

**FILED / PRODUIT**

Date: October 14, 2022

CT- 2022-002

Sara Pelletier for / pour  
REGISTRAR / REGISTRAIRE

CT-2022-002

OTTAWA, ONT.

Doc. # 381

**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**

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**NOTICE OF MOTION**

(Commissioner's Motion to Strike part of Witness Statements)

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**TAKE NOTICE THAT** the Applicant, the Commissioner of Competition, will make a motion to the Competition Tribunal ("Tribunal") on a date to be determined or as soon thereafter as the motion may be heard.

**THE MOTION IS FOR:**

1. an order striking out parts of the witness statements filed and served by the Respondents, as described in Appendix A attached hereto, that the Tribunal finds to be inadmissible on the grounds o that they constitute inadmissible opinion evidence or hearsay;
2. costs of this motion; and
3. such further and other relief as counsel may request and the Tribunal deems just.

**THE GROUNDS FOR THE MOTION ARE:**

4. The Tribunal has firmly held that the principles of evidence applicable to court proceedings apply equally to the Tribunal in the context of its assessment of the admissibility of evidence. The legislative history of the Tribunal, and its enabling legislation, namely the *Competition Act*, reflect a clear intention to judicialize the processes of the Tribunal and hold the evidence to the highest evidentiary standards;
5. Tribunal decisions have held that the judicial-like nature of the Tribunal, and the important impact that its decisions can have on a party's economic interests, mean that the Tribunal must act with the highest degree of concern for procedural fairness which therefore calls for the strict application of the rules of evidence;
6. The more critical the evidence will be and the more it will goes to the core of the issue before the Tribunal, the more closely the Tribunal must adhere to the rules of evidence so as to ensure fairness;
7. The Respondents' pre-hearing disclosure, namely the witness statements identified in Appendix A, are flawed and fail to meet the rules of evidence. The witness statements offer inadmissible opinion evidence and hearsay evidence on core issues that are before the Tribunal and which have been put forward by the Commissioner; in the section 92 Application;
8. The Respondents' witness statements improperly contain factual findings and opinions with respect to contested issues in this proceeding;

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9. Opinion evidence from lay witnesses is admissible in very limited circumstances and only when the opinion is based on facts that were actually observed by the witness in question. A number of paragraphs relied on by the witnesses are not within their direct knowledge;
10. The witness statements also contain inadmissible hearsay, including statements regarding the views of market analysts and consultants provided to the witnesses as well as news articles. The hearsay evidence does not meet the requirements of necessity or reliability and is therefore not admissible;
11. In many respects, the witness statements filed and served by the Respondents are closing arguments as opposed to a statement of facts within the knowledge of the witnesses. It does not meet any of the requirements under Tribunal Rule 68 and is so flawed that parts thereof ought to be struck;
12. The Commissioner therefore seeks to strike certain paragraphs contained in the witness statements, as provided for in Appendix A;
13. *Competition Tribunal Rules*, rules 2(1), 68, 74
14. Such further or other grounds as counsel may advise and the Tribunal may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

15. Appendix A; and
16. such further or other material as counsel may advise and this Tribunal may permit.

**DATED AT OTTAWA, ONTARIO** this 14th day of October, 2022.

*Alexander M. Gay*

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**AND TO: GOVERNMENT OF ALBERTA**  
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APPENDIX "A"			
Witness statement	Reference (page/para)	Statement	Basis for Objection
Marisa Fabiano	Page 6, para 23	23. [REDACTED]	The paragraph contains inadmissible hearsay evidence. A witness statement from [REDACTED] has not been produced in these proceedings.
Marisa Fabiano	Page 7, para 24	24. [REDACTED]	The paragraph contains inadmissible hearsay evidence. A witness statement from [REDACTED] has not been produced in these proceedings.
Marisa Fabiano	Page 7, para 25	25. [REDACTED]	The paragraph contains inadmissible evidence. [REDACTED] The author of the [REDACTED] analysis has not been called by Rogers as a witness in this proceeding. The Commissioner is therefore deprived

			of the opportunity to cross-examine the person who prepared the analysis relied upon. Admitting this evidence would be procedurally unfair to the Commissioner and would impede the truth-seeking function of the Tribunal.
Dean Prevost	Page 42-43 paras 111-117	111. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 112. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 113. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 114. [REDACTED] [REDACTED] [REDACTED]	These paragraphs contain inadmissible hearsay evidence. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] The author of the analysis has not been called by Rogers as a witness in this proceeding. The Commissioner is therefore deprived of the opportunity to cross-examine the person who prepared the analysis relied upon. Admitting this evidence would be procedurally unfair to the Commissioner and would impede the truth-seeking function of the Tribunal.



[REDACTED]

115. [REDACTED]

116. [REDACTED]

117. [REDACTED]

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Trevor English	Page 6 Para 11	11. As explained below, I, other members of the ELT, our Board of Directors and members of the Shaw family have determined unanimously that the Proposed Transaction with Videotron and Rogers is in the best interests of Shaw, its investors and its many other stakeholders. <u>Moreover, we believe firmly that the Proposed Transaction will significantly enhance competition in the wireline and wireless industries, and is also in the best interests of Canadians.</u>	<p>The paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Trevor English, as an officer of Shaw, is not in a position to comment on what may be in the interest of Canadians and whether the Proposed Transaction will increase competition at large.</p>
Trevor English	Page 49 Para 155	155. The appreciation in Quebecor’s share price is particularly telling. It indicates that the collective judgment of independent analysts and investors was that the proposed sale of Freedom to Videotron is highly accretive to Videotron and that Videotron will be able to operate Freedom viably and profitably. This is in contrast to the equity markets one-day share price decline of Shaw of ~8% when we announced the original WIND acquisition in late 2015.	<p>The paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Trevor English, as an officer of Shaw, is not in a position to comment Videotron’s future performance.</p>
Trevor English	Page 50-53 Paras 160-165	<p>160. In the period following the announcement of June 17, 2022, numerous independent analysts who have significant experience covering the telecommunications industry in Canada have expressed their strong support for the Proposed Transaction.</p> <p>161. On June 21, 2022, RBC Capital Markets published an analyst report concerning the</p>	<p>These paragraphs contain inadmissible hearsay evidence.</p> <p>The witness makes reference to a series of market reports from RBC Capital Markets, National Bank, BMO Capital Markets that contain analysis on the proposed Transaction.</p>

