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CT-2022-002

OTTAWA, ONT.

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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

WRITTEN REPRESENTATIONS OF THE COMMISSIONER
(Respondents' Motion to Strike Commissioner's Witness Statements)

OVERVIEW

1. The Commissioner opposes the Respondent's motion to strike certain paragraphs of the witness statement of Blaik Kirby, Charlie Casey, Christopher Hickey, Denis Albert, Nazim Benhadid, Sameer Dhamani, Stephanie Assad, Stephen Howe and Sudeep Verma ("Disputed Paragraphs"). There is no basis to declare any portion of these witness statements inadmissible as improper lay opinion evidence or hearsay. This is nothing more than a defensive move by the Respondent to respond to the Commissioner's motion to strike.

2. The Respondent has been candid and open in its contention that its motion is in response to the Commissioner's motion to strike certain paragraphs from the Respondent's witness statements. In so doing, the Respondent has put forward a laundry list of items, many of which mischaracterize the evidence or for which there is no basis to complain. This is nothing more than a defensive move on the part of the Respondent to drown out the Commissioner's motion to strike.

3. Regardless, the Disputed Paragraphs can be categorized under two headings, namely inadmissible lay opinion evidence (Category 1) and inadmissible hearsay evidence (Category 2) and concerns that are entirely without merit, either because they misrepresent the evidence or fail to properly describe the purpose for which it was tendered (Category 3).

4. As it relates to lay opinion evidence (Category 1), the Respondents take a very narrow view on the evidence that can be provided by a lay witness. The Commissioner is of the view that a lay witness may express opinion evidence where they have personal knowledge of the observed facts and where they testify to facts within his or her observation, experience and understanding of events, conduct or actions. Thus, where a witness, for example, is responsible for marketing in a given wireless company or operates retail stores that offer wireless product, they can speak to the competitive landscape within which they operate in. The witnesses' observations and perceptions regarding the competitive landscape is either evidence of fact or, alternatively, it satisfies the test for admissible lay opinion evidence.

5. On the issue of hearsay evidence (Category 2), three of the Commissioner's witnesses rely on external market information. In one case, such as the Bell witness, it relies on the only market information available by a third-party service provider. The source data has been validated by Bell and is used to generate analysis in the normal course of business. The Commissioner contends that this evidence is an exception to the hearsay rule in that it is both reliable and necessary. In another witness statement, a dealer that has retail stores uses information obtained from an association to which he belongs and for which he forms part of, to draw certain conclusions. This is the witness's evidence and is not hearsay evidence as contended by the Respondent. The witness had a direct hand in the creation of that data. In a third case, the witness relies on a trustworthy publication that contains market information on the wireless sector. The Commissioner contends that this evidence is an exception to the hearsay rule in that it is both reliable and necessary.

6. Beyond these two categories, there is a third category of complaints that are beyond the pale of reasonability and without an ounce of merit (Category 3). For instance, there is a witness from a Bureau officer that speaks to how input was received from consumers and stakeholders and how it issues and gathers responses to the RFIs. The evidence is not tendered for the truth of the content of the submissions received from consumers/stakeholders or the responses received to the RFIs. The evidence speaks only to the process of gathering views and information. In both cases, the Respondent contends that the Commissioner is not entitled to speak to the processes, without producing a witness statement from the consumer/stakeholder or the persons that provided responses to the RFI.

7. The chess clock is hanging over the heads of the parties to this proceeding and this should inform the Tribunal's approach to these motions. To the extent that there is clearly inadmissible evidence in the witness statements, the Tribunal must be strike it out on a preliminary basis, prior to the hearing. To the extent that the evidence is admissible, the Tribunal should communicate that to the parties and rule on the motions. A Tribunal process that is encumbered by a litany of objections is not in the interest of justice or the Tribunal process. To the extent that the evidence sits on the margins of what is admissible, the Tribunal can defer the ruling to the hearing.

8. As it relates to the Respondent's complaints in this motion, the Commissioner contends that the motion should be dismissed in its entirety.

PART II: SUMMARY OF FACTS

9. There is a very compressed schedule in these proceedings. The terms of the Scheduling Order call for witness statements and responding witness statements. All parties have filed evidence.

10. Shortly after receiving the witness statements, the Commissioner apprised the Respondents, Rogers and Shaw, that there were paragraphs in their witness statements that were inadmissible, either on the grounds that they are hearsay or that they are opinions that a lay witness is not entitled to make.

11. An invitation was extended for the Respondents to remove the offending paragraphs. Both refused to adhere to the request.

12. Instead, the Respondent, Shaw, made it clear that if the Commissioner pursued its motion to strike out the offending paragraphs, it too would bring a cross-motion, alleging the same complaints against the Commissioner.

13. As for the Respondent, Rogers, it gave notice that it would reply to the Commissioner's motion. It also brought a new cross-motion for leave to file a new witness statement from Mr. McKinsey to rectify the deficiency found in the witness statement of Dean Prevost. This motion is opposed by the Commissioner.

14. As detailed above, the Respondents concerns are grouped by the Commissioner under three broad categories, namely concerns over the opinions of lay witnesses (Category 1), alleged inadmissible hearsay evidence (Category 2) and complaints that are entirely without any foundation whatsoever and border on the frivolous (Category 3).

PART IV: SUBMISSIONS

A. The Legal Test: Lay Opinion Evidence (Category 1)

15. A lay witness may make an inference from an observed fact.¹ Opinion evidence from lay witnesses, including as to their own market conduct and the conduct of their own business in the competitive landscape, is admissible if a witness has personal knowledge of the observed facts and testifies to facts within his or her observation, experience and understanding of events, conduct or actions.² The Respondent, Shaw, fails to understand the extent to which lay opinion evidence is admissible.

16. The Supreme Court of Canada has recognized that "[t]he line between 'fact' and 'opinion' is not always clear".³ The courts have developed greater freedom to receive lay witnesses' opinions when the witness has personal knowledge of the observed facts and testifies to facts within his or her observation, experience and understanding of events, conduct or actions. An officer of a company that is involved in developing marketing strategy for his or her company is therefore entitled to speak to his or her company's marketing efforts as well as his or her understanding of the competitive landscape within which they operate.

17. The Federal Court of Appeal has echoed the very same thoughts as the Supreme Court of Canada. In the context of a Tribunal proceeding, the Court held that opinion from a lay witness is acceptable "*where the witness is in a better position than the trier of fact to form the conclusions; the conclusions are ones that a person of ordinary experience can make; the witnesses have the experiential capacity to make the conclusions; or where giving opinions is a convenient mode of stating facts too subtle or complicated to be narrated as facts*".⁴ As such, when a witness has personal knowledge of observed facts such as a company's marketing efforts and the marketplace within which it deploys its efforts, its evidence may be accepted by a court or the Tribunal even if it is opinion evidence.

18. The only limitation in relation to lay opinion evidence is that is that lay witnesses 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, they have the experiential competence".⁵ This makes an abundance of sense and sets the outer limits to what a lay witness may opine on.

¹ *R v Graat*, 1982 CarswellOnt 101, [1982] 2 SCR 819, at para 14 (SCC); Commissioner's BOA, Tab 1.

² *Canada (Commissioner of Competition) v Vancouver Airport Authority*, 2018 Comp Trib 15 at para 10 ("VAA Prelim Motion"), Commissioner's BOA, Tab 2; *The Commissioner of Competition v Vancouver Airport Authority*, 2019 Comp Trib 6 at para 146-47 ("VAA Merits"), Commissioner's BOA, Tab 3.

³ *R v Graat*, 1982 CarswellOnt 101, [1982] 2 SCR 819, at p 12, Commissioner's BOA, at Tab 1.

⁴ *Toronto Real Estate Board v Commissioner of Competition*, 2017 FCA 236 ("TREB FCA"), at para 79-81, Commissioner's BOA, at Tab 4.

⁵ *Toronto Real Estate Board v Commissioner of Competition*, 2017 FCA 236 ("TREB FCA"), at para 79-81, Commissioner's BOA, at Tab 4.

19. Thus, when a witness had ‘an opportunity for observation’ and was ‘in a position to give the Court real help,’ the evidence may be admissible and the real issue will be the assessment of weight that is to be given to the evidence.⁶ However, contrary to what is suggested by the Respondent, Shaw, allowing all matters to go to weight is also not an answer. Where the opinion is not something that could have been observed or experienced by the witness, and the witness offer opinion in respect of that matter, it is clearly inadmissible and cannot go to weight. This is an important difference between the respective position of the parties in these competing motions.

