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OTTAWA, ONT.

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THE COMPETITION TRIBUNAL

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

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*;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an interim order pursuant to section 104 of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

- and -

ATTORNEY GENERAL OF ALBERTA AND VIDEOTRON LTD.

Interveners

**WITNESS STATEMENT of KENNETH J. MARTIN
AFFIRMED OCTOBER 20, 2022**

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1. My name is Kenneth J. Martin. I am a Director at Altman Solon, a strategic management consulting firm for the telecommunications industry. I previously provided a witness statement in this proceeding dated September 23, 2022 (my “**First Report**”). I repeat and adopt the contents of that report for the purposes of this report.
2. Lax O’Sullivan Lisus Gottlieb LLP, counsel to the Respondent Rogers Communications Inc. (“**Rogers**”), has asked me to respond to the report delivered by Michael Davies dated September 23, 2022. I co-authored the attached expert report with my fellow consultants at Altman Solon, Rory Altman and Timothy Wickham. I submit this report further to my First Report.
3. I attach as **Exhibit “A”** my expert report in this matter setting out my opinion.
4. I attach as **Exhibit “B”** my Acknowledgment of Expert Witness.

AFFIRMED by Kenneth J. Martin of the City of Boston, in the Commonwealth of Massachusetts, before me at the City of Toronto, in the Province of Ontario, on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

PATRICK M. WODHAMS

KENNETH J. MARTIN

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This is Exhibit "A" referred to in the Affidavit of Kenneth J. Martin sworn by Kenneth J. Martin at the City of Boston, in the Commonwealth of Massachusetts, before me at the City of Toronto, in the Province of Ontario, on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

PATRICK WODHAMS

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Responding Expert Report of Kenneth J. Martin

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I. OVERVIEW AND SUMMARY OF OPINIONS

1. I submit this report further to my previous report dated September 23, 2022 (my “**First Report**”). Unless otherwise indicated, defined terms used in the First Report are also used herein.
2. In the First Report, I opined on the competitiveness of Freedom under Videotron’s ownership with reference to, among other things, the Canadian wireless industry and Videotron’s capabilities. In doing so, I commented on the report of Michael Davies dated May 6, 2022 (the “**First Davies Report**”).
3. Mr. Davies has since delivered a report dated September 23, 2022- (the “**Updated Davies Report**”). Counsel for Rogers Communications Inc. (“**Rogers**”) has asked me to respond to the Updated Davies Report and Mr. Davies’ statements in his report that Freedom will be a less effective competitor under the ownership of Videotron than under the ownership of Shaw, to the extent not already addressed in my First Report.
4. I do not agree with Mr. Davies’ opinions. I have reviewed Mr. Davies’ analysis and it does not change my opinion that the Proposed Transaction creates an opportunity to accelerate the competitiveness of the Canadian wireless market for the benefit of consumers and that Shaw’s wireline assets are not necessary for Freedom to compete effectively.
5. I also understand that the Commissioner of Competition produced a summary of his review of the Sale of Freedom to Videotron and the reasons it did not change the Commissioner’s position in this Application. I have reviewed the Commissioner’s summary. I note that it largely aligns with Mr. Davies’ theory that a wireless provider requires a wireline network to successfully compete. For the same reasons outlined herein, I do not agree with the Commissioner’s conclusions and instead my opinion is that wireless providers in Canada (as is true internationally) do not require wireline assets to be successful.
6. In this report, I respond to the most significant issues with Mr. Davies’ analysis below. However, the fact that I have not addressed a specific point in the Updated Davies Report should not be taken as agreement with Mr. Davies’ views or analysis.
7. My opinion can be summarized as follows:
 - Mr. Davies’ opinion that Freedom is better-positioned to compete under Shaw because of its ability to leverage wireless bundling with Shaw’s existing wireline assets is not supported by the evidence. Specifically, Mr. Davies asserts that Videotron-Freedom would be disadvantaged without wireline assets and “likely see its market share rapidly eroded by competitors who can effectively bundle their fixed services with their (stronger) wireless services’ offering.”¹ There is no empirical basis for this

¹ Davies Report (Sept. 23), ¶ 260

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position. If it were true that in the absence of wireline ownership a wireless company was susceptible to rapid erosion in market share, the end state in each major provincial market in Canada would result in only two viable wireless competitors. This is not consistent with the dynamics of the Canadian wireless market.