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Proposed Transaction, a copy of which is attached to this Witness Statement as Exhibit “49”. The report stated:

We believe the proposed remedy package with Quebecor is highly complementary to Canada’s broader telecom policy, and importantly, avoids several “lose-lose-lose-lose” scenarios that can emerge if the current transaction is not remedied on a timely basis and therefore unable to close (i.e., an alternative wireline-only transaction, excess overbuilds, multi-year 5G delays, deteriorating competitive positions, prolonged Tribunal/court processes etc.). Specifically, the proposed remedy package in our view: (1) meaningfully bolsters Quebecor’s sustainability and its path to 5G outside of Quebec by providing Quebecor with increased operating and financial flexibility given enhanced network access; (2) enables Rogers to begin narrowing on a timely basis what appears to be a widening gap to Bell and TELUS with respect to fiber infrastructure and fiber densification in urban markets (a critical element of 5G B2B IoT over the next 5-10 years); (3) strengthens the government’s four facilities-based wireless player policy by providing national scale to a regional operator; and (4) provides much sought after sustained facilities based wireless competition.

[emphasis added]

162. On July 7, 2022, National Bank published an analyst report concerning the Proposed Transaction, a copy of which is attached to this Witness Statement as Exhibit “50”. The report stated:

When does a regulatory process extend too long and begin to work counter-productively? The T-Mobile and Sprint merger took two years, but that was about the U.S. wireless market contracting to three national players from four. That's significant. In Canada, we're looking at two geographically complementary cable companies trying to merge while selling a regional wireless player, which has already been sold twice, to another hoping to get bigger. Rogers could have expedited opening the door to

The market reports are put forward for the truth of their content, that is, as support of the contention that the proposed Transaction is beneficial for the telecommunications market.

The authors of the various market reports have not been called by Rogers/Shaw as witnesses in these proceedings. The Commissioner is therefore deprived of the opportunity to cross-examine the authors who prepared the analysis relied upon. Admitting this evidence would be procedurally unfair to the Commissioner and would impede the truth-seeking function of the Tribunal.

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Quebecor long before mid-May. However, it finally made the important pivot. Over the past few years, the Canadian government has analyzed competition in wireless and published multiple reports and policies. We assume that regulators have established a better understanding of how different parties could more optimally challenge the status quo and help rework some of the competitive dynamic in Canadian wireless.

We believe that Quebecor would have presumably been high on any government list pre-2020 and would have remained so throughout the pandemic. [emphasis added]

163. On August 22, 2022, BMO Capital Markets published an analyst report concerning the Proposed Transaction, a copy of which is attached to this Witness Statement as Exhibit “51”.

The report stated:

We remain of the view that there is a path to approval of the Rogers-Shaw-Quebecor transaction. Ultimately, our optimism is based on the government’s long-standing support of a four-player policy. With that being the case, it seems logical to conclude that the government will ultimately approve this transaction with Quebecor as the buyer of Freedom. Simply put, rejecting the transaction will throw the four-player narrative into an untenable position.

In our view, Quebecor represents the best solution available to satisfy the government’s industrial policy. It meets ownership requirements, has an operational track record in the business and enough balance sheet capacity to fund the purchase. Moreover, it comes in at a lower cost base than Shaw and with more attractive commercial arrangements. It seems to us the Competition Bureau, directly or indirectly, has extracted concessions for which it can rightly claim credit. [emphasis added]

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164. Just yesterday, on September 22, 2022, National Bank published an analyst report concerning the Proposed Transaction, a copy of which is attached to this Witness Statement as Exhibit “66”. The report analyzes the Commissioner’s Response to Demand for Particulars in this case, which set out 12 perceived “difficulties” that the Commissioner believes Videotron will face operating the Freedom wireless business without the supposed “benefits delivered by Shaw from its wireline business”. The report concludes that “We see no ‘smoking gun’ among them” and that:

Videotron has proven to be the most successful regional wireless operator in Canada with full and deep-pocketed financial support from its parent Quebecor. Shaw over the past 10+ years has struggled in the face of competitive pressures from Telus and pursued different strategies to cope with the latter’s fibre rollout. Shaw Mobile was the company’s latest effort to reduce Internet churn and was an offering on unsustainable economic terms. Looking back at Figures 1 and 2 earlier in this report, it’s clear that Videotron has operated as successfully, if not better but certainly not worse than Shaw in wireless. To suggest that Videotron would provide less effective financial, managerial, technical or other support and not be able to replicate Shaw’s competitiveness is to misjudge Videotron and ignore its capabilities, commitment, and overall track record to date in wireless. As for the Big 3, not only do they compete against one another, but Videotron can be expected to stimulate a renewed level of competitive intensity in wireless on price, value offers, and also bundling via TPIA. Aggressive promotions recently launched by Videotron in Manitoba via VMedia are well below Bell Internet pricing and triggering retaliatory moves. In the report by Wall Communications (Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions) which was prepared for ISED and made public on Feb. 15, Videotron’s Fizz Mobile was highlighted as offering the cheapest plans in Canada for data packages of 7-9 GB and 10-19

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GB. Freedom or really Shaw Mobile may be the cheapest on zero data plans offering just talk and text which we don't view as real mobile plans in a world where the average consumer is destined to progressively require and use more data. Meanwhile, Videotron's Fizz Mobile also allows customers to roll over unused data and it also has a rewards program to enable free mobile data and/or price rebates.

[...]

Freedom has been operated as a standalone division of Shaw and its separation is not expected to be difficult, lengthy or costly. The vast majority of Freedom's subscribers and Shaw's overall subscribers are in Ontario where Shaw has no wireline operations much as Wind never had any across its footprint. Freedom accesses backhaul services in Ontario on commercial terms through the Big 3 and on arm's length (commercial) terms with Shaw in Alberta and British Columbia. Videotron would access backhaul similarly and with no prejudice. Videotron would buy Freedom's more than 800 retail locations and also contractually have access to Shaw's over 450K Go Wi-Fi hotspots. With Freedom, Videotron would double revenues, EBITDA, and subscribers and gain scale along the way, so we don't see how Freedom loses scale except for its separation from Shaw, but again, Quebecor has the resources to fund investments in Freedom and access to the TPIA regime to bundle.

