

**IN THE MATTER** of the *Competition Act*, R.S.C. 1985, c. C-34;

**AND IN THE MATTER** of a Consent Agreement pursuant to section 74.12 of the *Competition Act* with respect to certain deceptive marketing practices of the Respondent under paragraph 74.01(1)(a), subsection 74.01(1.1) and subsection 74.01(2) of the *Competition Act*.

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**SIRIUS XM CANADA INC.**

**Respondent**

---

**CONSENT AGREEMENT**

---

**WHEREAS** the Commissioner is responsible for the administration and enforcement of the Act;

**AND WHEREAS** the Respondent is a Canadian broadcasting company incorporated under the *Canada Business Corporations Act* with headquarters in Toronto, Ontario and holds a broadcasting licence for national satellite radio subscription undertakings issued by the Canadian Radio-television and Telecommunications Commission, and offers subscription-based satellite and streaming radio content in Canada;

**AND WHEREAS** the Respondent offers various Subscription Services to access satellite and streaming radio content offered by the Respondent;

**AND WHEREAS** the Respondent has advised the Commissioner that it is regulated, and is mandated to pay various regulatory and licence fees under the *Broadcasting Act* (S.C. 1991, c.11), and is regulated as a broadcaster, and is subject to various tariffs and decisions ordered by the Copyright Board, under the *Copyright Act* (R.S.C. 1985, c. C-42);

**AND WHEREAS** the Respondent has made Representations to the public in Canada about the price at which consumers can purchase Subscription Services;

**AND WHEREAS** making a price representation that is not attainable due to additional obligatory charges or fees, a practice known as drip pricing, constitutes a false or misleading representation under the Act, unless the obligatory charges or fees represent only an amount imposed by or under an Act of Parliament or the legislature of a province;

**AND WHEREAS** the Commissioner has concluded that these price Representations are not attainable outside of Quebec due to the addition of the Music Royalty and Administrative Fee, an obligatory fee that is imposed by the Respondent on consumers that they must pay on a monthly basis to access the Respondent's Subscription Services;

**AND WHEREAS** the Commissioner has concluded that the Music Royalty and Administrative Fee is not imposed by law directly on consumers;

**AND WHEREAS** the Music Royalty and Administrative Fee increases or has increased the monthly cost of Subscription Services by approximately 10% or 20%, outside of Quebec, depending on the subscription plan chosen;

**AND WHEREAS** the Respondent has voluntarily made changes to its Website in December 2023 to address certain Representations at issue and has subsequently made further voluntary changes prior to the Execution Date;

**AND WHEREAS** the Commissioner has concluded that the Respondent engaged in drip pricing, outside of Quebec, as contemplated by the Act;

**AND WHEREAS** the Commissioner has concluded that the Respondent's drip pricing Representations, outside Quebec, are material to consumers;

**AND WHEREAS** the Commissioner has concluded that the Respondent engaged in conduct reviewable pursuant to paragraph 74.01(1)(a) of the Act outside of Quebec;

**AND WHEREAS** the Respondent has made Representations to the public in Canada in promotional emails about the price at which consumers can purchase Subscription Services;

**AND WHEREAS** the Commissioner has concluded that the Respondent's promotional emails constitute electronic messages within the meaning of subsection 74.011(2) of the Act;

**AND WHEREAS** the Commissioner has concluded that certain Representations, outside of Quebec, as to price made by the Respondent in promotional emails create a materially false or misleading impression that consumers can purchase Subscription Services at the price represented, whereas consumers were also required to pay the Music Royalty and Administrative Fee, an additional obligatory non-governmental fee, on a monthly basis to access the Respondent's Subscription Service;

**AND WHEREAS** the Commissioner has concluded that the Respondent's price Representations made in promotional emails to the public outside of Quebec are false or misleading in a material respect;

**AND WHEREAS** the Commissioner has concluded that the Respondent is engaging in conduct reviewable pursuant to subsection 74.011(2) of the Act;

**AND WHEREAS** the Commissioner has agreed to more favourable terms in this Agreement than would otherwise be the case, in light of the changes that the Respondent has made to its Website in December 2023 to address certain representations at issue;

**AND WHEREAS** the Respondent does not agree with the Commissioner's conclusions but nonetheless seeks to resolve the concerns identified by the Commissioner in the course of its inquiry into this matter;