- Mr. Davies' opinion that Shaw was poised for rapid 5G deployment prior to Rogers and Shaw entering into their Arrangement Agreement ignores that Shaw/Freedom was lagging other wireless providers with respect to 5G deployment even before the deal was announced, including Videotron, and that Shaw/Freedom currently lacks critical mid-band spectrum for 5G deployment, which Videotron holds.
- Mr. Davies' argument that Rogers' recent network outage is "relevant to competition in the marketplace"² overstates the long-term impact of outages on the wireless market competitive dynamics and does not fully consider efforts to address the risk of future outages.
- Mr. Davies' opinion on the competitive strength of Freedom under the "status quo" versus with Videotron overstates the benefits of Freedom with Shaw and understates the benefits of Freedom with Videotron. He draws on a limited set of data to incorrectly assert the strategic importance of wireline-wireless bundles, ignoring substantial Canadian and international data contrary to his conclusions, while also dismissing Videotron's ability to offer competitively priced bundles.

II. RESPONSES TO MR. DAVIES

1. Freedom does not require a wireline network to be competitive

8. Mr. Davies opines that "the competitive strength of the proposed divested Freedom Mobile entity, if acquired by Videotron will be greatly reduced."³ He argues, among other things, that it will lose the benefit of a facilities-based wireline network: "it will lack existing fixed services with which to bundle,"⁴ and "it will lose access to wireline infrastructure."⁵
9. As I stated in my First Report, Freedom does not require Shaw's wireline assets to be competitive. Mr. Davies argument that Freedom is dependent on Shaw's wireline assets for bundling and cost structure ignores Canadian and international evidence that wireless companies can and routinely do successfully take material share from incumbents without the ownership of wireline assets.
10. In my First Report at paragraphs 60 to 105, I demonstrated that wireless market share growth does not depend on wireline ownership, including that:

² Davies Report (Sept. 23), ¶ 224

³ Davies Report (Sept. 23), ¶ 10

⁴ Davies Report (Sept. 23), ¶ 228

⁵ Davies Report (Sept. 23), ¶ 230

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- a. Multiple Canadian wireless providers have been able to attain high market shares in areas where they have no wireline network, including Bell and Telus, each of which have provided witness statements opposing the Proposed Transaction. As of 2020, Freedom had █% market share (█ million wireless subscribers) in Ontario (Freedom's highest market share in Canada) where Shaw has essentially no wireline network.⁶ By way of further example, Rogers has █% wireless market share in British Columbia, where it does not offer wireline services.⁷
 - b. In a sample of 145 companies across 38 countries, companies that offer wireless with no wireline assets had nearly the same (or greater) year-over-year increases in market share as combined wireless-wireline companies.⁸
 - c. There are many examples of wireless companies that have grown market share without wireline assets, including T-Mobile in the US, Play in Poland, and WOM in Chile.⁹
 - d. Bundling is not among the top reasons Canadian consumers cite for selecting a wireless provider and only a minority (27%) of Canadian consumers bundle their wireline and wireless services, which is statistically a similar level as independent selection of the same wireless and wireline provider.¹⁰
11. Mr. Davies' opinion that the competitiveness of Freedom is dependent on Shaw wireless-wireline bundles and access to Shaw wireline infrastructure implies that the same dynamic should cause other operators' out-of-footprint wireless businesses to be disadvantaged. Indeed, Mr. Davies opines that Videotron-Freedom would be disadvantaged without wireline assets and "likely see its market share rapidly eroded by competitors who can effectively bundle their fixed services with their (stronger) wireless services' offering."¹¹
12. Applying Mr. Davies' analysis to the Canadian market, all Canadian wireless operators should experience "rapid share erosion" outside of their wireline footprints. In the case of the four largest provinces, Mr. Davies' position would predict major erosion/decline for Shaw/Freedom in Ontario; for Rogers in British Columbia, Alberta and Quebec; Bell in British Columbia and Alberta; Telus in Ontario and Quebec. Following this share erosion argument to its conclusion would lead to each major province having just two integrated wireline-wireless operators