165. The report also indicated its "surprise" that the Commissioner's position with respect to the acquisition of Shaw by Rogers has not evolved in reaction to the announcement that, as a condition to that acquisition, Freedom would be divested to Videotron:

Admittedly, paragraphs 38-49 of the Notice of Application were outlined before Rogers/Shaw struck a deal with Quebecor's Videotron for the divestiture of Freedom Mobile. That said, we

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		<p>remain surprised that the Competition Bureau hasn't updated its arguments over the past three months to reflect the reality of the proposed remedial solution which ostensibly nullifies the concerns raised in these paragraphs. Videotron, a successful operator in wireless, would be acquiring a fully functioning mobile operation in Freedom that already has invested in all facets of the business and established commercial arrangements where necessary for backhaul as well as domestic and international roaming. Spectrum is not an issue as Freedom has what it needs and Videotron also not only possesses 3500 MHz spectrum outside Quebec as a prelude to future 5G deployment outside of its current footprint but will also be positioned well to add more mid-band spectrum in next year's 3800 MHz auction</p>	
<p>Trevor English</p>	<p>Page 6-7 Paras 11-14</p>	<p>11. As explained below, I, other members of the ELT, our Board of Directors and members of the Shaw family have determined unanimously that the Proposed Transaction with Videotron and Rogers is in the best interests of Shaw, its investors and its many other stakeholders. <u>Moreover, we believe firmly that the Proposed Transaction will significantly enhance competition in the wireline and wireless industries, and is also in the best interests of Canadians.</u></p> <p>12. Among other things, the acquisition of Freedom by Videotron will create a wireless carrier that is well-positioned to fulfill the Government of Canada's longstanding and important policy goal of creating a viable and effective fourth national wireless competitor. To my knowledge, there is no other participant in the wireless industry in Canada capable of realizing that goal. <u>Following its acquisition of Freedom, Videotron will have</u> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] The new Videotron-Freedom business will have the scale, spectrum, resources, assets,</p>	<p>Parts of paragraph 11, 12, 13 and 14 contain inadmissible lay opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the 'but for' world" and they "are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the 'but for' world, nor do they have the experiential competence".</p> <p>Trevor English, as an officer of Shaw, is not in a position to comment on Videotron's future performance or that of other competitors, such as Telus. Nor is he in a position to comment on the performance of the market at large subsequent to Proposed Transaction.</p>

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		<p>experience, expertise and motivation to compete effectively and aggressively against Bell, TELUS and Rogers in the provision of wireless services throughout much of Canada (and, additionally, a new ability to sell wireline services outside its footprint at rates lower than regulated wholesale rates).</p> <p>13. The acquisition by Rogers of the wireline business of Shaw will also significantly enhance competition in the provision of wireline services. Among other things, the merged business of Rogers and Shaw will have the necessary scale, resources, experience and sophistication to compete more aggressively and effectively against TELUS in Western Canada in the provision of wireline services than Shaw has been able to in recent years.</p> <p>14. The unique benefits to competition and to consumers that the Proposed Transaction offers are being compromised and eroded by delay and by the uncertainty caused by the Commissioner of Competition's continued litigation to block the Proposed Transaction. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] It is critical that the remaining elements of the regulatory process be completed as expeditiously as possible, to quickly allow Freedom/Videotron and Rogers/Shaw to compete fully in the marketplace for the benefit of Canadians. The only winners of any further delays and uncertainty with respect to the approval of the Proposed Transaction are Bell and TELUS.</p>	
Trevor English	Page 50 Paras 157-159	157. [REDACTED]	Paragraphs 157, 158 and 159 contain inadmissible lay opinion evidence.



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		<p>[REDACTED]</p> <p>158. At the same time, the Proposed Transaction is the best—and perhaps the only— opportunity to fulfill the Government of Canada’s longstanding policy objective of creating a viable and effective fourth national wireless competitor. Following its acquisition of Freedom, Videotron will have more [REDACTED] wireless customers in a national market of approximately 30 million consumers, [REDACTED]. The new business will therefore have the scale, resources, assets, experience, expertise and motivation to compete effectively and aggressively against Bell, TELUS and Rogers throughout much of Canada.</p> <p>159. Critically, unlike Shaw, Videotron was able to participate in the recent 3500 MHz spectrum auction and succeeded in acquiring spectrum licences that cover markets within Freedom’s footprint. The acquisition of that spectrum will provide Freedom, under the ownership of Videotron, with a viable path toward deploying 5G services.</p>	<p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Trevor English, as an officer of Shaw, is not in a position to comment on Videotron’s future performance or that of other competitors, such as Telus. Nor is he in a position to comment on the performance of the market at large subsequent to completion of the Proposed Transaction.</p>
Trevor English	Page 57 Para 178	178. [REDACTED]	<p>Paragraph 178 contains inadmissible lay opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not</p>

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			<p>in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Trevor English, as an officer of Shaw, is not in a position to offer evidence on Videotron</p>
Trevor English	Page 58 Para 179	<p>179. [REDACTED] if the Proposed Transaction is permitted to proceed, Videotron will be able to leverage Freedom’s existing radio access network infrastructure to quickly put the 3500 MHz spectrum that it acquired in 2021 to use in 5G services across Freedom’s service area. I understand that the spectrum licences that Videotron acquired in that auction are currently not being used, contrary to the public interest.”</p>	<p>Paragraph 179 contains inadmissible lay opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Trevor English, as an officer of Shaw, is not in a position to offer evidence on the public interest</p>
Trevor English	Page 59 Para 184	<p>184. It is in the self-interest of both Bell and TELUS to seek to derail or delay the completion of the Proposed Transaction. Indeed, both Bell and TELUS voiced their strong opposition to the Proposed Transaction in the CRTC hearing to consider Rogers’ acquisition of Shaw’s broadcasting assets held in November 2021. Attached to my Witness Statement as Exhibits “56” and “57” are copies of news articles reflecting comments made by Bell and TELUS in the course of this CRTC hearing. Following the CRTC hearing, both Bell and TELUS made Final Submissions to the CRTC in writing, reiterating their opposition and calling for the CRTC to withhold its approval of the transaction. I have attached to my Witness Statement as Exhibits “58” and “59” Bell’s Final Submission dated December 13, 2021 and TELUS’ Final Submission dated December 13, 2021, respectively.</p>	<p>This paragraph contains inadmissible hearsay evidence.</p> <p>The witness makes reference and appends a series of news articles which are clearly inadmissible.</p>