20. In the case of VAA, this Tribunal applied the guidance from the Supreme Court and understood that a lay witness could provide opinion on what he has acquired through personal knowledge, experience and observation. The Tribunal found in this case that, by virtue of their roles and responsibilities at their respective airline companies, the witnesses had the required personal knowledge, observation and experience to testify on the expected saving to be realized or expected to be realized by their companies, and the increased expenses allegedly incurred or expected to be incurred by their respective airlines, as a result of their inability to switch in-flight caterers at YVR.⁷

21. The case of *AstraZeneca Canada Inc v Apotex Inc* also illustrates the point.⁸ The issue was whether an affidavit filed on behalf of Apotex (“API”) contained impermissible opinion evidence. The impugned affidavit set out the lay affiant’s opinions with respect to three issues; namely: (i) the API Process uses the same process as claimed in [AstraZeneca’s] ‘994 Patent; (ii) neutral esomeprazole in a solid, crystalline form, as claimed in [AstraZeneca’s] ‘076 Patent, is used or produced in API’s Process; and (iii) the optical purity of esomeprazole is increased at any stage during API’s process by selectively removing racemic omeprazole, as claimed in [AstraZeneca’s] ‘184 Patent... 14 20. Justice Crampton rejected the request to strike the paragraphs and stated that he was satisfied that API’s affiant had not filed improper opinion evidence:

In my view, Dr. Horne simply provided factual information in his affidavit, primarily based on his knowledge of API’s processes. To provide that factual information, he necessarily had to describe his understanding of the patents in question ... In describing his understanding of those patents, he simply and very briefly: (i) quoted the plain language in those patents; and (ii) stated his understanding of what each of those patents claimed. He spent a total of four sentences describing his understanding of [AstraZeneca’s] ‘994 Patent, five sentences describing his understanding of [AstraZeneca’s] ‘076 Patent, and seven short sentences describing his understanding of [AstraZeneca’s] ‘184 Patent. By contrast, he spent nine full paragraphs describing API’s Process, which was the clear focus of his affidavit.⁹

⁶ *Toronto Real Estate Board v Commissioner of Competition*, 2017 FCA 236 (“TREB FCA”), at para 79-81, Commissioner’s BOA, at Tab 4.

⁷ *The Commissioner of Competition v Vancouver Airport Authority*, 2019 Comp Trib 6 at para 146-147 (“VAA Merits”), Commissioner’s BOA, Tab 3.

⁸ *AstraZeneca Canada Inc v Apotex Inc*, 2011 FC 505, aff’d 2011 FCA 211, Commissioner’s BOA, Tab 5.

⁹ *AstraZeneca Canada Inc v Apotex Inc*, 2011 FC 505, aff’d 2011 FCA 211, at para 34, Commissioner’s BOA, Tab 5.

22. What the *AstraZeneca Canada Inc v Apotex Inc* case illustrates is that where the opinion is intrinsically linked to the subject matter to which a witness is entitled to testify and forms part of the body of knowledge that he likely has acquired through experience, the lay opinion evidence is admissible.

23. The Disputed Paragraphs in Category 1 do not constitute improper which the Commissioner claims constitute improper lay opinion evidence, as explained below.

Blaik Kirby

24. Blaik Kirby is Group President, Consumer and Small & Medium Business (SMB) for BCE Inc., (Bell). He led the teams responsible for sales, marketing and product development for Bell’s consumer and SMB wireless and wireline businesses. His responsibility included, amongst other things, understanding and responding to market and competitive dynamics in Canada’s wireless industry, including with respect to the pricing, competitive strategies and market positioning of Bell and its competitors.¹⁰ He therefore has direct knowledge of Bell’s marketing efforts and, by necessity, knowledge of the competitive landscape within which Bell operates.

25. All of the impugned statement are well within the bounds of what Mr. Kirby can testify to given the position that he has occupied for decades.

Blaik Kirby	Page 6; Para. 13	<p>13. <u>In response to these “Big Gig” plans launched in 2017, Rogers and the other national wireless carriers introduced significant discounts and promotions on their own wireless plans throughout 2018 and into 2019.</u>In our case, these included 10 GB plans (which was then the largest data bucket typically offered in the Canadian market) launched broadly for a brief time in December 2017 at prices \$60 lower than those available before the Big Gig plans had been launched [REDACTED]</p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine on the motivation of Rogers and other wireless carriers in launching certain promotions.</p>	<p>Mr. Kirby is speaking to his direct knowledge as an officer of Bell who is involved in marketing. He is speaking to what he observed in the marketplace and what he saw as a response to the “Big Gig” roll out. He is not speaking to what motivated</p>
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¹⁰ See paras 1 and 2 of the Kirby Witness Statement.

				Rogers and other competitors to make an offering. What Mr. Kirby believes is a market response to an offering made by Freedom is within his field of knowledge.
Blaik Kirby	Page 10; Para. 20	20. <u>Shaw Mobile’s launch was highly successful.</u> As of August 2020, we estimated that it already had approximately [REDACTED] in British Columbia and Alberta. <u>Shaw Mobile’s offerings were highly attractive to all consumer segments including price-conscious consumers and multi-line family households.</u>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine on the “success” of Shaw Mobile or whether the Shaw Mobile offerings were “highly attractive”.</p>	Mr. Kirby is speaking to his direct knowledge as an officer of Bell who is involved in marketing product. He knows and has observed the competitive marketplace, including the offerings of Shaw. What Mr. Kirby believes is a market response to an offering made by Shaw is within his field of knowledge. To the extent that he provides an approximate number, it can go to weight.
Blaik Kirby	Page 11; Para. 25	25. Without our wireline infrastructure and operations, Bell would not be as effective a wireless competitor as we are today. <u>My experience in the Canadian telecommunications industry indicates that is true for all integrated wireless competitors in Canada, including</u>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters</p>	Mr. Kirby is providing evidence that rests entirely on his experience in the wireless

		<p><u>Shaw/Freedom Mobile</u>. For example, I have observed that Videotron’s position as an integrated wireless and wireline competitor in Quebec, leveraging tactics such as cross-selling wireless services and offering large multiproduct discounts, has been essential to its ability to succeed as a disruptive competitor in that province.</p>	<p>beyond their own conduct and that of their businesses.</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine on the alleged importance of wireline infrastructure “for all Integrated wireless competitors in Canada, including Shaw/Freedom Mobile”.</p>	<p>industry. He speaks to the relationship between the wireline asset and the offering of wireless services and the ability to capture clients from the wireline footprint. These are observations that he extends to the market at large, which is proper and for which he is entitled to make. The attack would have some merit if Mr. Kirby’s opinion was that Shaw/Freedom owe its entire success to the wireline asset. But that is not what he is saying. He is speaking in general terms to the relationship between wireline and wireless offerings and the ability to leverage the wireline footprint.</p>
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<p>Blaik Kirby</p>	<p>Page 12; Para. 26</p>	<p><u>26. Prior to the announcement of the Proposed Acquisition, Shaw Mobile was beginning to play a similarly disruptive role in Alberta and British Columbia. I expected Shaw Mobile to continue to play this role and to increase its impact on the market, just as Videotron had done previously, given that it was in a similar position to the one occupied by Videotron when it launched – namely, a well-capitalized company with a large established wireline subscriber base, a well-established local brand, and a small wireless subscriber base and market share. If the Proposed Acquisition does not proceed, I expect Shaw Mobile will return to playing this disruptive role in the market.</u></p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine or speculate on the “role” that Shaw Mobile may play if the proposed transaction between Rogers and Shaw does not proceed.</p>	<p>Mr. Kirby is responsible for marketing at Bell. He has direct knowledge of the competitive landscape. He has observed that Shaw Mobile played a disruptive role prior to the Proposed Transaction. . He provides a further observations, which he tempers with the words “expected” to suggest that this disruptive role in the competitive marketplace was, in his opinion, expected to play out in the future if the merger did not occur. This is based on his direct observations of their conduct in the competitive marketplace, prior to the Proposed Merger. Clearly within his filed of knowledge and proper.</p>
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<p>Blaik Kirby</p>	<p>Page 12; Para. 28</p>	<p>28. <u>Based on my observation of the wireless market in Canada since 2008, I consider that Rogers and Shaw are often each other’s closest wireless competitor. By this I mean that Shaw’s competitive behaviour (pricing, promotions, etc.) in the wireless market appears to be most heavily influenced by the competitive behaviour of Rogers and, conversely, that Rogers’ competitive behaviour appears to be most heavily influenced by the competitive behaviour of Shaw.”</u></p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine or speculate on the competitive dynamics between Rogers and Shaw.</p>	<p>Mr. Kirby is responsible for marketing wireless product for Bell. He is speaking to his observations of market behaviour that he has observed from competitors, such as Rogers and Shaw. His job is to observe the conduct of competitors in the wireless sector and respond with offerings. He is speaking to his assessment of the competitive behaviour of Rogers and Shaw which he has directly observed.</p>
<p>Blaik Kirby</p>	<p>Page 13; Para. 29</p>	<p>29. In the ordinary course of my day to day responsibilities, I am regularly involved in assessing competitive initiatives in the market and, where appropriate, responding to them. This involves, for example, tracking changes to pricing or other changes to the offers of our competitors. In doing so, I have observed and Bell’s internal documents reflect that the impact of Shaw on the market has most frequently been seen in the first instance through its impact on Rogers. [REDACTED] <u>In other words, changes in the offers available in the market (such as the introduction of a particular promotion or a reduction in the cost of a wireless service plan) often result from a change made by Shaw, to which</u></p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine on competitive dynamics in the wireless market at large. Nor is he in a</p>	<p>There is nothing improper in this paragraph. Mr. Kirby is a marketing specialists, employed by Bell to understand the competitive market and make offerings. He has observed market conduct, which is what</p>