⁶ Martin Report (Sept. 23), ¶ 63

⁷ Martin Report (Sept. 23), ¶ 67

⁸ Martin Report (Sept. 23), starting at ¶ 68. Statistical analysis of this data showed that there is no statistically significant benefit in terms of market share growth for combined wireline-wireless companies versus wireless-only operators; see ¶ 69

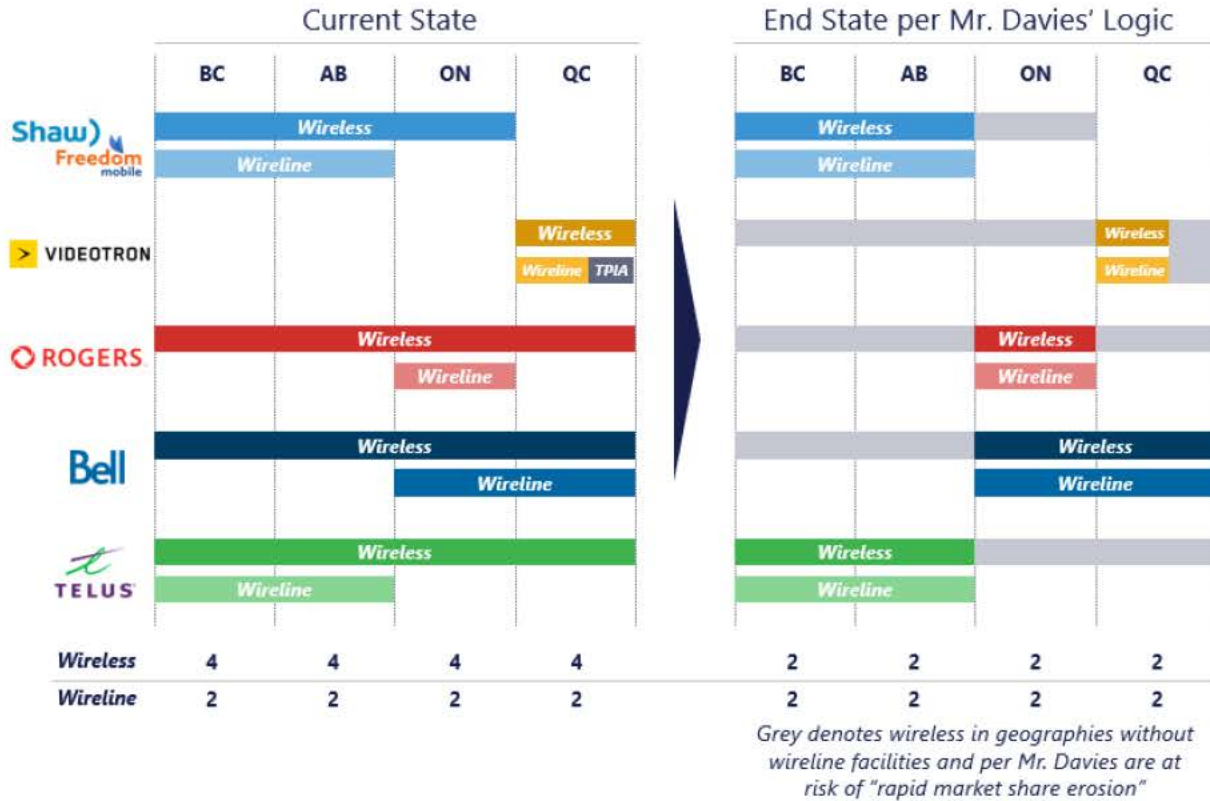
⁹ Martin Report (Sept. 23), ¶¶ 71-74

¹⁰ Martin Report (Sept. 23), ¶ 104

¹¹ Davies Report (Sept. 23), ¶ 260

with no significant competitive nationwide wireless market, to the detriment of consumers, as shown in **Figure 1** below.