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<p>Trevor English</p>	<p>Page 59 Para 187</p>	<p>The TELUS-Bell network sharing arrangement has placed Shaw at a significant competitive disadvantage. Although Shaw does not know all of the precise details of these arrangements between Bell and TELUS, it is widely known in the industry that Bell and TELUS pool their spectrum and their capital. They have been able to divide the country in two and provide wireless services nationally at half the cost that any other carrier would have to pay. The network sharing arrangements between Bell and TELUS are so pervasive that these two companies are widely known in the industry as “Belus”.</p>	<p>Paragraph 59 contains inadmissible opinion evidence. Speculative in nature.</p> <p>A witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Trevor English, as an officer of Shaw, is not in a position to offer evidence on Bell and Telus commercial arrangements.</p>
<p>Trevor English</p>	<p>Page 61 Para 195</p>	<p>195. [REDACTED] [REDACTED] [REDACTED] In October 2019, BMO Capital Markets published an analyst report entitled, “Q4/F19: Starving Wireline to Feed Wireless?” In this analyst report, BMO notes that Shaw’s wireless business has “been dilutive to free cash flow as the company makes significant investments” to close the gap with our competitors. Meanwhile “[w]ireline continues to bleed subscribers (should bode well for TELUS)”, “[w]ireline capex intensity is expected to come down significantly”, and “ongoing market share losses to TELUS could be a growing concern”. [REDACTED] [REDACTED] I attached to my Witness Statement as Exhibit “63” a copy of this BMO analyst report.</p>	<p>The paragraph contains inadmissible hearsay evidence.</p> <p>The witness makes reference to a market report from BMO Capital Markets that contain analysis on the proposed Transaction.</p> <p>The market reports are put forward for the truth of their content, that is, as support of the contention that the proposed Transaction is beneficial for the telecommunications market.</p> <p>The author of the market report has not been called by Rogers/Shaw as witnesses in these proceedings. The Commissioner is therefore deprived of the opportunity to cross-examine the author who prepared the analysis relied upon. Admitting this evidence would be procedurally unfair to the Commissioner and would impede the truth-seeking function of the Tribunal.</p>

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<p>Trevor English</p>	<p>Page 62 Para 198</p>	<p>198. [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p>Paragraph 198 contains inadmissible lay opinion evidence. Speculative in nature.</p> <p>A witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Trevor English, as an officer of Shaw, is not in a position to offer evidence on unrelated company’s business. Nor is he entitled to make a claim that blocking the transaction would be harmful to competition and the interests of Canadian consumers.</p>
<p>Trevor English</p>	<p>Page 62 Para 201</p>	<p>201. [REDACTED] [REDACTED] In a recent interview with the Globe &amp; Mail published on September 16, 2022, Darren Entwistle, the - Chief Executive Officer of TELUS, acknowledged that he is concerned by the prospect of a “recapitalized Shaw”: As he plots his final chess moves, the loquacious and, by his own admission, anxiety-riddled CEO has other worries on his mind, as well. Among them is a potential seismic shift in the industry’s competitive landscape, as federal regulators mull a proposed \$26- billion merger between Rogers Communications Inc. and Shaw Communications Inc. If approved, the deal will not only combine to of the country’s largest cable networks, providing Shaw with fresh capital to deploy in Western Canada. It will also create an opportunity for Videotron Ltd. owner Quebec Inc. to expand its wireless business outside Quebec. [...] Shaw has been steadily losing market share to Telus in Western Canada in recent years, and Mr. Entwistle admits he’s worried a recapitalized Shaw could be a fiercer competitor for Telus. “Anyone that tells you that they’re not worried about the</p>	<p>The paragraph contains inadmissible hearsay evidence.</p> <p>The witness makes reference to a news article which is not admissible evidence.</p>

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		<p>competition shouldn't be in the job," he said, adding that anxiety can drive creativity and innovation.</p> <p>"I get paid to be anxious about stuff even when there's nothing obvious to be anxious about. ...So yeah, I'm anxious about [Rogers-Shaw]. I'm anxious about how the market may evolve. People would say to me, 'If the Rogers-Shaw deal doesn't go through I guess you're happy.' I said, 'No, I'm anxious either way.'" [emphasis added]</p>	
Trevor English	Page 63 Para 202	<p>202. A copy of the Globe &amp; Mail's article of September 16, 2022 is attached to this Witness Statement as Exhibit "64". In addition, I have attached to this Witness Statement as Exhibit "65" a copy of an analyst report published by TD on September 19, 2022 commenting on the interview given by Mr. Entwistle.</p>	<p>The paragraph contains inadmissible hearsay evidence.</p> <p>The witness makes reference to a news article which is not admissible evidence.</p> <p>The witness makes reference to a market report from TD that contains analysis on the proposed Transaction. The market report is put forward for the truth of their content, that is, as support of the contention that the proposed Transaction is beneficial for the telecommunications market.</p> <p>The author of the market report has not been called by Rogers/Shaw as witnesses in these proceedings. The Commissioner is therefore deprived of the opportunity to cross-examine the author who prepared the analysis relied upon. Admitting this evidence would be procedurally unfair to the Commissioner and would impede the truth-seeking function of the Tribunal.</p>
Trevor English	Page 63 Para 203	<p>203. There is no doubt in my mind that the Proposed Transaction will enhance competition in the wireline business, including in Western Canada. Rogers will be able to compete more effectively as a national wireline carrier. With its scale and resources, [REDACTED] challenging TELUS in</p>	<p>Paragraph 203 contains inadmissible opinion evidence.</p> <p>A witness cannot testify on matters beyond their own conduct and that of their businesses in the 'but for' world" and they "are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the 'but for' world, nor do they have the experiential competence".</p>