**AND WHEREAS IT IS AGREED AND UNDERSTOOD** that for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission of this Agreement, and subject to paragraph 21 of this Agreement, the Respondent does not contest the Commissioner's conclusions, but nothing in this Agreement shall be taken as an admission or acceptance by the Respondent as to any facts or findings in any civil, criminal, regulatory, or administrative proceeding, or shall be taken as an acceptance or admission by the Respondent under the Act, for any other purpose, or any other applicable law, of any facts or findings, wrongdoing, submissions, legal argument or conclusions for any other purpose; nor shall the non-contestation of the Commissioner's conclusions have any issue-preclusive or claim-preclusive effect in any future proceeding, except for any future proceeding between the Parties, and shall not derogate from or limit any rights or defences of the Respondent against third parties including any defences available under the Act or any other Act;

**AND WHEREAS** the Parties are satisfied that this matter will be resolved with the registration of this Agreement which, upon registration, shall have the same force and effect as an order of the Tribunal;

**NOW THEREFORE**, in order to resolve the Commissioner's concerns, the Parties hereby agree as follows:

**I. INTERPRETATION**

1. For the purpose of the Agreement, the following definitions shall apply:
  - a. "**Act**" means the *Competition Act*, R.S.C. 1985, c. C-34;
  - b. "**Affiliate**" means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
  - c. "**Agreement**" means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the Act, including Appendix "A" hereto;
  - d. "**Application**" means any application, whether on mobile or desktop, owned, controlled or operated by the Respondent and used for the purpose of supplying Subscription Services to the public in Canada;
  - e. "**Commissioner**" means the Commissioner of Competition appointed pursuant to section 7 of the Act, and his or her authorized representatives;
  - f. "**Execution Date**" means the date on which the Agreement has been signed by both Parties;
  - g. "**Interpretation Act**", means the *Interpretation Act*, R.S.C. 1985, c. I-21;
  - h. "**Marketing Personnel**" means all current and future employees of the Respondent and Senior Management of the Respondent who are materially involved in or responsible for developing, implementing or overseeing the advertising, marketing and/or pricing of Subscription Services;
  - i. "**Music Royalty and Administrative Fee**" means the additional obligatory fee that consumers, outside of Quebec, must pay on a monthly basis to access the Subscription Services;
  - j. "**Parties**" means the Commissioner and the Respondent collectively, and "Party" means any one of them;
  - k. "**Person**" means any individual, corporation, partnership, firm, association, trust, unincorporated organization, or other entity;

- l. “**Representations**” means any and all representations made, caused to be made, or permitted to be made by or on behalf of the Respondent, including any representation on the Website, Applications, in promotional emails, or by direct mail;
- m. “**Respondent**” means Sirius;
- n. “**Senior Management**” means the Respondent’s current and future Chief Executive Officer, Chief Operating Officer, Chief Administrative Officer, Chief Financial Officer, Chief Accounting Officer, President, Vice Presidents, Secretary, Controller, General Manager, Managing Directors, and any individual who performs their functions;
- o. “**Sirius**” means Sirius XM Canada Inc., incorporated pursuant to the Canada Business Corporations Act, its successors and assigns, all Affiliates, and the respective successors and assigns of each;
- p. “**Subscription Service**” means any subscription plan offered by Sirius that includes music channels;
- q. “**Tribunal**” means the Competition Tribunal established by subsection 3(1) of *Competition Tribunal Act*, R.S.C., 1985, c. 19 (2nd Supp.), as amended; and
- r. “**Website**” means the website accessible at siriusxm.ca via desktop, laptop or mobile device, and any other website owned, controlled or operated by the Respondent and used for the purposes of promoting the Subscription Services to consumers in Canada.

II. **COMPLIANCE WITH THE DECEPTIVE MARKETING PRACTICES PROVISIONS OF THE ACT**

- 2. Within forty-five (45) days of the Execution Date, the Respondent shall comply with Part VII.1 of the Act.
- 3. Without limiting the generality of paragraph 2, within forty-five (45) days of the Execution Date, the Respondent shall not make, cause to be made, or permit to be made on its behalf any material Representation to the public in Canada that constitutes drip pricing within the meaning of subsection 74.01(1.1) of the Act or that creates a materially false or misleading general impression that consumers can purchase Subscription Services at prices that are not attainable due to additional obligatory charges or fees, including the Music Royalty and Administrative Fee.