Figure 1. End State per Mr. Davies' Logic



13. This end state based on Mr. Davies' logic is not likely because the fundamental premise that wireless businesses need wireline assets is flawed.

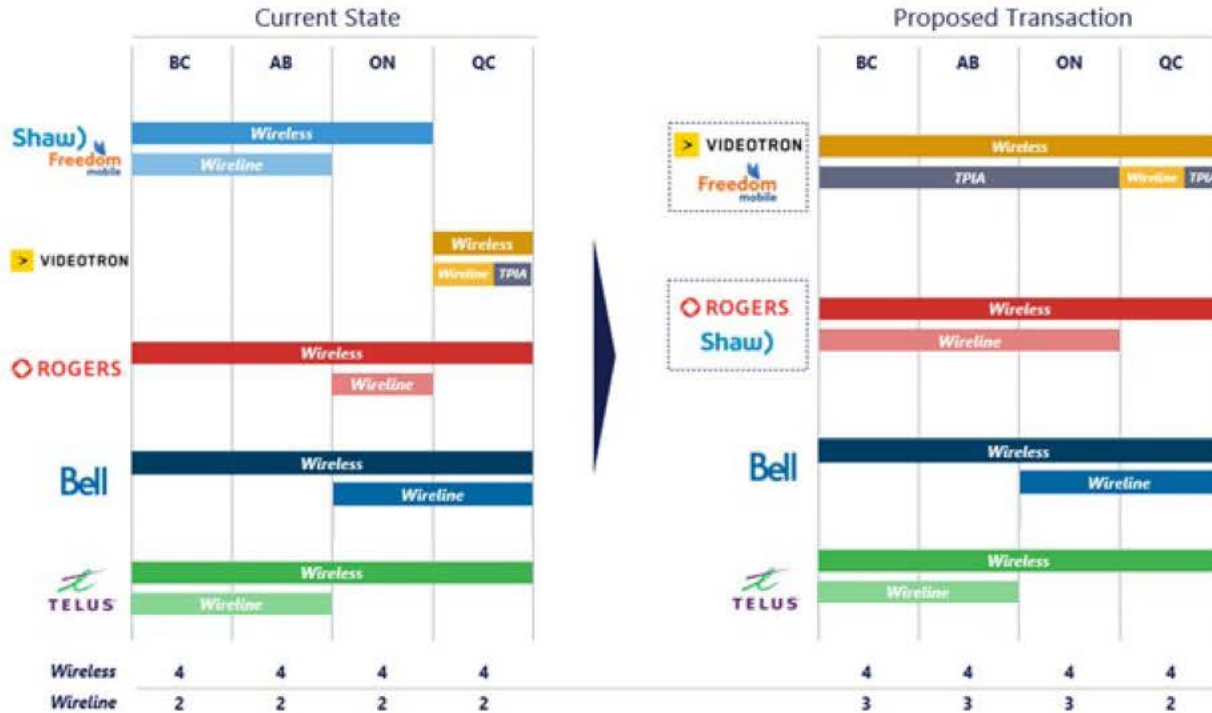
14. Instead, the Proposed Transaction would place Freedom wireless assets with Videotron, an operator with a national wireless strategy,¹² as opposed to leaving it with Shaw which during this period was focused on using wireless as a wireline retention strategy (through Shaw Mobile). In my view, this is a limited competitive strategy compared to a wireless-first business strategy and less likely to have sustainable, beneficial impacts for wireless consumers.¹³ Contrary to Mr. Davies' assertions and the Commissioner's conclusions, the Proposed Transaction represents meaningful progress toward more robust nationwide wireless