		<p>Rogers then responds, [REDACTED]</p>	<p>position to opine on the causal relationship between the promotional offerings of Shaw and Rogers.</p>	<p>he is paid to do. He is speaking to what he has observed in the market when Shaw has changed offerings. A cascading reaction that is followed by Rogers adjusting prices and then Bell.</p>
<p>Blaik Kirby</p>	<p>Page 13; Para. 32</p>	<p>32. I have also observed that Shaw has targeted areas where Rogers has long been the market leader – in particular, the Greater Toronto Area and the Greater Vancouver Area, where the combined market shares of Shaw and Rogers [REDACTED] <u>Shaw and Rogers compete closely in other areas of British Columbia, Alberta, and Ontario as well, and I expect competition between them to continue and to increase absent the Proposed Acquisition.</u></p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine on the competitive dynamics between Rogers and Shaw. Nor is he in a position to opine or speculate on those dynamics in the event the transaction between Rogers and Shaw is not completed.</p>	<p>There is nothing improper in this paragraph. Mr. Kirby is a marketing specialist, employed by Bell to understand the competitive marketplace and respond to it with offerings. He has observed market conduct, which is what he is paid to do. He is speaking to what he has observed in the competitive marketplace and, based on his knowledge, what he expects of the competitive landscape in the future. His</p>

				<p>last sentence is couched with “expect” which will go to weight. But he is better positioned to make these assessment than most, including the court.</p>
<p>Blaik Kirby</p>	<p>Page 14; Para. 33</p>	<p>33. <u>In British Columbia and Alberta this increase in the level of competition between Rogers and Shaw would result in particular from the recent launch of Shaw Mobile and its strategy of aggressively selling wireless services to Shaw’s existing wireline customer base.</u> In July 2020, Bell estimated that [REDACTED] [REDACTED] [REDACTED] Our estimate [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] These are the customers that we observe are being targeted by Shaw Mobile.</p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine on the competitive dynamics between Rogers and Shaw. Nor is he in a position to opine or speculate on the alleged causal relationship between Shaw Mobile’s product offerings and his perception of the competitive dynamic.</p>	<p>This paragraph must be read with paragraph 32, which the Respondents have not included in their submissions. Mr. Kirby is speaking to the competitive landscape that he has observed. That is his job. He has observed the marketplace and is able to opine, based on previous market conduct that he has directly observed, on the competitive landscape in British Columbia and Alberta. He is able to speak to how wireline assets are used to capture new clients in the</p>

				wireless sector. This is a truth that he states in previous paragraphs applies to all companies that hold wireline assets.
Blaik Kirby	Pages 17-18; Para. 43	<u>43. Videotron's primary competitive strategy and, I believe, a significant contributing factor to their wireless results in the province of Quebec has been their ability to cross-sell wireless services to their large existing Internet subscriber base and to offer large multiproduct discounts. This strategy plays a disproportionate role in Videotron's wireless business. For example, an analysis I presented to</u> [REDACTED]	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine or speculate on Videotron's competitive strategy and its impact on Videotron's wireless business.</p>	Mr. Kirby is speaking to his observations of the conduct of Videotron in the competitive marketplace. He is in the field of marketing and gets paid to track and observe the offerings made by competitors and potential competitors. He uses that market information to make offerings for Bell. The cross-selling of services has been directly observed and is known to Mr. Kirby. Entirely proper lay opinion evidence.
Blaik Kirby	Page 18; Para. 45	<u>45. In addition to its ability to cross-sell services to its large existing customer base and offer large multiproduct discounts, Videotron's results in wireless are supported by its strong brand in the province of Quebec and status as a local champion. For Videotron, all of these</u>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters</p>	Again, Mr. Kirby is an officer of Bell that gets paid to market product and services for

		<p>factors are unique to Quebec. For example, according to the [REDACTED]</p>	<p>beyond their own conduct and that of their businesses.</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine on the factors that account for Videotron’s results in wireless. Nor is he entitled to opine or speculate on whether a competitor’s perceived strategy is likely to be successful in a different geographical market.</p>	<p>Bell. He must be attuned to the competitive marketplace as the officer responsible for sales and marketing. He has observed that Videotron has a recognizable brand name in the province of Quebec, which as a marketing officer, he is entitled to make. He is also entitled to speak to marketing strategies that he has observed in the marketplace of competitors, such as Videotron.</p>
<p>Blaik Kirby</p>	<p>Page 19; Para. 47</p>	<p><u>47. For these reasons, I do not expect that, if Videotron expands into other provinces, it could or would play the same large and disruptive role as it has done in Quebec, given that it will be very differently positioned. Rather, it is the combination of Shaw and Shaw Mobile that I would expect to play a more disruptive role in the market in Alberta and British Columbia.</u></p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses. In particular, lay witnesses “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</p>	<p>Again, Mr. Kirby is providing observations on the competitive marketplace. He is entitled to conclude that Videotron is a recognizable brand in the Quebec market. The Respondents also fail to include para 46 which</p>

			<p>experiential competence”.</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine or speculate on Videotron’s future competitive performance or role in the wireless market if it acquires Freedom. Nor is he in a position to opine or speculate on the “role” that “the combination of Shaw and Shaw Mobile” may play in Alberta and British Columbia if the transaction between Rogers and Shaw does not proceed.</p>	<p>source internal Bell documents that have conducted an analysis on why it believes Videotron has encountered a measure of success in Quebec. He has observed that Videotron has leveraged wireline assets and engaged in cross-selling, matters that will not be available to it in the future. As a marketing officer, he is entitled to speak to his observations and the likely outcome in western Canada given what he has observed.</p>
<p>Blaik Kirby</p>	<p>Page 19; Para. 48</p>	<p>48. <u>Moreover, I expect that even if Videotron expands into other provinces they will continue to prioritize retention and cross-selling to their large Internet and wireless subscriber base in Quebec, even at the expense of growth in other areas. This is because that has been core to their strategy and success, and because the Quebec market will continue to be most important to their financial performance.</u></p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses. In particular, lay witnesses “are not in a better position than the trier of fact to form conclusions about the greater economic</p>	<p>Mr. Kirby, an officer responsible for marketing Bell products, has directly observed the market conduct of Videotron in the competitive marketplace. He knows that Videotron performance is anchored in</p>

			<p>consequences of the ‘but for’ world, nor do they have the experiential competence”.</p> <p>Mr. Kirby, as an Officer of Bell, is not in a position to opine or speculate on Videotron’s future priorities and strategy.</p>	<p>Quebec. An observation that is hardly controversial. He is speaking to what he “believes” will occur in the future and Videotron’s attempt to preserve the Quebec market share. A reasonable conclusion based on a set of facts that are before him and that he has observed directly in the competitive marketplace.</p>
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Christopher Hickey

26. In relation to Mr. Hickey, he is the Director, Regulatory Affairs at Distributel. He is responsible for the regulatory activities and functions of Distributel. Distributel is an internet service provider, a telecommunications service provider and a broadcasting distribution undertaking.¹¹

Christopher Hickey	Page 6; Para. 14	14. <u>Distributel does not view duplicating Shaw’s existing wireline broadband network as practical or feasible.</u>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Hickey, as an Officer of Distributel,</p>	<p>This objection is entirely unreasonable. Mr. Hickey is speaking to his company’s ability and desire to duplicate a wireline broadband network of a competitor. This is entirely within his field of knowledge. He is speaking to what</p>
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¹¹ See paras 1 and 2 of the Hickey Witness Statement.

