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September 6, 2022

**Filed Electronically**

Mr. Claude Doucet  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, ON K1A 0N2

Dear Mr. Doucet:

**Re: Part I Application by Timeless Inc. on behalf of OneSoccer, alleging a breach of section 9 of the *Broadcasting Distribution Regulations* by Rogers Cable Inc. (“Rogers Cable”) – Comments of TELUS Communications Inc.**

1. Pursuant to the directions set out for response to Part I Applications, TELUS Communications Inc. (“TELUS”) hereby provides its comments on the Application by Timeless Inc. (“Timeless”) on behalf of OneSoccer alleging that Rogers Cable Inc.’s (“Rogers”) refusal to carry the linear programming service “OneSoccer” confers an undue preference on Rogers.
2. In its application, Timeless describes the unresolved negotiations regarding the carriage of Timeless’ linear programming service “OneSoccer” on Rogers distribution platform. As noted in the application, Rogers Media previously carried OneSoccer’s programming on its Sportsnet programming service, which proved to be popular. However, Rogers appears to be uninterested in carrying the OneSoccer linear programming service on its distribution platforms.
3. TELUS has carried OneSoccer since September 2021, as part of the theme pack “*More Sports*”, and on an *a la carte* basis. TELUS carries OneSoccer based on the merits of the programming and its interest to consumers. However, Rogers as a vertically integrated entity (“VI”) has conflicting interests when it comes to carrying

certain independent programming. The most reasonable explanation for Rogers' disinterest in distributing OneSoccer is that it would compete with its affiliated programming service, Sportsnet.

4. TELUS is not advocating a return to mandatory carriage requirements. There are good reasons to give distributors the freedom to choose which discretionary services they offer their customers, which promotes healthy competition among discretionary services. However, vertical integration distorts those incentives and closer scrutiny is warranted when vertically integrated entities refuse carriage of independent programming services on their related distribution platforms. This is particularly true when the programming service in question is an independent programming service that is directly competitive with the VI's own services, and the independent has offered evidence to suggest that that VI entity does find value in its programming.
5. In its *Regulatory framework relating to vertical integration*, the Commission acknowledges the "possibility that VI entities might prioritize the distribution of related services...over the distribution of independent programming services, thus limiting the programming to which Canadians have access"<sup>1</sup>. Unfortunately, this possibility has become a reality for OneSoccer.
6. In the *Let's Talk TV* policy, the Commission recognized that "...independent services are an important source of diversity in the system as they often offer niche program targeted at narrower audiences."<sup>2</sup> However, Rogers' refusal to carry OneSoccer explicitly highlights the dangers that vertical integration poses to diversity of voices.
7. Given the Commission's recent approval of Rogers' application to acquire Shaw's broadcasting licences,<sup>3</sup> it is important to scrutinize Rogers' carriage decisions relating to independent competitors carefully, given its size and scale. This is particularly true when those decisions threaten to diminish the viability of an independent programming service, and when that programming service has offered evidence to suggest that Rogers values its programming. The Commission should ensure that Rogers is not free to weaken the viability of its competitors as a precursor to attempting to buy the service, or its programming rights.
8. In its recent approval of the Rogers/Shaw transaction, the Commission recognized that there is a need to review its existing policies to protect independent services because the "application of existing policies could lead to unintended outcomes following the close of the transaction".<sup>4</sup> Yet even before the close of the transaction, Rogers is depriving an independent service of carriage on its distribution platforms

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<sup>1</sup> Broadcasting Regulatory Policy CRTC 2011-601, *Regulatory framework relating to vertical integration*, 21 September 2011, paras 43.

<sup>2</sup> Broadcasting Regulatory Policy CRTC 2015-96, *Let's Talk TV - A World of Choice - A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, 19 March 2015, para 118.

<sup>3</sup> Broadcasting Decision CRTC 2022-76, *Shaw Communications Inc. – Change of ownership and effective control*, 24 March 2022.


<sup>4</sup> Broadcasting Decision CRTC 2022-76, para. 96.

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despite the fact that its affiliate Sportsnet demonstrated interest in carrying OneSoccer's programming, albeit on terms that did not allow OneSoccer's branding to be associated with the programming.

9. Timeless' claim of undue preference by Rogers is not surprising, and is timely. TELUS supports the Commission's careful examination of Timeless' application, as the statements made in that complaint suggest that Rogers' actions are not being made for valid commercial reasons, but rather anti-competitive reasons.
10. All of which is respectfully submitted by TELUS.

Yours truly,



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