¹² Martin Report (Sept. 23), ¶ 55

¹³ Paul McAleese, Examination for Discovery, August 22, 2022 (2022 08 22 - Transcript of Paul McAleese FNL (CT).pdf), pp. 111-112

competition.¹⁴ **Figure 2** presents the likely end-state in the scenario where the Proposed Transaction is approved, with four wireless providers in each of the four largest provinces.

Figure 2. End State per Proposed Transaction



2. Shaw has lagged other wireless providers in 5G deployment even before the transaction announcement and currently lacks key spectrum

15. Mr. Davies opines that “Shaw was in a robust position to roll-out and launch 5G prior to the announcement of the acquisition.”¹⁵

¹⁴ Since at least 2008, it has been the policy of the Canadian government to promote the emergence of a fourth national wireless carrier. The Competition Bureau has recognized the potential benefits to the Canadian wireless industry of a fourth national carrier. In 2014, Patrick Hughes, then a Bureau Senior Economist, stated “an additional nationwide carrier would increase choice, expand mobile wireless penetration in Canada ... and drive down the incumbents’ average retail prices by about two percent;” see Martin Report (Sept. 23), ¶¶ 10-14. Freedom under Videotron is well-positioned to compete because of the following: (a) Videotron will combine with Freedom into a near national facilities-based fourth wireless carrier; (b) the acquisition of Freedom by Videotron will accelerate 5G nationwide deployment by moving the Freedom business from Shaw to Videotron, which has been a 5G leader in Quebec; (c) the Videotron-Freedom combined operator will be more competitive with a lower cost structure against the three largest operators than separately due to economies of scale, transaction synergies, and favorable agreements enabled by the Proposed Transaction; and (d) Videotron has demonstrated a vision, plan, experience, and financial stability to deliver on incorporating Freedom’s assets into its existing business with attractive pricing and reasonably low-priced bundles; see Martin Report (Sept. 23), ¶ 2

¹⁵ Davies Report (Sept. 23), ¶ 186

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included planned rollouts in 600 MHz to start in early FY2021 and rollouts in 3500 MHz spectrum had it acquired, as it had planned, additional spectrum.”¹⁶ In my opinion, Mr. Davies’ analysis of Shaw’s ability to roll-out 5G relative to Videotron ignores or discounts assets and capabilities, both at the time of the acquisition and as they currently exist.

16. First, even before the Proposed Transaction was announced, Shaw was lagging the other major wireless competitors on 5G rollouts.¹⁷ The Big Three first launched 5G networks in 2020.¹⁸ Even if Shaw had been in a position for a roll-out in Q1 or Q2 of 2021, it would have been behind its counterparts.

17. Second, regardless of whether Shaw planned to roll out 5G in 2021 or intended to participate in the July 2021 auction for 3500 MHz spectrum, at present, Shaw lacks 3500 MHz spectrum suitable for attaining 5G speeds and capacity. The 600 MHz spectrum band provides increased coverage but is not as suitable for 5G capacity.

[REDACTED] Mr. Davies acknowledges that low-band 5G “could possibly have lower speeds than ... 4G”.²⁰ Because of this, Freedom’s 5G deployment under Shaw would be disadvantaged relative to the incumbents.

18. By contrast, Videotron does have the necessary 3500 MHz spectrum assets to deliver 5G speeds in Alberta, British Columbia, and Ontario²¹ and has already deployed 5G in Quebec.²² Videotron has both the 5G capacity spectrum (3500MHz) and 5G deployment experience that Shaw lacks and a strategy and plan²³ to deploy

¹⁶ Davies Report (Sept. 23), ¶ 68

¹⁷ Martin Report (Sept. 23), ¶ 50

¹⁸ [itbusiness.ca, Big Three Launch 5G in Canada, October 9, 2020 \(itbusiness.ca-Canadians get free access to 5G October 9 2020.pdf\)](https://itbusiness.ca/Big-Three-Launch-5G-in-Canada-October-9-2020/)

[REDACTED]

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5G in Freedom's footprint, enabling a post-transaction Freedom to readily compete with the Big Three on 5G.