			<p>is not in a position to opine or speculate on the practicality or feasibility of wireless investments that could be made by other carriers.</p>	<p>Distributel would not consider as an option.</p>
<p>Christopher Hickey</p>	<p>Page 6; Para. 15</p>	<p>15. <u>As we demonstrate below, it would not be feasible to use Shaw’s regulated wholesale services to offer the wireline Internet service component of a wireline Internet and wireless service bundle similar to Shaw’s current bundled offering as doing so would result in insufficient or negative margins. With respect to off-tariff agreements, we note that Rogers has entered into only a very limited number of off tariff agreements.</u></p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Hickey, as an Officer of Distributel, is not in a position to opine or speculate on the feasibility of “us[ing] Shaw’s regulated wholesale services to offer the wireline Internet service component of ... a bundle similar to Shaw’s current bundled offering”.</p>	<p>Mr. Hickey is speaking to his company’s ability to offer services using Shaw’s wholesale services. He is not opining on Shaw, as suggested by the Respondents. He does not believe that given the pricing of wholesale services, acceptable margins are feasible for Distributel. He is certainly in a position to speak to what Distributel could or would do given the wholesale price offered by Shaw.</p>
<p>Christopher Hickey</p>	<p>Page 8; Para. 22</p>	<p>22. <u>The spreadsheet also sets out the additional costs that we expected to incur to offer a wireless service similar to the ‘Unlimited’ 25Gb wireless plan that Shaw offers in its wireline Internet and wireless service bundles (see column K of Exhibit I).</u></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>[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>The concerns are entirely without merit. Mr. Hickey had discussions with Telus and has identified the source of the information in the affidavit, namely Telus. He has provided data, which is found in the spreadsheets. The source of the data is Telus and the manipulation of that data is that of</p>

	<p>TELUS would have to either duplicate fibre infrastructure at additional cost or lease it from other carriers. Leasing fibre backhaul facilities reduces TELUS' ability to control their performance (including speed, latency, jitter, capacity and upgrades to equipment), routings, and timely maintenance of critical facilities. Owning facilities (as opposed to leasing them) allows TELUS to build redundancies and other reliability features into the architecture of the network and to respond more quickly to incidents and outages through consistent and timely traffic monitoring. For example:</p> <p>a) Containing disruptions from outages: <u>Operators that own their own facilities are able, in their sole discretion, to determine the number of cell sites that share a connection to the core networks, in accordance with their own risk tolerances. By controlling the number of cell sites that share a connection, and how such a connection is shared, an operator is able to contain the impact of outages or network failures. The greater the number of cell sites that share a connection, the greater the effects will be in the event there is an outage affecting that connection. Accordingly, the experience that an operator</u></p>	<p>their own conduct and that of their businesses.</p> <p>Mr. Benhadid, as an Officer of TELUS, is not in a position to opine on the network performance or abilities of other telecommunications operators, or on the experiences that other operators are able to provide to customers.</p>	<p>entitled to say that a network is only as fast as its weakest/slowest link. This is a general proposition that is surely within his field of knowledge and experience.</p> <p>The Respondents misread paragraph a) in relation to disruptions from outages. Mr. Benhadid, as the person that is responsible for wireless network builds and maintenance at Telus, is entitled to opine on how owning facilities can make a company responsive to outages. He is not speaking about a competitor; rather, he is pointing out a general proposition, based on his direct knowledge of the networks that he has acquired while occupying a position at Telus</p> <p>In relation to paragraph b), Mr. Benhadid is simply stating that ownership of the assets allow Telus to design a network that protects against outages, something that may not be the case with competitors that do not own assets.</p>
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	<p><u>that leases fibre backhaul is able to provide its downstream customers in terms of reliability may be substantially different, and in any event will be largely out of its control, instead resting in the hands of the operator from whom they lease the facilities.</u></p> <p>b) Reducing risk of outages: TELUS ensures that certain key cell sites have two independent connections to the cores and have back-up generators, to ensure optimum performance and reliability. We are thus able to protect against a substantial outage by building two connections that are physically separate from each other, so that if one connection goes down, the other can still carry the traffic. <u>Other wireline carriers upon whom operators that lease fibre will be dependent may not have a similar network design.</u></p> <p>c) Adapting to sudden spikes in demand: When TELUS anticipates increased network traffic in an area where it owns the facilities (for example, the Calgary Stampede) and there is insufficient backhaul capacity for that traffic, TELUS can readily upgrade capacity within [REDACTED]. In comparison, where TELUS leases backhaul, we must request an upgrade from the provider and such an</p>	<p>Contrary to what is suggested by the Respondents, he does not make any assertions in relation to Roger, Shaw or Videotron.</p> <p>In relation to paragraph d), Mr. Benhadid simply advises that ownership of assets gives rise to increased control. Where there is no ownership, the lessee is susceptible to lesser control over the asset. Thus, requiring it to request some cooperation from the owner. This is a statement based on his direct knowledge and experience of the wireless networks that he creates and maintains for Telus and is by no means a pronouncement on Rogers, Shaw or Videotron.</p>
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		<p>upgrade can take up to one week or longer to implement. Where such events can be forecasted at the time the wholesale contract is entered into, it may be possible for the lessee to negotiate established timeframes for responding to such requests. However, in TELUS' experience this is not done, and in any event, many such events – such as natural disasters, sporting events or protests – cannot be forecast accurately.</p> <p>d) Rectifying performance anomalies quicker: Where TELUS owns its own network, it can address performance anomalies in voice and/or data quality substantially more quickly by having end to end visibility into all the elements traversed by that traffic <u>than could be addressed by a lessee who would need to persuade its wholesale provider to investigate and resolve the performance issues.</u></p>		
<p>Nazim Benhadid</p>	<p>Page 4; Para. 7</p>	<p>7. <u>In my experience, competition between network operators leads to substantial network investments to improve the speed, reliability and performance of wireless (and wireline) services that would not otherwise be made. This is an important reason why TELUS</u> decided to build the vast majority of its own fibre backhaul to serve our wireless operations outside</p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Benhadid, as an Officer of TELUS, is not in a position to opine generally on competition between network</p>	<p>Mr. Benhadid is responsible for network build and maintenance at telus. He is speaking to what he has experienced as the officer responsible for wireless infrastructure at Telus. As a general proposition, based on his experience, competition causes market players to</p>

		of our traditional wireline serving area, for example, in Montreal.	operators and what such competition may lead to. Nor is he in a position to opine or speculate on the investment rationales of other network operators.	invest greater amounts to increase performance of the networks. His observations are in relation to what happens to networks with increased competition. He offers the Telus experinece as an example for that general proposition.
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Sameer Dhamani

28. Mr. Dhamani is the owner of seven Freedom Mobile retail stores across Alberta. He retails Freedom offerings to the public in various communities in Alberta.¹³

Sameer Dhamani (September 2022)	Page 4; Para. 15	15. In addition, Freedom’s commission structure on Freedom Internet service is not a motivating factor for sales; the commissions are very modest, in comparison to the significant headaches involved with selling the product. <u>Freedom Home Internet is no antidote to Shaw’s unfair competition on mobile plans.</u>	This paragraph contains inadmissible opinion evidence. A lay witness cannot testify on matters beyond their own conduct and that of their businesses. Mr. Dhamani, as an Independent Dealer of Freedom, is not in a position to opine on alleged “unfair competition” by Shaw and what constitutes an “antidote” to such “unfair competition”.	Mr. Dhamani is a retailer of Freedom products. He has direct knowledge and experience of the offerings of Freedom and Shaw. The small commissions offered by Freedom when assessed against Shaw’s competitive behaviour is no match. He is in a position to provide evidence on the competitive forces in the marketplace for which he makes offerings to the public.
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¹³ Dhamani Witness Statement, sworn March 3, 2022 and September 2022, at paras 1 and 2.

<p>Sameer Dhamani (March 2022)</p>	<p>Page 8; Para. 9</p>	<p>9. In Alberta, Shaw has been undercutting the Freedom brand with superior Shaw offers. <u>We consider Shaw to be leveraging unfair advantages over Freedom dealers.</u> Shaw negotiates our agreements and are not required to provide disclosure. At the same time, Freedom dealers are required to provide Shaw with operational data. Shaw has leveraged this information to support the Shaw Mobile brand and have been porting customers from Freedom to Shaw Mobile. For example, every Monday all Alberta dealers are required to submit weekly activation/upgrade reports which includes competitive offerings, described as “Market trends.” This information is passed on to Freedom managers, and in turn, Shaw. Shaw has access to all of this data, while Freedom dealers do not.</p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Dhamani, as an Independent Dealer of Freedom, is not in a position to opine on alleged “unfair advantages” that are supposedly being “leverage[ed]” by Shaw.</p>	<p>Mr. Dhamani is directly involved in the competitive marketplace, making Freedom offerings to consumers. He is able to provide evidence on his direct experiences in the marketplace and how Shaw what shaw is offering in comparison to what Freedom dealers offer. All of this is within his field of knowledge and experience..</p>
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Stephen Howe

29. Stephen Howe is the chief technology and information officer at Bell. He leads Bell’s team responsible for designing, building and operating Bell’s industry-leading broadband fibre, wireless, satellite and media networks as well as application development, infrastructure and cloud management.¹⁴

<p>Stephen Howe</p>	<p>Page 3; Para. 8</p>	<p>8. <u>Fibre backhaul plays a critical role both in expanding the capacity, performance, and reliability of a wireless network to serve customers and in realizing the benefits of 5G.</u></p>	<p>This paragraph contains inadmissible opinion evidence.</p>	<p>There is nothing improper with this statement when considered within the context of the position that he</p>
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¹⁴ Howe Witness Statement, at paras 1 and 2.