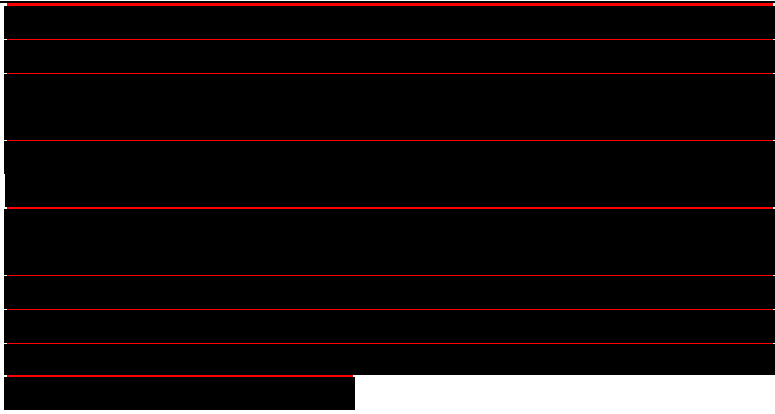
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		Western Canada and continuing to offer high-quality and highly competitive services across its national footprint.	Trevor English, as an officer of Shaw, is not in a position to offer evidence on Rogers' business strategy and/or operations.
Trevor English	Page 63 Para 204	204. The Proposed Transaction will also enhance competition in the wireless business. Videotron will have what it needs to emerge as a fourth national wireless carrier, including scale, - spectrum and physical infrastructure that spans most of the country. The Government of Canada will be closer than ever has been to accomplishing its goal of spurring the emergence of a fourth national wireless carrier.	Paragraph 203 contains inadmissible opinion evidence.  A witness cannot testify on matters beyond their own conduct and that of their businesses in the 'but for' world" and they "are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the 'but for' world, nor do they have the experiential competence".  Trevor English, as an officer of Shaw, is not in a position to offer evidence on the competitive landscape at large.
Rod Davies	Page 14 Para 37	37. [REDACTED]	The paragraph contains inadmissible hearsay evidence.  The witness makes reference to information that he has received from Shaw's management. The source of the information is not even disclosed. Further, it proceeds to speculate about the sustainability of a pricing strategy.

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Rod Davies	Page 14 Para 39	39. [REDACTED]	<p>Paragraph 39 contains inadmissible opinion evidence.</p> <p>A witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Rod Davies, as a market analyst, is not in a position to give evidence on what other companies will be doing in the marketplace in the future.</p>
Brad Shaw	Page 13 Para 51	51. The combination of Videotron and Freedom will result in a much stronger wireless competitor that is capable of challenging the “Big 3” throughout most of Canada. Videotron has a proven track record as a disruptor in the wireless business in Quebec, where it has offered innovative services and won significant market share at the expense of all of Rogers, BCE and TELUS. With the acquisition of Freedom, Videotron will have greater scale, an enhanced portfolio of spectrum, and a 5G-capable network in Ontario, Alberta and British Columbia (to go with its existing operations in Quebec and portions of Ontario). Videotron will acquire that scale, spectrum and network, along with retail distribution, at a substantial discount compared to the amount of capital Shaw has invested into Freedom.	<p>Paragraph 51 contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Brad Shaw, as an officer of Shaw, is not in a position to give evidence on the marketplace at large and, more specifically, Videotron.</p>
Brad Shaw	Page 13 Para 52	52. [REDACTED]	Paragraph 52 contains inadmissible opinion evidence.

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			<p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Brad Shaw, as an officer of Shaw, is not in a position to give evidence on the marketplace at large and, more specifically, Videotron or how Freedom will perform under Videotron ownership.</p>
Brad Shaw	Page 13 Para 53	<p>53. I firmly believe that the proposed sales of Freedom to Videotron and of Shaw to Rogers are in the best interests of the Company and its stakeholders. I also believe that the Proposed Transaction is in the best interests of Canadians and the future of telecommunications in Canada. With respect to the wireline side of our business, the Transaction will result in a company that has the scale, experience, resources and incentives to invest substantially in its wireline network across the country and to compete vigorously and effectively in the wireline business, including against TELUS in Western Canada. Moreover, the sale of Freedom to Videotron will result in a company that has the scale, experience, resources and incentives to invest and compete aggressively and effectively in the wireless business in ways that Shaw simply has not been and will not be able to.</p>	<p>Paragraph 53 contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Brad Shaw, as an officer of Shaw, is not in a position to give evidence on the marketplace at large and, more specifically, Videotron or how Freedom will perform under Videotron ownership.</p>
Brad Shaw	Page 14 Para 54	<p>54. The Proposed Transaction is, from my perspective and the perspective of Shaw, a win for all stakeholders, including our customers. It is a win for Rogers, which will gain new strength as a national wireline telecommunications provider. It is a win for Videotron, which will have the tools and resources to emerge as a viable and effective fourth national wireless carrier. It is a win for</p>	<p>Paragraph 54 contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about</p>



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		<p>the Government of Canada, which has never been this close to achieving its objective of creating a fourth national wireless carrier, and may never get this close again if the Proposed Transaction were to be blocked. It is a win for the Commissioner of Competition, since it will significantly enhance competition in the wireless and wireline businesses in Canada and because the sale of Freedom to Videotron directly responds to his stated concerns. Most importantly, it is a win for millions of Canadians, who will benefit from affordable access to high-quality telecommunications services.</p>	<p>the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Brad Shaw, as an officer of Shaw, is not in a position to give evidence on the marketplace at large and, more specifically, Videotron or how Freedom will perform under Videotron ownership.</p>
Brad Shaw	Page 15 Para 58	<p>58. Finally, I wish to emphasize that the consequences associated with blocking the Proposed Transaction would be harmful not only to Shaw and its stakeholders, but also to competition in the wireless and wireline industries and to the interests of millions of Canadians.</p>	<p>Paragraph 58 contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Brad Shaw, as an officer of Shaw, is not in a position to give evidence on the marketplace at large.</p>
Paul McAleese	Page 7- 8 Paras 8 - 11	<p>8. The Proposed Transaction involves a unique and transformative series of transactions among Shaw, Rogers and Videotron (and its parent company, Quebecor Inc.) that in my mind will significantly enhance competition throughout much of the Canadian telecommunications industry. The Proposed Transaction involves two key elements:</p> <p>(a) First, the purchase by Videotron from Shaw of Freedom, which will result in the expansion of Videotron’s wireless operations to Alberta, British Columbia and large parts of Ontario that Videotron does not already serve; and</p> <p>(b) Second, immediately following the divestiture of Freedom to Videotron, the purchase by Rogers of Shaw’s wireline business</p>	<p>Paragraphs 8,9 10 and 11 contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Paul McAleese, as an officer of Shaw, is not in a position to give evidence on the marketplace at large and more specifically, Videotron performance.</p>

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(which includes Internet, cable and satellite television, and traditional phone services)

9. The Proposed Transaction will create two important new dynamics in the Canadian telecommunications industry. First, the new combined business of Shaw and Rogers will have the scale, assets, resources, expertise and incentives required to compete vigorously and effectively in Canada's rapidly changing wireline communications industry. The combined entity will be far better positioned than a stand-alone Shaw would otherwise be to make the necessary investments to challenge Shaw's chief wireline competitor in Western Canada, TELUS. As explained below, TELUS is substantially larger than Shaw, with a market capitalization, revenues and assets that are each approximately two- to three-times greater than those of Shaw.