19. Mr. Davies also speculates about the ability of Shaw to acquire 3500 MHz spectrum or other mid-band spectrum in the event that the Proposed Transaction is blocked. In particular, he suggests that, if the Proposed Transaction was blocked, Shaw could use the \$1.5 billion²⁴ break fee to purchase or lease suitable spectrum "provided such spectrum was available for purchase."²⁵ Mr. Davies fails to consider whether Shaw would have other competing budgetary needs for the break fee, for example to invest in areas that have recently had budget cuts such as wireline capex.

Even if the spectrum was available, the necessary negotiations with other potential buyers (for a sale or lease with existing spectrum holders) would further delay 5G deployment and make Shaw lag its peers even more.²⁷ In my opinion, Videotron as opposed to Shaw is more likely to deploy 5G in Freedom's footprint expeditiously.

3. Mr. Davies' overstates the relevance and significance of the Rogers network outage

20. Mr. Davies opines that "[n]etwork outages experienced by Rogers are highly relevant to the extent to which competitors in the wireless services market such as Rogers, Shaw and others compete with respect to the reliability of their networks" and that "recent outages made reliability more salient to consumers."²⁸ I disagree with Mr. Davies' opinion.
21. First, Mr. Davies overstates the impact of outages on wireless competition. Based on my industry experience, outages can unexpectedly occur and are quickly addressed²⁹ to reduce future risk of additional outages and therefore have little impact on the competitive dynamics of the market.³⁰ It is in operators' best interest

²⁴ [Reuters, Rogers, Shaw start Canada antitrust talks over blocked C\\$20 merger, July 4, 2022 \(Reuters - Rogers, Shaw start Canada antitrust talks.pdf\)](#)

²⁸ Davies Report (Sept. 23), ¶ 9

²⁹ Rogers Q2 2022 Earnings Call, starting at p. 20 (Rogers Q2 2022 Earnings Call - Rogers-Q2-2022-Earnings-Call-Transcript.pdf)

³⁰ Google Trends, Network Outage Search Activity (multiTimeline.csv); T-Mobile 2020 Annual Report, p. 43 (TMOBILE 2020 Annual Report.pdf); Rogers 2021 Annual Report, p. 33 (Rogers 2021 Annual Report.pdf). International cases confirm that outages have little to no effect on churn. Google Trend data from 2020-2021 shows two major spikes globally in the search for the phrase "network outage." These spikes represent the T-Mobile outage in June 2020 and the Rogers outage in April 2021. Company data demonstrates that the network outages had minimal effect on churn. Churn data as follows: T-Mobile: Postpaid – 0.9% (2019) to 0.9% (2020), Prepaid – 3.8% (2019) to 3.0% (2020). Rogers: Postpaid – 1.0% (2020) to 1.0% (2021), Prepaid – 4.4% (2020) to 4.2% (2021).

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to identify and address the root causes and to mitigate the impact to the customer base (e.g., through consumer credits).³¹ Further, Mr. Davies does not note the publicly reported network outages that Bell and Telus had between 2019 and 2022.³²