4. Without limiting the generality of paragraph 2, within forty-five (45) days of the Execution Date, the Respondent shall not make, cause to be made, or permit to be made on its behalf any Representation to the public in Canada, or send or cause to be sent such a Representation in an electronic message that creates a materially false or misleading general impression that consumers can access Subscription Services at prices that are not attainable due to additional obligatory charges or fees, including the Music Royalty and Administrative Fee.
5. If the Respondent becomes aware that there has been a breach or possible breach of any terms of this Agreement, the Respondent shall, within ten (10) days notify the Commissioner thereof and provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach, and the steps the Respondent has taken to correct the breach or possible breach.

### **III. PAYMENTS**

#### **ADMINISTRATIVE MONETARY PENALTY**

6. The Respondent shall pay an administrative monetary penalty in the amount of \$3.3 million.

#### **COSTS**

7. The Respondent shall pay \$30,000 for costs incurred by the Commissioner during the course of his investigation into this matter.

#### **FORM AND TIME OF PAYMENT**

8. The payments referred to in paragraphs 5 and 6 above shall be made within thirty (30) days of the Execution Date by certified cheque or by wire transfer payable to the Receiver General for Canada.

### **IV. CORPORATE COMPLIANCE PROGRAM**

9. Within ninety (90) days of the Execution Date, the Respondent shall enhance and thereafter maintain in relation to the Act, a corporate compliance program, the goal of which will be to promote the Respondent's compliance with the Act generally, and Part VII.1 of the Act specifically. The compliance program shall be formulated and implemented in accordance with the Commissioner's guidance titled "Core Principles of a Credible and Effective Compliance Program" (as of the Execution Date of this Agreement) on the Competition Bureau's website at [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).

10. Members of the Respondent's Senior Management will fully support and enforce the compliance program and play an active and visible role in its implementation and maintenance.
11. Within twenty-one (21) days of the enhancement of the compliance program, each member of Senior Management shall acknowledge his or her commitment to the compliance program by signing and submitting to the Commissioner a letter in the form set out in Appendix "A" to this Agreement. Any individual who becomes a member of Senior Management during the term of this Agreement shall sign and submit to the Commissioner a letter in the form set out in Appendix "A" to this Agreement, within twenty-one (21) days of becoming a member of Senior Management.

**V. COMPLIANCE REPORTING AND MONITORING**

12. The Respondent shall provide a copy of this Agreement to all Marketing Personnel within fourteen (14) days of the registration of this Agreement, and to all future Marketing Personnel within fourteen (14) days of the commencement of their employment. Within fourteen (14) days of being provided with a copy of this Agreement, the Respondent shall obtain from each of these individuals a signed and dated statement acknowledging that he or she has read and understood this Agreement and Part VII.1 of the Act.
13. The Respondent shall provide the Commissioner written confirmation that all Marketing Personnel have received a copy of this Agreement within twenty-one (21) days of the registration of this Agreement.
14. For the purposes of monitoring compliance with this Agreement, the Respondent will provide the Commissioner with information relating to any matter addressed in Parts II, III, IV and V of this Agreement that the Commissioner requests, within thirty (30) days of a written request from the Commissioner.
15. Within one hundred and twenty (120) days of the Execution Date, the President or Chief Operating Officer of the Respondent shall provide to the Commissioner a statement under oath or solemn affirmation that the compliance program required by Part IV of this Agreement has been implemented.

**VI. GENERAL**

16. Notices, reports and other communications pursuant to any of the terms of this Agreement shall be in writing and shall be considered to be given if sent by personal delivery or registered mail to the Parties at the

following addresses (notices can also be sent informally by email to the attention of the persons indicated below, but will not be formally considered given they are sent by email):

**(a) Commissioner of Competition**

Competition Bureau  
Place du Portage, 21st Floor  
50 Victoria Street, Phase I  
Gatineau, QC K1A 0C9  
Attention: Deputy Commissioner of Competition, Cartels and Deceptive Marketing Practices Branch

Email: [josephine.palumbo@cb-bc.gc.ca](mailto:josephine.palumbo@cb-bc.gc.ca)

**With a copy to:**

Executive Director and Senior General Counsel  
Competition Bureau Legal Services  
Department of Justice  
Place du Portage, 22nd Floor  
50 Victoria Street, Phase I  
Gatineau, QC K1A 0C9