		<p>Our website emphasizes the importance of our fibre network to our 5G deployment: [Page 4, Screenshot from Bell’s website]</p>	<p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Howe’s executive position with Bell does not entitle him to opine or speculate on the role played by fibre backhaul with respect to the networks of other wireless carriers.</p>	<p>occupies at Bell. . Mr. Howe is chief technology and information Officer at BCE. He designs and creates networks. He has direct knowledge and experience in the technological aspects of wireless networks. He opines on the importance of fiber backhaul in expanding capacity, performance and reliability of a wireless network and in realizing benefits of a 5G.</p>
Stephen Howe	Pages 4-5; Para. 10	<p>10. The locations in which each of Bell and Telus have deployed Radio Access Networks in connection with the network reciprocity arrangements overlap to a large degree – but not entirely – with our respective wireline network footprints. Accordingly, in most areas in Alberta / British Columbia, where Telus operates an extensive residential wireline network, Telus has deployed a RAN and Bell has not, while in most areas in Ontario / Quebec / Atlantic Canada, where Bell operates an extensive residential wireline network, Bell has deployed a RAN and Telus has not. This is because <u>there are significant advantages to deploying a wireless network within your wireline network footprint</u>. While our experience demonstrates that it is possible for an established national wireless operator to successfully deploy a wireless network outside an existing wireline network footprint,</p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Howe’s executive position with Bell does not entitle him to opine or speculate on the alleged advantages or opportunities that Shaw Mobile and Freedom (or other wireless carriers) would supposedly obtain by deploying a wireless network within their wireline footprint.</p>	<p>There is nothing improper with this statement when considered within the context of the position that he occupies at BCE.. Mr. Howe id chief technology and information officer at BCE. He has direct knowledge and experience in the technological aspects of wireless networks and their creation. He is entitled to speak to the advantages to be derived from deploying a wireless network within a wireline network footprint.</p> <p>Given his experience, Mr. Howe is entitled to draw general conclusions on the benefits of deploying a wireless network</p>

		<p>deploying in an area where we have such a footprint provides us with significant opportunities to reduce costs, reduce deployment timelines, and increase innovation. <u>The same would be true for other companies, including Shaw (Shaw Mobile and Freedom), deploying a wireless network within their traditional wireline footprint.</u></p>		<p>within their traditional wireline footprint. He believes that these general principles apply equally to all market participants.</p>
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Sudeep Verma

30. Mr. Verma is the owner of 15 Freedom retail stores where he offers Freedom product to consumers. He operates these stores and is directly involved in making offerings to consumers.¹⁵

<p>Sudeep Verma (September 2022)</p>	<p>Page 2; Para. 8</p>	<p>8. <u>These initiatives also forced incumbent telecom companies to compete to follow some of Freedom’s revolutionary ideas and strategies.</u></p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Verma, as an Independent Dealer of Freedom, is not in a position to opine or speculate on the alleged impact of these initiatives on other telecommunications companies, or on</p>	<p>Mr. Verma has a number of Freedom retail stores. He makes offerings to consumers and is aware of the competitive market in which he operates. He would know how the market responds to the offerings, all of which would be within his direct knowledge and experience. He can speak to how the competitive marketplace responded to various initiatives.</p>
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¹⁵ Verma Witness Statement, at paras 1 and 2.

			competition more generally.	
Sudeep Verma (September 2022)	Page 3; Para. 12	<p>12. <u>Contrary to prior years, in which Freedom was a market-leader with aggressive and prominent campaigns, Freedom’s back-to-school promotions this year were uninteresting and very similar to offerings from other cell phone providers. There were simply no aggressive promotions by Freedom to distinguish itself from other brands.</u></p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Verma, as an Independent Dealer of Freedom, is not in a position to opine or speculate on whether Freedom’s promotions were “uninteresting” or more generally on their effectiveness against offerings offered of other wireless carriers in the market.</p>	<p>Mr. Verma has a number of Freedom mobile retail stores. He makes offerings to consumers and is aware of the market in which he operates. He would know about offerings by competitors and how the market responds to the offerings of Freedom. He would be acutely aware of such things as back to school promotions offered by competitors.</p>
Sudeep Verma (September 2022)	Page 3; Paras. 13-14	<p>13. <u>Although I do not have access to Freedom data to know how much it spends on advertising and brand visibility, I, as well as many other F-Branded Association dealers perceive a dramatic reduction in Freedom's recent advertising efforts.</u></p> <p>14. Unlike in the past, there are no transit ads, few (if any) highway billboards, and not many television or radio ads. <u>Instead, it would appear that Freedom has downloaded the advertising effort on dealers to use their own co-op dollars for brand awareness.</u></p>	<p>This paragraph contains inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Verma, as an Independent Dealer of Freedom, is not in a position to opine or speculate on the level of Freedom’s advertising spend</p>	<p>Mr. Verma has a number of Freedom retail stores. He makes offerings to consumers and is aware of the competitive marketplace in which he operates. He would know how the market responds to the offerings, all of which would be within his knowledge. He would know about Freedom’s marketing efforts at large as he competes with their offerings. He would</p>

			and advertising efforts.	know the extent to which Freedom has pushed down marketing efforts to dealers. He is a dealer. He is not opining on a given quantum, but rather as a general observation.
Sudeep Verma (September 2022)	Page 3; Para. 15	<p>15. <u>Freedom is engaging in limited social media ads and other branding activity in conjunction with the back-to-school period, but the messaging involves unclear messaging on emojis and workouts, which create little brand recall and has not helped in driving traffic to stores. Dealers have seen dwindling customer engagement on social media posts. The few comments that are seen usually involve excoriating complaints against Freedom. Overall, national marketing by Freedom has been curtailed to a large extent.</u></p>	<p>This paragraph contains inadmissible opinion evidence and inadmissible hearsay evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Verma, as an Independent Dealer of Freedom, is not in a position to opine on the nature or effectiveness of Freedom’s advertising, or on the nature of customer engagement on social media as perceived by other (unidentified) dealers.</p> <p>Moreover, this paragraph attempts to put into evidence “excoriating complaints” allegedly made against Freedom online. Mr. Verma did not append these complaints to his Witness Statement,</p>	<p>Mr. Verma has a number of Freedom retail stores. He makes offerings to consumers and is aware of the market in which he operates. He would know how the market responds to the offerings, all of which would be within his knowledge. He would know how Freedom markets offerings. He is alive to how social media platforms are used by Freedom and how consumers react to it. He understands the competitive landscape within which he operates. He is speaking to what is within his direct knowledge and experience, especially as it relates to social media as a marketing platform.</p>

			<p>and the Commissioner has not called any of the individuals who supposedly made those complaints as witnesses in this proceeding. The Respondents are therefore deprived of the opportunity to cross-examine the individuals whose statements are being relied upon. Admitting this evidence would be procedurally unfair to the Respondents and would impede the truth-seeking function of the Tribunal.</p> <p>In addition, evidence concerning complaints made about Freedom on social media or elsewhere online by unidentified individuals has no relevance to any issue raised in this proceeding. To the extent this evidence has any probative value (and it does not), that probative value is outweighed overwhelmingly by its prejudicial effect. For this reason as well, the evidence is inadmissible.</p>	
<p>Sudeep Verma</p>	<p>Page 11; Para. 18</p>	<p>18. Wind/Freedom is a pioneer in industry-leading reforms, <u>which the incumbents ultimately matched</u>, helping</p>	<p>This paragraph contains</p>	<p>Mr. Verma can speak to the competitive landscape in which he operates. As the</p>

<p>(February 2022)</p>		<p>Canadian consumers. Some examples of these disruptions include: (a) unbundling device pricing from rate plans, which meant customers did not have to continue paying for their hardware once devices were paid off (in a two-year term), and (b) introducing “Big Gig data” on rate plans, which meant consumers had abundant data as compared to incumbents who did not offer these plans, <u>but which ultimately forced incumbents to follow suit</u>. A summary of some of Freedom’s pioneering competitive initiatives is described below.</p>	<p>inadmissible opinion evidence.</p> <p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Verma, as an Independent Dealer of Freedom, is not in a position to opine or speculate on the competitive impact of initiatives on other telecommunications companies and on competition more generally.</p>	<p>owner of retail stores that offer Freedom product, he knows the competitive market landscape in which he operates. He is speaking about his experiences and how the competitive marketplace reacted to the “Big Gig data” roll out by Shaw. He is entitled to speak to these matters as the owner of a retail store that makes offerings which require that he have knowledge of competitive offerings.</p>
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B. The Legal Test: Hearsay Evidence

31. Hearsay evidence is inadmissible. The witness statements tendered by the Commissioner contain no hearsay evidence or alternatively, as explained below, the evidence falls within the exception to the hearsay rule.