22. It is my understanding that Rogers took rapid actions to address the unexpected July 8, 2022 outage and did not experience significant consumer impacts. When asked about the July 8, 2022 outage's effect on Rogers' churn in the Q2 2022 earnings call, Rogers' CEO, Tony Staffieri, said that while there was an immediate impact on subscriber numbers following the outage, churn seemed to improve daily and Rogers did not feel the need to revise its initial earnings guidance for the year.³³ Had the outage been as "salient" to consumers as Mr. Davies suggests, one would expect to see a significant and sustained negative impact on Rogers' subscriber numbers and therefore revisions to end-of-year guidance.
23. Second, Mr. Davies speculates about the potential impact of the outage on Freedom, assuming the Proposed Transaction is approved. He writes that "the new Freedom Mobile and Videotron entity will rely to a significant extent upon fixed connectivity provided by Rogers using its wireline networks, including the erstwhile wireline networks of Shaw, for backhaul and other connectivity for its wireless networks." [REDACTED] Mr. Davies goes on to note that "Rogers' plan to attempt to mitigate future outages is insufficient in the face of the additional risk that comes from eliminating a separate independent network that could have and would have inherently provided redundancy."³⁵ Although Mr. Davies deems Rogers' plan "insufficient," he does not review, consider, or comment on the details of the plan nor how it is "insufficient."

³¹ Rogers Q2 2022 Earnings Call, starting at p. 20 (Rogers Q2 2022 Earnings Call - Rogers-Q2-2022-Earnings-Call-Transcript.pdf). Rogers CFO, Glenn Brandt, noted that while call center volume was high immediately following the outage, Rogers was "quick to respond with customers on the five-day service credit" which allowed call center volume to "settle off." Rogers' experience would appear to be consistent with temporary, as opposed to sustained, impacts from an outage.

³² [Daily Hive News, Telus internet outage affects 1,300 customers across parts of Metro Vancouver September 16, 2019. \(Telus internet outage affects 1,300 customers across parts of Metro Vancouver News.pdf\)](#); [BlogTO, Bell and Telus suffer massive network and service outage in Ontario, August 6, 2020. \(Bell and Telus suffer massive network and service outage in Ontario.pdf\)](#); [Victoria Buzz, Telus and Bell customers across Western Canada reported cell service outages this morning, September 2, 2021. \(Telus and Bell customers across Western Canada reported cell service outages this morning.pdf\)](#); [MobileSyrup, Telus confirms eastern Canada network outage restored \[Update\], October 6, 2021. \(Telus confirms eastern Canada network outage restored \[Update\].pdf\)](#); [Penticton Herald, Governments call out telecom giant Bell: Frustration continues over company's failure in rural N.S., October 12, 2022. \(Governments call out telecom giant Bell Frustration continues over company's failure in rural N.S. Spare News pentictonherald.ca.pdf\)](#)

³³ Rogers Q2 2022 Earnings Call, p. 9 (Rogers Q2 2022 Earnings Call - Rogers-Q2-2022-Earnings-Call-Transcript.pdf)

³⁴ Davies Report (Sept. 23), ¶ 218

³⁵ Davies Report (Sept. 23), ¶ 222

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24. Additionally, while Mr. Davies argues that the outage “will have made the reliability of wireless networks a more salient factors in the choices that customers make about their wireless service providers,”³⁶ it is not typical for consumers to make purchasing decisions based on (much less be aware of) the relationship between wireless providers and their wireline backhaul providers; it would therefore be unlikely that wireless consumers would reconsider subscribing to Freedom under Videotron because Videotron receives much of its backhaul from Rogers.

25. Importantly, Mr. Davies does not comment at all on the following steps that have been taken in relation to the outage to mitigate the risk of future network disruption:

- a. In response to the outage, Canada’s Minister of Innovation, Science and Industry, stated that the major Canadian wireless providers reached a Memorandum of Understanding to allow them to work more effectively together in the event of an emergency to “ensure that the 9-1-1 system is not vulnerable to an outage or other network disruption.”³⁷
- b. Rogers is also taking the following network resiliency measures:
 - a. A logical and physical separation of Rogers’ wireless and wireline networks; and
 - b. Reviewing internal processes for reviewing, testing and implementing code during network maintenance updates.³⁸

26. Based on my industry experience and my understanding of Roger’s mitigating measures, the outage has very little relevance on competitive dynamics in the market.