Email: [ic.cb\\_lsu\\_senior\\_general\\_counsel-avocat\\_general\\_principal\\_usj\\_bc.ic@canada.ca](mailto:ic.cb_lsu_senior_general_counsel-avocat_general_principal_usj_bc.ic@canada.ca) and

[cb\\_lsu\\_senior\\_general\\_counsel-avocat\\_general\\_principal\\_usj\\_bc@ised-isde.gc.ca](mailto:cb_lsu_senior_general_counsel-avocat_general_principal_usj_bc@ised-isde.gc.ca)

**(b) The Respondent**

Sirius XM Canada Inc.  
1000-351 King Street East  
Toronto, ON M5A 0L6

Email: [REDACTED]

**With a copy to:**

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9



Email: [REDACTED]

17. This Agreement shall be binding upon the Respondent for ten (10) years following registration with the Tribunal.
18. The Parties consent to the immediate registration of this Agreement with the Tribunal pursuant to section 74.12 of the Act.
19. The Commissioner may, in his sole discretion and after informing the Respondent in writing, extend any of the time frames in Parts IV and V of this Agreement.
20. The Commissioner may, with the consent of the Respondent, extend any of the time frames in Part VI of this Agreement.
21. Nothing in this Agreement precludes the Respondent or the Commissioner from bringing an application under section 74.13 of the Act where the circumstances that led to the making of this Agreement have changed.
22. The Respondent shall not make any public statements that contradict the terms of this Agreement.
23. The Respondent attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner for variation or rescission of this Agreement.
24. In the event of a dispute regarding the interpretation, implementation or application of this Agreement, either Party or both of the Parties may apply to the Tribunal for an order or directions. In no event shall any dispute suspend any time period under the Agreement. Subject to their rights of appeal, the Parties shall abide by any decision of the Tribunal made in order to give effect to this Agreement.
25. This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.
26. The Agreement constitutes the entire agreement between the Parties and supersedes all previous negotiations, communications and other agreements, whether written or oral, unless they are incorporated by reference herein. There are no terms, covenants, representations,

statements or conditions binding on the Parties other than those contained herein.

27. The computation of time periods contemplated by this Agreement shall be in accordance with the Interpretation Act. For the purpose of this Agreement, the definition of "holiday" in the Interpretation Act shall include Saturday. For the purposes of determining time periods, the date of this Agreement is the last date on which it is executed by a Party.
28. The Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada, without applying any otherwise applicable conflict of law rules.

[The remainder of this page is intentionally left blank]

PUBLIC

- 11 -

The undersigned hereby agree to the filing of the Agreement with the Tribunal for registration.

DATED at Toronto, in the Province of Ontario this 3<sup>rd</sup> day of June, 2024.

**for: Sirius XM Canada Inc.**

"Original signed by Mark Redmond"

---

Mark Redmond  
President and Chief Executive Officer

I have authority to bind the corporation.

**DATED** at Gatineau, in the Province of Quebec this 3<sup>rd</sup> day of June, 2024.

"Original signed by Matthew Boswell"

---

Matthew Boswell  
Commissioner of Competition

**APPENDIX "A"**

**ACKNOWLEDGEMENT BY SENIOR MANAGEMENT**

**[Corporate Company Letterhead]**

June 3, 2024

**CONFIDENTIAL**

Commissioner of Competition  
Competition Bureau  
Place du Portage, Phase 1  
50 Victoria Street, 21st Floor  
Gatineau (QC) K1A 0C9

**RE: Commitment to Enhance and Maintain Compliance Program**

Further to paragraph 10 of the Agreement between the Commissioner of Competition (the "Commissioner") and Sirius XM Canada Inc. ("**Sirius**"), dated June 3, 2024, I hereby commit to successfully implement the enhanced corporate compliance described in Part IV of the Agreement, for the purpose of promoting compliance with the Competition Act, R.S.C. 1985, c. C-34, as amended (the "Act"), including the deceptive marketing practices provisions in Part VII.1 of the Act. I will take an active and visible role in Sirius' enhanced corporate compliance program.

Sincerely,

---

**Mark Redmond**  
President and Chief Executive Officer

cc: Deputy Commissioner of Competition, Cartels and Deceptive  
Marketing  
Practices Branch, Competition Bureau

Executive Director and Senior General Counsel, Competition Bureau  
Legal Services