32. Hearsay evidence is presumptively inadmissible. The essential defining features of hearsay are “: (a) the fact that the statement is adduced to prove the truth of its contents; and (b) the absence of a contemporaneous opportunity to cross-examine the declarant.¹⁶ As such, statements that are outside the witness’ personal knowledge are hearsay.¹⁷

33. The fundamental objection to hearsay evidence is the inability to test the reliability of hearsay statements through proper cross-examination. It is a procedural fairness concern. A consultant report, for instance, that is put forward in a witness statement and that makes assertions as to, say, the benefits or efficiencies to be derived from a proposed merger escape cross-examination. The Respondents receive the benefit of the evidence, without challenge, all of which breeds unfairness on the adjudicative process and on the Commissioner.

¹⁶ *R v Khelawon*, 2006 SCC 57, at para 35, Commissioner’s BOA, at Tab 6.

¹⁷ *Canadian Tire Corp Ltd v PS Partsource Inc*, 2001 FCA 8, at para 6, Commissioner’s BOA, at Tab 7.

34. There is no doubt that the presumptive inadmissibility of hearsay may be overcome when it is established that what is being proposed falls under a recognized common law or statutory exception to the hearsay rule. Hearsay evidence may also be admissible when it satisfies the twin criteria of “necessity” and “reliability” under the principled approach developed by the Supreme Court of Canada.¹⁸

35. The hearsay exceptions are in place to facilitate the search for truth by admitting into evidence hearsay statements that are reliably made or can be adequately tested. Source data from recognizable institutions, such as an OECD Reports, IMF Reports or World Bank Reports, for instance, fall into the hearsay exception and the author of these reports need not be produced in order to admit them into evidence.

36. Under the principled approach established by the Supreme Court, the onus is on the person who seeks to tender the hearsay evidence to establish “necessity” and “reliability” on a balance of probabilities.¹⁹ The function of the trier of fact is to determine whether the particular hearsay statement exhibits sufficient indicia of necessity and reliability so as to afford him or her a satisfactory basis for evaluating the truth and trustworthiness of the statement that has been put into evidence.

37. The “necessity” requirement may be established in instances where there is no alternative evidence or no other means for a party to bring the evidence before the Court. This will typically occur where the calling party “cannot compel testimony from the declarant”.

38. The “reliability” requirement may be established in either or both of two ways, namely procedural or substantive reliability.

39. Procedural reliability is established when there are adequate safeguards for testing the evidence despite the fact that the declarant has not given the evidence in court, under oath or its equivalent and under the scrutiny of contemporaneous cross-examination.²⁰ These substitutes must provide a satisfactory basis for the trier of fact to rationally evaluate the truth and accuracy of the hearsay statement. Among the substitutes for traditional safeguards are video recording the statement, administration of an oath and warning the declarant about the consequences of lying.

40. Substantive reliability is established where the hearsay statement is inherently trustworthy. To determine whether the statement is inherently trustworthy, a trial judge considers the circumstances in which the statement was made and any evidence that corroborates or conflicts with the statement. The judge must be satisfied that the statement is so reliable that contemporaneous cross-examination on it would add little

¹⁸ *R v Bradshaw*, 2017 SCC 35 (“Bradshaw”), at para 23, Commissioner’s BOA, at Tab 8; *R v Mapara*, 2005 SCC 23, at para 15, Commissioner’s BOA, at Tab 9.

¹⁹ *R v Khelawon*, 2006 SCC 57, at para 47, Commissioner’s BOA, at Tab 6.

²⁰ *R v Khelawon*, 2006 SCC 57, at para 63, Commissioner’s BOA, at Tab 6.

if anything to the process.²¹ Accordingly, where, on a balance of probabilities, a court determines that there are sufficient guarantees of a statement’s inherent trustworthiness, a statement may be admitted because it meets the test for threshold reliability.

41. The complaints raised by the Respondent are either not hearsay statements or fall within the hearsay exception explained above.

Blaik Kirby

42. The complaints levelled against Blaik Kirby relates to reliance that he places on [REDACTED] data. Mr. Kirby is responsible for marketing and sales of wireless services at Bell. At footnote 31 of his Witness Statement he explains how Bell uses [REDACTED] data to understand the marketplace. He states:

[REDACTED]

<p>Blaik Kirby</p>	<p>Page 14; Para. 34</p>	<p>34. <u>Data obtained from [REDACTED] which for the reasons set out above I consider to be reliable, indicates that, in the time period from July 1, 2020 to June 30, 2022, the number of customers switching between Shaw and Rogers nationally [REDACTED]. These data are summarized in the graph below, which Bell prepared. They show that nearly [REDACTED]</u></p>	<p>This paragraph contains inadmissible hearsay evidence.</p> <p>Mr. Kirby relies on information from a third-party, [REDACTED] for the truth of its contents without permitting the Respondents to cross-examine a [REDACTED] representative on the accuracy of that information and the process through which it was gathered. Admitting this evidence would be procedurally unfair to the Respondents and would impede the truth-</p>	<p>Both the reliability and necessity test to the hearsay exception rule are met. The only reliable source of data is [REDACTED] a third-party data provider. This is explained at footnote 31 of Mr. Kirby’s affidavit. The reliability of the data has been validated by Bell.</p> <p>Paragraph 34 also speaks to charts</p>
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²¹ R v Khelawon, 2006 SCC 57, at paras 49, 62, 107, Commissioner’s BOA, at Tab 6.

		<p>[REDACTED]</p> <p><u>This leads me to conclude that, across the Shaw footprint, competition between Rogers and Shaw is disproportionately relevant to the competitive dynamic.</u></p> <p>[REDACTED]</p>	<p>seeking function of the Tribunal.</p>	<p>created by Bell. While the source data may originate from [REDACTED] which meets both the reliability and necessity requirements of the hearsay exception. The charts and manipulation of the data originates from Bell. Mr. Kirby is entitled to speak to these matters. If the Respondents contend that the source data is not reliable as an input to the charts created by Bell, they are free to cross-examine.</p>
<p>Blaik Kirby</p>	<p>Pages 16-17; Paras. 39-41</p>	<p>39. <u>According to data Bell obtained from [REDACTED] (which, as described above, I consider to be reliable), Shaw had net ports of [REDACTED]</u></p> <p>[REDACTED]</p> <p>[REDACTED] <u>This means that</u></p> <p>[REDACTED]</p> <p>[REDACTED] <u>By Q4 2021 Shaw's net ports for the quarter were -</u></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>40. <u>Rogers has been the largest beneficiary of the reduction in Shaw's competitive efforts following the announcement of</u></p>	<p>This paragraph contains inadmissible hearsay evidence.</p> <p>Mr. Kirby relies on information from a third-party, [REDACTED] for the truth of its contents without permitting the Respondents to cross-examine a [REDACTED] representative on the accuracy of that information and the process through which it was gathered. Admitting this evidence would be procedurally unfair to the Respondents and would impede the truth-seeking function of the Tribunal.</p>	<p>[REDACTED] is a product that [REDACTED] provides to wireless carriers. It is a third-party data provider. Bell relies on this data in the normal course of business to guide its consumer offerings. The data source meets both the reliability and necessity test to the hearsay exception. At para 31, Mr. Kirby explains that this is the only source of information available to Bell</p>

		<p><u>the Proposed Acquisition.</u> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>41. <u>Looking just at the port outflows from Shaw in Q4 2021, Rogers accounts for [REDACTED] (i.e., [REDACTED] of customers switching to other carriers from Shaw switched to Rogers). Because Rogers typically captures just [REDACTED] of wireless net additions, I understand the fact that it accounts for [REDACTED] of Shaw’s net port swing and captures [REDACTED] of port outflows from Shaw to be a consequence of the particularly close competition between Rogers and Shaw prior to the Proposed Acquisition. These data are reflected in the graph below, which Bell prepared based on the data from [REDACTED]</u></p> <p>[REDACTED]</p> <p>[REDACTED]</p>		<p>and that it has tested its reliability.</p> <p>Part of the statements are in relation to a chart that was crated by Bell, using source data from [REDACTED]</p> <p>The Respondents may cross-examine on the source data, but the Bell charts contain information that has been uniquely created by Bell.</p>
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Charlie Casey

43. Charlie Casey is the VP of Consumer, Controller of Telus. His responsibilities include financial planning and reporting for the consumer segment of the business. He supports all financial and subscriber key performance indicators for the Telus consumer business. In his witness statement, Mr. Casey relies on data that is supplied by Comlinkdata. Comlinkdata is a third-party service provider that synthesizes billions of data points to generate unique, actionable insights for clients in the wireless sector. The company specializes in network insights, business and residential subscriber behavior, and sales enablement across wireless, wireline, broadband, and device ecosystems.²²

Charlie Casey	Page 4; Para. 8, 8(a)	8. <u>I believe that Shaw’s competitive intensity in Alberta, British Columbia and in Ontario has decreased materially since the</u>	This paragraph contains inadmissible opinion evidence.	Mr. Casey is relying on Comlinkdata, which sources
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²² <https://comlinkdata.com/about/>