10. Second, the combination of Freedom and Videotron will finally be able to achieve and implement the Federal Government's longstanding policy objective of creating a strong and effective fourth national wireless carrier. Freedom-Videotron will – for the first time – offer the national scale, assets, expertise and capabilities needed to invest for the long-term and compete aggressively, effectively and on a sustainable basis in the provision of wireless services against the “Big 3” wireless incumbents (Bell, TELUS and Rogers).

11. The terms of the Proposed Transaction will enable Freedom-Videotron to carry on business as a viable, effective and disruptive force across the combined footprint of Freedom and Videotron in Alberta, British Columbia, Ontario and Quebec – in a way that would not have been possible for Shaw. This is so for a variety of significant reasons, including:

(a) Videotron is a well-known and experienced provider of both wireline and wireless services, with a longer and more successful history of growth in its home markets than Freedom;

(b) the purchase price of [REDACTED] being paid by Videotron to acquire Freedom (in which Shaw has, to date, invested approximately \$4.5 billion) will enhance Videotron's flexibility to invest in both 5G and aggressive customer-acquisition strategies to gain market share and "bring the fight" to the Big 3 in both Ontario and Western Canada, as it has already done in Quebec;

(c) Videotron will have over [REDACTED] wireless customers (compared to Freedom's existing customer base of only approximately [REDACTED] customers), giving the new business unprecedented scale that no competitor in the wireless industry in Canada (other than Bell, Rogers and TELUS) has ever enjoyed;

(d) as a result of various long-term agreements Videotron has secured with Rogers (including backhaul and roaming) as part of the divestiture of Freedom to Videotron, [REDACTED]

(e) unlike Freedom, Videotron: (i) has already successfully deployed 5G networks in its wireless footprint; and (ii) owns the critical 3500 MHz spectrum across Freedom's current wireless footprint, permitting it to rapidly deploy the next-generation 5G services in Freedom's footprint [REDACTED]

and

(f) because of the access to [REDACTED] wholesale wireline home Internet services Videotron has secured from Rogers, Videotron will have the ability – if it chooses – to profitably offer wireline-wireless bundles to consumers across the entire combined wireline footprint of Rogers-Shaw. This materially expands the competitive framework by creating the potential for an additional competitor in home Internet in each of Western Canada and Ontario.

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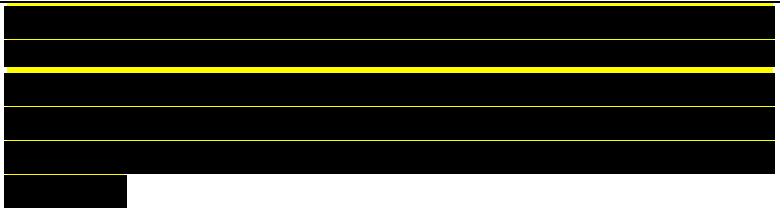
<p>Paul McAleese</p>	<p>Page 10-11 Paras 15-16</p>	<p>15. Similarly, one of the largest and most successful wireless carriers in the United States – T-Mobile US Inc. (“T-Mobile”) – has operated successfully for years in providing wireless services to its customers in the United States even though it did not own or operate its own wireline network or provide wireline services. The suggestion that one cannot compete aggressively and successfully in the wireless business in Canada without also owning and operating a wireline business is simply wrong.</p> <p>16. I have been in this business for many years. For all of the reasons I elaborate on below, it is difficult for me to imagine a better opportunity to realize the Government of Canada’s longstanding objective of creating a fourth national wireless carrier than the one the Proposed Transaction presents.</p>	<p>Paragraphs 15 and 16 contain inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Paul McAleese, as an officer of Shaw, is not in a position to give evidence on the USA marketplace and more specifically, on how the merger will affect Canadians.</p>
<p>Paul McAleese</p>	<p>Page 50-51 Paras 166 - 168</p>	<p>166. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] This advantage in spectrum holdings translates directly into wireless network advantages in the form of greater speed, capacity and coverage. Just like adding lanes to a highway permits more cars to travel along it at higher speeds, obtaining additional spectrum allows a wireless carrier to offer larger amounts of wireless data and to transmit at higher speeds. In my experience, these network advantages are then touted in marketing materials, and lead directly to an increase in perceived customer experience, competitive advantage and market share for all of Bell, TELUS and Rogers. An article from PC Mag entitled “Fastest Mobile Networks Canada 2022” illustrates that network strength functions as a key differentiator of wireless carriers in the eyes of the public. This</p>	<p>Paragraphs 166, 167 and 168 contain inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Paul McAleese, as an officer of Shaw, is not in a position to give evidence on the marketplace and more specifically, on how the merger will affect Canadians.</p> <p>Paragraphs 166, 167 and 168 also contain inadmissible hearsay evidence.</p> <p>The witness makes reference to a series of articles which is not admissible evidence. The author of the articles has not produced a witness statement. The Commissioner is therefore deprived of the</p>

article is attached to my  
Witness Attachment as **Exhibit “51”**.

167. For instance, on September 20, 2022, an article published in PCMag entitled “Fastest Mobile Networks Canada 2020”, reported on network speed and quality for wireless providers in cities and provinces across Canada. The article highlighted the disparity between the Big 3 (with their 5G+ networks and spectrum) and regional carriers. In particular, the article noted that “[s]ince 2015, Bell and Telus have traded off the win in our study, largely because together, they generally have more wireless spectrum than Rogers”, but that “Rogers' aggressive 5G+ buildout this year ...[lead] it to win in Montreal, Ottawa, and Vancouver”, emphasizing the importance of capital and spectrum to the ability to compete in Canada’s wireless market. A copy of this article is attached to my Witness Statement as **Exhibit “51”**.

