in *Canada (Commissioner of Competition) v Rogers Communications Inc and Shaw Communications Inc*, CT-2022-002.

The core issue in this proceeding was whether a proposed acquisition of Shaw Communications Inc. (“**Shaw**”) by Rogers Communications Inc. (“**Rogers**”), as modified by a divestiture arrangement with Videotron Ltd. (“**Videotron**”), is likely to prevent or lessen competition substantially in the provision of wireless telecommunications services in Alberta and British Columbia. Pursuant to their three-way arrangement, Shaw would first transfer its subsidiary Freedom Mobile Inc. (“**Freedom**”) to Videotron. Rogers would *only then* acquire the remainder of Shaw through an amalgamation arrangement.

The Tribunal has determined that the proposed transactions and ancillary agreements comprising the arrangement (the “**Merger and Divestiture**”) are not likely to prevent or lessen competition substantially. In other words, the Merger and Divestiture are not likely to result in materially higher prices, relative to those that would likely prevail in the absence of the arrangement. The Merger and Divestiture are also unlikely to result in materially lower levels of non-price dimensions of competition, relative to those that would likely exist in the absence of the arrangement. Such non-price dimensions of competition include service, quality, variety, and innovation.

In the course of making this determination, the Tribunal rejected various allegations made by the Commissioner of Competition (the “**Commissioner**”) in support of several propositions, including that: (i) Shaw's divestiture of Freedom to Videotron would result in Freedom being a less effective competitor than it was immediately prior to the announcement of the Merger; (ii) Rogers' acquisition of Shaw Mobile would likely give rise to anti-competitive unilateral effects; and (iii) the Merger and Divestiture would likely facilitate the exercise of collective market power by Rogers, BCE Inc. (“**Bell**”), and TELUS Communications Inc. (“**Telus**”).

Videotron is an experienced market disrupter that has achieved substantial success in Quebec. It has drawn upon that experience to develop very detailed and fully costed plans for its entry into and expansion within the relevant markets in Alberta and British Columbia, as well as in Ontario. Those plans were buttressed when Videotron acquired VMedia Inc. (“**VMedia**”) earlier this year, with a view to accelerating its rollout of new bundled offerings. The Tribunal has concluded that the evidence establishes that the bundled offerings of Freedom and VMedia will likely be priced at a level that is at least as competitive as the level at which the bundled offerings of Shaw Mobile and Freedom likely would have been priced in the absence of the Merger. The Tribunal has determined that the same is also likely to be true for the “wireless only” offerings of Freedom and

Videotron's digital "Fizz" brand, relative to the corresponding offerings of Shaw Mobile and Freedom. In addition, the Tribunal has found that Videotron, which is in the process of rolling out 5G services in Quebec, is likely to do the same in Alberta and British Columbia within a time-frame that will ensure that competition is not substantially prevented or lessened.

It bears underscoring that there will continue to be four strong competitors in the wireless markets in Alberta and British Columbia, namely, Bell, Telus, Rogers and Videotron, just as there is today. Videotron's entry into those markets will likely ensure that competition and innovation remain robust. Among other things, Videotron has a proven record of aggressive pricing and innovation in Quebec and parts of Eastern Ontario. Its expansion into Alberta, British Columbia and the rest of Ontario will be facilitated by the very favourable arrangements that it has negotiated as part of the Divestiture. That expansion will also be facilitated by the national rollout of Videotron's "Fizz" brand. Moreover, instead of the two firms (Telus and Shaw) that offer bundled wireless and wireline products in those markets today, there will be at least three (Telus, Rogers, and Videotron).

The Tribunal has also determined that the strengthening of Rogers' position in Alberta and British Columbia, combined with the very significant competitive initiatives that Telus and Bell have been pursuing since the Merger was announced, will also likely contribute to an increased intensity of competition in those markets.

Alberta and British Columbia were the only two geographic markets at issue in this proceeding. The Commissioner confirmed on the opening day of the trial, that the Divestiture would ensure that competition is not likely to be substantially prevented or lessened in Ontario, where approximately 72% of Freedom's customers are located. Rogers' post-merger market share in Alberta (approximately 26%) will be well below the 35% "safe harbour" threshold set forth in the Competition Bureau's *Merger Enforcement Guidelines* in relation to unilateral market power. Rogers' share in British Columbia (approximately 40%) will only be moderately above that threshold. The Tribunal expects that those market shares, as well as the market shares of Telus and Bell, will erode as Videotron grows.

The Tribunal's reasons will not address competition in wireline services, except to the extent that such services are relevant to competition in wireless services in Alberta and British Columbia. This is because the Commissioner did not allege that Rogers' acquisition of Shaw's wireline business would likely prevent or lessen competition substantially in any wireline markets. In essence, Rogers is simply stepping into Shaw's shoes in Alberta and British Columbia, where it currently does not compete in the wireline business. In fiscal 2021, the wireline business generated approximately 83% of Shaw's overall revenues.

The Tribunal is working towards issuing a public version of its full decision in both official languages within approximately 48 hours.

The Tribunal panel was composed of Chief Justice Paul Crampton (judicial member), Mr. Wiktor Askanas (lay member) and Ms. Ramaz Samrout (lay member).