	<p><u>announcement of the Proposed Transaction on March 15, 2021.</u> My belief is based on a number of data points and observations, including the following:</p> <p>a) <u>The Comlink data: Attached to my witness statement as Exhibit A are true copies of three Comlink reports which show the net ports for Shaw on a monthly basis for the period commencing January 1, 2021 (prior to the announcement of the Proposed Transaction) and ending August 31, 2022, on a national basis, on a combined Alberta and British Columbia basis; and on an Ontario only basis.</u> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] More specifically,</p> <p>i. <u>The national report shows that Shaw gained [REDACTED] net ports in April 2021 and lost [REDACTED] net ports in December 2021. This is an approximate 235% decrease in the number of net ports. This trend has continued throughout 2022. Shaw commenced 2022 by losing [REDACTED] net ports and in August lost [REDACTED] net ports.</u></p> <p>ii. <u>The combined Alberta and British Columbia report shows that Shaw gained [REDACTED] net ports in April 2021 and lost [REDACTED] net ports in December 2021. This is an approximate 103% decrease in net ports. Shaw has experienced a drastic decline in net ports in 2022. It commenced the year by gaining [REDACTED] net ports and then the decline commenced and in August it lost [REDACTED] net ports.</u></p> <p>iii. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>A lay witness cannot testify on matters beyond their own conduct and that of their businesses.</p> <p>Mr. Casey, as an Officer of TELUS, is not in a position to opine or speculate on Shaw’s competitive decision-making or “competitive intensity”.</p> <p>This paragraph also contains inadmissible hearsay evidence.</p> <p>Mr. Casey relies on information from a third-party, Comlink, for the truth of its contents without permitting the Respondents to cross-examine a representative of Comlink on the accuracy of that information and the process through which it was gathered. Admitting this evidence would be procedurally unfair to the Respondents and would impede the truth-seeking function of the Tribunal.</p>	<p>objective and reliable data on the marketplace to the wireless sector. The information is both reliable and necessary, meeting the hearsay exception. He is providing an opinion on the market data that has been provided by an independent third-party service provider that is paid to gather this type of information for industry.</p> <p>Mr. Casey is responsible for financial planning and reporting for the consumer segment of the business at Telus. He relies on Comlinkdata to arrive at a conclusion in relation to competitive intensity of Shaw. He expresses an opinion on the data.</p>
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		<p><u>since the Proposed Transaction was announced. Shaw lost [REDACTED] net ports in April 2021 and lost [REDACTED] net ports in December 2021. This is an approximate 374% decrease in net ports. This trend has continued throughout 2022. Shaw lost [REDACTED] net ports in January 2022 and in August it lost [REDACTED] net ports.</u></p> <p><u>iv. A common element of each of these reports, each of which covers a time period after the announcement of the Proposed Transaction, is Shaw’s substantial loss of net ports in the Black Friday-Cyber Monday period (late November) and the Boxing Week period (late December) which suggests that Shaw was not competing vigorously for subscribers during these heavy price promotional periods.</u></p>	
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Christopher Hickey

44. In relation to Mr. Hickey, he is the Director, Regulatory Affairs at Distributel. He is responsible for the regulatory activities and functions of Distributel. Distributel is in internet service provider, a telecommunications service provider and a broadcasting distribution undertaking.

Christopher Hickey	Page 8; Para. 22	<p>22. <u>The spreadsheet also sets out the additional costs that we expected to incur to offer a wireless service similar to the ‘Unlimited’ 25Gb wireless plan that Shaw offers in its wireline Internet and wireless service bundles (see column K of Exhibit I).</u> [REDACTED]</p>	[REDACTED]	Mr. Hickey had discussions with Telus and has identified the source of the information the affidavit and believe it to be true. He has provided the data, which is found in the spreadsheets that he subsequently
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		<p><u>experience, the primary customer segments that rely on Freedom retail services are mid-to-low income earners, new Canadians, visible minorities, students and seniors.</u></p> <p>11. <u>Based on data from our customer postal codes and StatsCan, our customers live in areas with mid-to-low average incomes, with high concentrations of new Canadians and high concentrations of visible minority populations. Attached as Exhibit “A” to this affidavit is an analysis prepared by the F-Branded Association, which compares the postal codes of its customers in the GTA area and compares those postal codes to information from the City of Toronto as to average family income, concentration of new immigrants, and concentration of visible minority population.</u></p>	<p>These paragraphs rely upon analysis of Freedom’s customers performed by the F-Branded Association. Mr. Verma is not the author of the analysis. The author of the analysis has not been called by the Commissioner as a witness in this proceeding. The Respondents are therefore deprived of the opportunity to cross-examine the person who prepared the analysis that is being relied upon. Admitting this evidence would be procedurally unfair to the Respondents and would impede the truth-seeking function of the Tribunal.</p>	<p>observations as it relates to customer segments is based, in part on first hand knowledge at the retail stores as well as data from the F-Branded Association. This is ignored by the Respondents. Further, Mr. Verma is a member of the F-Branded Association. This is his association to which he is actively involved and has a direct interest and has been involved in creating the data. As it relates to paragraph 11, the data as it relates to where the client lives is from information that is held by the retail store. Reliance on F-Branded information which correlates income level and postal code meets both the necessity and reliability test of the exception to hearsay. Not to mention that the source of the information is form an association to which Mr. Verma has a direct interest. The Respondents are free to cross-examine on the</p>
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				evidence as it is the evidence of Mr. Verma.
Sudeep Verma (February 2022)	Page 10; Para. 14	14. <u>Attached as Exhibit “D” to this affidavit is an analysis prepared by the F-Branded Association to show the percentage of prepaid customers, versus postpaid. Based on this sales data, prepaid users make up 43.1% of F-Branded Association customers, a rate which has steadily increased since 2018 when they made up 22.9% of our customers. In my experience, prepaid plans are attractive for financial reasons and because customers may not qualify for post-paid, for example, due to poor credit ratings, and for customers with low phone usage requirements, such as seniors. The source of this data in the analysis is actual sales recorded in the point-of-sale software at the store level and an average across the membership of the association.</u>	<p>This paragraph contains inadmissible hearsay evidence.</p> <p>This paragraph relies upon analysis of Freedom’s customers performed by the F-Branded Association.</p> <p>Mr. Verma is not the author of the analysis. The author of the analysis has not been called by the Commissioner as a witness in this proceeding. The Respondents are therefore deprived of the opportunity to cross-examine the person who prepared the analysis that is being relied upon. Admitting this evidence would be procedurally unfair to the Respondents and would impede the truth-seeking function of the Tribunal.</p>	The data generated by the Association of F-branded dealers meets the reliability and necessity test to the hearsay exception. The Association of F-branded wireless dealers is an association of 72 independent franchise dealers and dealer groups that share and create data. Mr. Verma is a member of the association and has a direct interest and stake in the evidence that is gathered and generated. The Respondents can cross-examine Mr. Verma on the evidence as it is his evidence given his direct interest in the association.
Sudeep Verma (February 2022)	Page 12; Para. 24	24. Throughout our history as Freedom dealers, we have strived to make Freedom the most attractive choice for customers moving over from the “big 3” incumbent providers. <u>Attached as Exhibit “J” to this affidavit is a chart from the F-Branded Association, which reflects that 61% of total Freedom activations are port-ins from Rogers, Fido and Chatr. The source for this data is a member</u>	<p>This paragraph contains inadmissible hearsay evidence.</p> <p>This paragraph relies upon analysis of Freedom’s customers performed by the F-Branded Association.</p> <p>Mr. Verma is not the author of the analysis. The author of the analysis has not been called by the Commissioner as a witness in this</p>	The data generated by the Association of F-branded dealers meets the reliability and necessity test to the hearsay exception. The F-Branded Association data is a source of information that independent dealers rely on and collectively

		<p><u>dealer operating more than 10 locations in the GTA and who has been tracking port-in at the store level via the point-of-sale software.</u></p> <p>There has been a conscious effort on part of Freedom to position itself as an alternative to the “Big Three”. Attached as Exhibit “K” to this affidavit is a “Freedom Mobile Competitor Comparison” document prepared by Freedom.</p>	<p>proceeding. The Respondents are therefore deprived of the opportunity to cross-examine the person who prepared the analysis that is being relied upon. Admitting this evidence would be procedurally unfair to the Respondents and would impede the truth-seeking function of the Tribunal.</p>	<p>generate. It is both reliable and necessary to understand the consumer behaviour in a given geographic area. The evidence is also that of Mr. Verma. He is the association and has a direct interest in the evidence that has been gathered and generated. In this context, the Respondents can cross-examine Mr. Verma and there is no unfairness.</p>
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C. Complaints that are entirely without merit (Category 3)

Denis Albert and Stephanie Assed

46. There are a number of complaints advanced by the Respondent that are beyond the pale of reasonability. The Commissioner has produced a witness statement that explains how it obtained and processed submissions from consumers and stakeholders. The submissions contained views on whether the merger was favourable. The witness statement was intended to explain how the Commissioner receives public input only. The actual statements are not put in evidence nor are they relied upon. The Bureau also uses an RFI process to gather information which is described in another witness statement. The results of the RFIs and the information that was received is not put in evidence. There is nothing improper in either the Denis Albert or Christine Assad witness statements. The Respondent grossly misreads the evidence and fails to understand the purpose for which it is tendered.