168. [REDACTED] The current speed disadvantage of the Freedom network is easily verifiable. A company known as Ookla LLC publishes a regular series of reports comparing the quality of telecommunications networks around the world; its reports on Canadian wireless companies are publicly available online: <https://www.speedtest.net/global-index/canada?mobile#market-analysis>. Ookla’s latest “Speedtest” report that includes Freedom pertains to the first quarter of 2022. It indicates that the speed of Freedom Mobile’s network is significantly below that of its competitors.

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<p>Paul McAleese</p>	<p>Page 56 Para 179</p>	<p>179. In my experience, there are ample options for the provision of backhaul services in Canada. In more urban, densely-populated portions of the country, a wireless carrier can typically choose from as many as four to six different options for any given cell site location. If fibre backhaul is unavailable, a microwave solution is almost invariably possible. In summary, backhaul is a commodity that is widely-available at competitive wholesale prices.</p>	<p>Paragraph 179 contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Paul McAleese, as an officer of Shaw, is not in a position to give evidence on the availability of backhaul in the marketplace and whether that market is competitive.</p>
<p>Paul McAleese</p>	<p>Page 57 Para 187</p>	<p>187. In my experience, the reliance by one wireless carrier on the backhaul and transport resources of other carriers and third parties in the manner described above is a familiar, desirable and deliberate aspect of the telecommunications industry in Canada. It would be wasteful, including from a capital allocation perspective, for every wireless carrier to spend the time and money required to build a wireline fibre network capable of delivering backhaul and transport services across a country as vast and topographically challenging as Canada, especially when other technological solutions, namely wireless microwave, are also widely available.</p>	<p>Paragraph 187 contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Mr. McAleese is opining on the state of competition in the market for backhaul services. This is prejudicial opinion evidence. The competitiveness of a market is not a matter for lay opinion evidence as it requires identification of product and geographic markets, market shares within those markets and an assessment of competition within those markets, including for example direct and indirect indicators of market power. Mr. McAleese is not an expert economist and provides only a bald and conclusory statements</p>

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			about the competitiveness of backhaul based on the existence of backhaul providers.
Paul McAleese	Page 58 Para 188	188. Reliance on another party’s backhaul and transport services is thus not detrimental, even for the most sizeable players in Canada’s wireless market. Indeed, it can be more cost-effective to lease these services than to own them outright.	<p>Paragraph 188 contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Mr. McAleese is opining on the state of competition in the market for backhaul services. Mr. McAleese is not an expert economist and provides only a bald and conclusory statement about the use of backhaul from other party’s.</p>
Paul McAleese	Page 65-66 Para 212, 214-216)	<p>212. As stated above, I lived and worked in the United States for more than a decade before I joined Shaw in 2017. I was (and remain) well aware of the wireless business carried on by T-Mobile US Inc. (“<b>T-Mobile</b>”) in the United States. T-Mobile is one of the largest and most successful providers of wireless services in the United States, across a number of different metrics, as illustrated in the following table: (p. 65 table)</p> <p>214. T-Mobile operated successfully for years in providing wireless services to its customers in the United States even though it did not own or operate its own wireline network or provide wireline services.</p> <p>215. T-Mobile acquired a wireline business in 2020 (after first announcing the transaction in 2018) when it merged with Sprint.</p>	<p>Paragraphs 212, 214, 215 and 216 contain inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Paul McAleese, as an officer of Shaw, is not in a position to give evidence on the USA marketplace and more specifically T-Mobile.</p>

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		<p>The data depicted in the table above, as of December 31, 2017, illustrates the success that T-Mobile was able to obtain without ever having owned or operated its own wireline network. Incidentally, on September 7, 2022, T-Mobile announced that it has reached an agreement to sell this entire wireline business to Cogent Communications for USD\$1. This transaction is referred to in a recent article entitled “T-Mobile sells wireline business to Cogent for \$1, expects hefty charge”, published by Reuters, and dated September 7, 2022, a copy of which is attached to my Witness Statement as <b>Exhibit “66”</b>. The transaction is also reported to include a 4.5 year, US\$700 million contract for Cogent to provide transitional services to T-Mobile.</p> <p>216. Clearly, T-Mobile has been highly successful in providing wireless products and services to its customers without also owning and operating its own wireline network or business.</p>	
<p>Paul McAleese</p>	<p>Page 69 Para 229-230</p>	<p>230. Just today, on September 23, 2022, the Globe and Mail quoted TELUS’ CEO, Darren Entwistle explaining how “we’re [TELUS] blowing our brains on fibre and 5G”. I attach the article “Telus CEO says it’s time for Ottawa to relax foreign-ownership rules for large telecoms. He’s right”, which I attach as Exhibit “81”.</p>	<p>Paragraph 230 contains inadmissible hearsay evidence.</p> <p>The witness makes reference to an article which is not admissible evidence. The author of the articles has not produced a witness statement. The Commissioner is therefore deprived of the opportunity to cross-examine the author who prepared the analysis relied upon. Admitting this evidence would be procedurally unfair to the Commissioner and would impede the truth-seeking function of the Tribunal.</p>
<p>Paul McAleese</p>	<p>Page 83 Para 269</p>	<p>269. Nor did Shaw Mobile have any significant impact on the Average Billing Per User of Shaw (or “ABPU”) in 2020 or 2021 either in British Columbia, Alberta or Ontario. Shaw’s ABPU in British Columbia increased from \$67.17 in 2020 to \$68.09 in 2021. In Alberta, Shaw’s ABPU increased from</p>	<p>The paragraph contains inadmissible hearsay evidence.</p> <p>The witness makes reference to a market report from TD that contains analysis on the proposed Transaction. The market report is put forward for the truth of their content, that is, as support of the</p>