Denis Albert	Pages 2-4; Paras. 5-14	<p>5. <u>As part of the Bureau’s review of a merger, the Bureau seeks a wide variety of perspectives on the competitive effects of the merger; the Bureau considers the views of not</u></p>	<p>These paragraphs contain impermissible hearsay evidence.</p> <p>The witness makes reference to “submissions” from</p>	<p>Mr Albert is an employee of the Bureau and speaks to the review process and how they receive views on</p>
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	<p><u>just the merging parties and their competitors, but also from the members of the general public who are consumers in the relevant market. To that end the Bureau receives submissions from Canadian consumers and stakeholders through the Information Centre.</u></p> <p><u>6. One channel through which the Information Centre receives submissions is through a web form located on the Bureau’s website (the “Merger Feedback Form”), located at the following address: https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/frm-eng/GH%C3%89T-83KK9Y. Unlike a request for information issued by a case team, the Merger Feedback Form is not associated with a specific merger. The Merger Feedback Form is located on a webpage that generally explains the Bureau’s merger review process. Following this explanation, the Merger Feedback Form invites Canadian consumers and stakeholders to submit their views on competition-related issues regarding a transaction.</u></p> <p><u>7. The Merger Feedback Form asks respondents to provide their last name; first name; e-mail address; company, association or organization; the name of the merger on which the respondent is commenting; and the respondent’s</u></p>	<p>thousands of individuals concerning the proposed transaction between Rogers and Shaw. The Commissioner has not called all of the individuals who supposedly made these submissions as witnesses in this proceeding. The Respondents have no opportunity to cross-examine all of the authors of the submissions.</p> <p>Neither the fact that submissions were sought from the general public, nor the receipt and number of the submissions received has any relevance to any issue raised in this proceeding. To the extent that they have any probative value (and they do not), that probative value is outweighed overwhelmingly by their prejudicial effect. For this reason as well, the evidence is inadmissible.</p>	<p>a proposed merger from consumers and stakeholders. The evidence speaks to the process followed by the Bureau and not to the content of the information that was gathered. The evidence is in relation to how information was gathered only. Not a single improper statement in all of the paragraphs referenced by the Respondents.</p>
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	<p><u>comments. The Merger Feedback Form also allows respondents to attach files.</u></p> <p>8. <u>Anyone may use to the form at any time to share their views on any merger. Callers to the Information Centre are also directed to submit their views through the Merger Feedback Form.</u></p> <p>9. <u>These submissions were received in our receiving e-mail inbox. A few samples were entered in our database called the Bureau Information Management System (“BIMS”) and assigned to the Mergers and Monopolistic Practices (“MMP”) directorate. The remainder of the submissions were placed in a folder accessible by both the Information Centre and the MMP directorate.</u></p> <p>10. <u>As part of my duties, I perform the daily triage of all requests coming in the Information Centre’s inbox. In doing so, I have read many of these submissions.</u></p> <p>11. <u>The Proposed Transaction aroused a significant interest by consumers in the impact of the Proposed Transaction and the Bureau’s review. Since the announcement of the Proposed Transaction in March 2021, the Information Centre received 7,881 submissions regarding the Proposed Transaction. These submissions were mainly received through the</u></p>		
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	<p><u>Merger Feedback Form, but submissions were also received through the complaint and information request forms available on the Bureau’s website at https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_03167.html. These submissions came from the general public, competitors and the industry voicing their opinion on the proposed transaction. This figure is in addition to any responses to requests for information issued by the Bureau’s case team.</u></p> <p><u>12. The Commissioner produced the majority of the submissions received by the Information Centre, approximately 7,556 documents, to Rogers Communications Inc. (“Rogers”), Shaw Communications Inc. (“Shaw”), and Videotron Ltd. (“Videotron”) in the course of the present application under section 92 of the Act.</u></p> <p><u>13. In conducting inquiries under the Act into previous mergers, the Bureau also received submissions through various channels with respect to those mergers. However, the Proposed Transaction has generated a significantly greater response than any other merger reviewed by the Bureau since at least 2016. The Bureau has received to-date approximately 4.16 times more submissions regarding</u></p>		
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		<p><u>the Proposed Transaction than the merger with the second highest number of submissions.</u></p> <p>14. <u>The number of total submissions received by the Bureau with respect to mergers within the past six years are set out in the table below. The totals seen in the table come from submissions received through the Merger Feedback Form and other forms located on the Bureau’s website, including the complaint and question forms. We track trends either by doing a search in BIMS or by creating a folder collecting request and submissions related to specific cases. Only the top five mergers by total number of submissions are shown.</u></p> <p>[Page 4, Chart of Number of Submissions]</p>		
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Stephanie Assad	Pages 2-3; Paras. -510	<p>5. <u>On September 28, 2021, the Bureau case team issued a public request for information (the “RFI”) to help gather facts about the Proposed Transaction. I was one of the Bureau officers responsible for the drafting of the RFI. At the time of the issuance of the RFI, the Bureau was investigating whether the Proposed Transaction is likely to result in a substantial</u></p>	<p>These paragraphs contain impermissible hearsay evidence.</p> <p>The witness makes reference to and attaches “submissions” from hundreds of individuals who are not witnesses in this proceeding, and which are themselves replete with inadmissible lay opinion evidence, prejudicial</p>	<p>Ms. Assad is an employee of the Bureau and is speaking to the RFI process used by the Commissioner. Her evidence goes to the process used to gather evidence and not what is contained in the responses. Not a</p>
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	<p><u>lessening or prevention of competition for mobile wireless, wireline internet, and broadcasting services. Attached as Exhibit “A” is a copy of the RFI. Attached as Exhibit “B” is a press release about the RFI issued by the Bureau on the same date.</u></p> <p><u>6. The RFI invited market participants and Canadians to submit information to assist the Bureau with its review of the Proposed Transaction. One purpose of the RFI was to seek a comprehensive set of perspectives on the impacts of the Proposed Transaction, including those of consumers of mobile wireless, wireline internet, and broadcasting services. The RFI allowed the Bureau to learn about the impacts of the Proposed Transaction from everyday Canadians who rely on these services without requiring the Bureau to directly reach out to individual consumers.</u></p> <p><u>7. The Bureau requested that all those with information relevant to the topics described in the RFI to provide submissions through a web-form on the Bureau’s website located at the following address: https://www.competitionbureau.gc.ca/eic/site/cbbc.nsf/frm-eng/MBED-C47KMR. Submissions made through the web-form were automatically sent to an e-mail inbox monitored by the Bureau. These e-</u></p>	<p>statements, and unsubstantiated claims.</p> <p>This inadmissible evidence is not being tendered to establish that various submissions were received in response to the RFI. Rather, it is being tendered for the truth of the contents of those submissions.</p> <p>Neither the fact of the issuance of the RFI, nor the receipt, number and content of the submissions received has any relevance to any issue raised in this proceeding. To the extent that they have any probative value (and they do not), that probative value is outweighed overwhelmingly by their prejudicial effect. For this reason as well, the evidence is inadmissible.</p>	<p>single submission is relied upon in this witness statement. She provides a mathematical summary of the responses that were reviewed and received. This attack is frivolous and without merit.</p>
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	<p><u>mails were then electronically preserved and uploaded to Nuix Discover. Officers on the Bureau’s case team would then review the submissions.</u></p> <p><u>8. The Bureau imposed a deadline of October 29, 2021 for responses to the RFI. As of October 29, 2021, the Bureau received 315 submissions in response to the RFI, copies of which are included under separate cover as Exhibit “C”. These submissions were received from self-identified residential customers, business customers, wholesale customers, competitors, and industry and/or economic experts. However, the majority (286 submissions) were from self-identified residential customers.</u></p> <p><u>9. I reviewed all 315 submissions received by the Bureau in response to the RFI. 244 of the submissions express a critical view of the Proposed Transaction. 10 of the submissions express a favourable view of the Proposed Transaction. 61 of the submissions do not express a either a critical or favourable view of the Proposed Transaction.</u></p> <p><u>10. In particular, 292 submissions in response to the RFI were marked by the respondents as relating to wireless services. Out of those, 239 of the submissions express a</u></p>		
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		<u>critical view of the Proposed Transaction; and 53 express a favourable view.</u>		
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PART IV – ORDERS REQUESTED

47. The Commissioner seeks from the Tribunal the following relief:

- (a) an Order dismissing the Respondents’ motion to strike paragraphs contained in a number of witness statement put forward by the Commissioner; and
- (b) costs of this motion

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of October, 2022

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