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		<p>\$71.15 in 2020 to \$71.65 in 2021. In Ontario, where Shaw Mobile plans were not available, the Company’s ABPU decreased from \$66.84 in 2020 to \$65.14 in 2021. These figures were extracted from the TD Securities analyst reports dated January 5, 2021 and December 30, 2021, attached to my Witness Statement as Exhibits “110” and “64”. By comparison, Rogers reported ABPU of \$63.24 in 2020 and \$63.45 in 2021, and Telus reported ABPU of \$70.49 in 2020 and \$69.83 in 2021. Bell reported ABPU of \$64.69 in 2020 and \$74.07 in Q3 2021, after which it no longer reported ABPU. These figures are extracted from the 2020 and 2021 Annual Reports of Telus and Rogers, and the 2020 Annual Report and Q3 2021 Press Release of Bell, and are attached to my Witness Statement as Exhibits “78”, “109”, “8”, “107” and “111”.</p>	<p>contention that the proposed Transaction is beneficial for the telecommunications market.</p> <p>The author of the market report has not been called by Rogers/Shaw as witnesses in these proceedings. The Commissioner is therefore deprived of the opportunity to cross-examine the author who prepared the analysis relied upon. Admitting this evidence would be procedurally unfair to the Commissioner and would impede the truth-seeking function of the Tribunal.</p>
<p>Paul McAleese</p>	<p>Page 84 Para 272</p>	<p>272. [REDACTED]</p>	<p>The paragraph contains inadmissible hearsay evidence.</p> <p>The witness makes reference to EnviroNics Analytics report that contains analysis on a segmentation system.</p> <p>The author of the report has not been called by Rogers/Shaw as witnesses in these proceedings. The Commissioner is therefore deprived of the opportunity to cross-examine the author who prepared the analysis relied upon. Admitting this evidence would be procedurally unfair to the Commissioner and would impede the truth-seeking function of the Tribunal.</p>
<p>Paul McAleese</p>	<p>Page 111-119 Para 361, 365, 374, 385, 389-393</p>	<p>361. The terms of the Divestiture Agreement provide Videotron with significant benefits and operational advantages relative to Freedom under Shaw’s ownership. As a result, Videotron will be better placed than Shaw now is to continue as a disruptive force in the wireless market, compete vigorously and emerge as a fourth</p>	<p>Paragraphs 361, 365, 374, 385, 389-393 contain inadmissible lay opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about</p>

national carrier. These benefits and advantages are significant, and include the following.

365. [REDACTED]

374. Once again, the savings Videotron will realize on roaming can be used to invest in its wireless network or be passed on to customers in the form of lower prices. Either way, the savings will permit Videotron/Freedom to compete even more vigorously and effectively against Bell, Rogers and TELUS in the market for wireless telecommunications services.

385. [REDACTED]

...

389. In my very firm view, Videotron is the one and only purchaser of Freedom capable of finally achieving the Government of Canada's longstanding and important policy objective of creating a viable, strong and effective fourth national wireless carrier that can sustain its competitiveness over future generations. Videotron is highly skilled, experienced,

the greater economic consequences of the 'but for' world, nor do they have the experiential competence".

Paul McAleese, as an officer of Shaw, is not in a position to give evidence on Videotron and the future performance of Freedom under Videotron.

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knowledgeable and effective in the wireless industry in Canada. It has an established track record of success as a wireless operator and disruptor in Quebec, where it has captured a significant, 23% market share, as reflected in an Industry Note published by TD Securities Inc. entitled "Annual Wireless Stats and Map", dated December 30, 2021, and attached to my Witness Statement as Exhibit "169". It is a sophisticated facilities-based carrier that also operates a significant wireline business.

390. The terms of the Divestiture Agreement have put Videotron in an even better position to compete vigorously and effectively in the wireless industry across Canada, in a way that Freedom never did and was incapable of doing. Given my experience, it is difficult for me to imagine a better outcome for Canadian consumers and promotion of competition, affordability, investment and innovation than the one the Divestiture Agreement presents.

391. Conversely, if the Proposed Transaction is blocked, the market dominance of the Big 3-and especially Bell and TELUS-may never be challenged. I have attached to my Witness Statement as Exhibit "170" an RBC Capital Markets Report dated August 15, 2022, entitled, "Canadian Telecommunications Services Q2/22 Review – Recovery Momentum Continuing into Q3/22", which articulates the numerous negative implications of Rogers not acquiring Shaw as: "(i) being a delay in 5G deployment and/or lower quality of service; (ii) a closing of the door on the prospect of a fourth national facilities-based operator in Canada; and (iii) the government's four player facilities-based wireless policy [being] at risk". Without the Proposed Transaction, RBC Capital Markets expected "the door could very well be closed on the prospect of Canada gaining a fourth national facilities-based operator."

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		<p>392. Moreover, on August 22, 2022, BMO Capital Markets published an analyst report concerning the implications of the Proposed Transaction. Attached as Exhibit “171” to my Witness Statement is a BMO Capital Markets Report dated August 22, 2022, “Quebecor Is as Good as it Gets for ISED”, that states that “Quebecor is positioned to be a more competitive and more sustainable fourth wireless player than Shaw proved to be. To [BMO Capital Markets], this is completely aligned with the government's long-standing wireless policy”.</p> <p>393. There is no other participant in the wireless industry in Canada that is capable of competing with the Big 3, now or in the foreseeable future. And no other participant in this industry will have access to the extraordinarily favourable arrangements that Videotron has been able to secure for itself, as described above.</p>	
Paul McAleese	Page 123-124 Paras 407-409	<p>407. In his Witness Statement, Mr. English addresses in detail what Shaw will look like going forward if the Proposed Transaction is not completed. I do not propose to tread over ground he has covered. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Paragraphs 407-409 contain inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses in the ‘but for’ world” and they “are not in a better position than the trier of fact to form conclusions about the greater economic consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Paul McAleese, as an officer of Shaw, is not in a position to give evidence on Videotron and the future performance of Freedom under Videotron. He provides broad statements about what is in the interest of Canadians, which is well beyond his direct knowledge. Statements are speculative at best.</p>

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408. The Proposed Transaction is also critical to the future of competition in wireline telecommunications in Western Canada. That means competition for Internet services, which are critical to how we live, work, and play and to the operation of our public and governmental institutions. Blocking the Proposed Transaction would undermine significantly competition both in wireless and in wireline. Allowing it to proceed, however, will create what I believe are truly transformational changes in our industry that will drive competition for both wireline and wireless services, to the benefit of all Canadians.

409. The divestiture of Freedom to Videotron and the combination of the wireline business of Shaw and Rogers are not only a logical and compelling solution for Shaw's difficulties, but a unique opportunity to create a better and more competitive telecommunications industry in Canada, for the benefit of all Canadians. That is a unique opportunity that is unlikely to arise again.