4. Mr. Davies’ opinion overstates the benefits of Freedom with Shaw and understates the benefits of Freedom with Videotron

27. Mr. Davies states “the competitive strength of the proposed divested Freedom Mobile entity if acquired by Videotron will be greatly reduced.”³⁹ He opines that this disadvantage will arise as a result of: a) bundling dynamics; b) distribution channel effects; and c) lost access to Go Wi-Fi hotspots.⁴⁰ I do not agree with Mr. Davies’ views and analysis on each of these points, as discussed below.

³⁶ Davies Report (Sept. 23), ¶ 216

³⁷ Affidavit of Ron McKenzie, October 20, 2022 (Affidavit of Ron McKenzie October 20, 2022.docx), ¶ 11; [ISED, Statement from Minister Champagne on Canada’s Telecommunications Reliability Agenda following Rogers’ outage on July 8, 2022, September 7, 2022 \(Statement from Minister Champagne on Canada’s Telecommunications Reliability Agenda following Rogers’ outage on July 8, 2022 - Canada.ca.pdf\)](#)

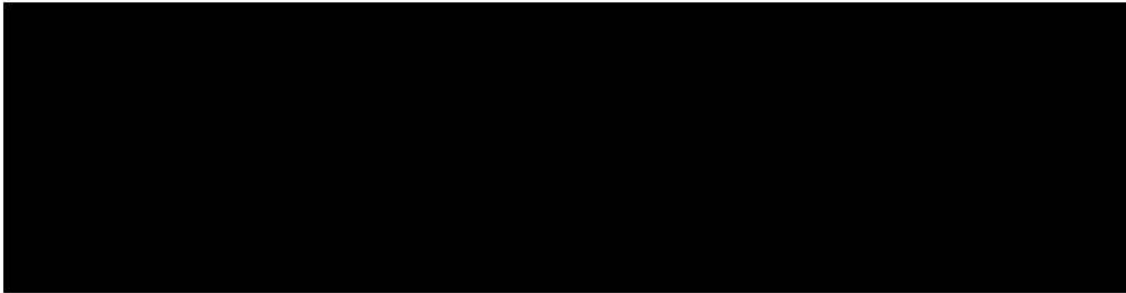
³⁸ Rogers Q2 2022 Earnings Call, pp. 13-14 (Rogers Q2 2022 Earnings Call - Rogers-Q2-2022-Earnings-Call-Transcript.pdf); Affidavit of Ron McKenzie, October 20, 2022 (Affidavit of Ron McKenzie October 20, 2022.docx), ¶ 11

³⁹ Davies Report (Sept. 23), ¶ 259

⁴⁰ Davies Report (Sept. 23), ¶¶ 228-230

a. Mr. Davies overstates the importance of wireline-wireless bundles

28. To ground his opinion that Freedom under Shaw is better positioned to compete than Freedom under Videotron, Mr. Davies focuses heavily on the launch of the Shaw Mobile brand in 2020, which he acknowledges was launched to protect Shaw's wireline business.⁴¹ Mr. Davies' emphasis on Shaw Mobile is misplaced, given that it comprises just █% of the █ million total combined Shaw/Freedom subscribers, as shown below.



29. In my view, Mr. Davies's analysis selectively draws from a limited data set (just two years) during an atypical marketing period (a brand launch), which represents a minority of Shaw's wireless business, to imply that wireless-wireline bundling through Shaw Mobile is a necessary strategy in the wireless industry. In doing so, Mr. Davies' analysis fails to account for key factors that make his conclusions unreliable. In particular, he ignores the (i) the limitations on Shaw Mobile's bundling strategy; (ii) the low incidence of wireline-wireless bundling across Canada; (iii) the inability of most Freedom customers to bundle with Shaw wireline; and (iv) Videotron's ability to provide attractive and economically viable bundles.

- i. **Limitations on Shaw Mobile's bundling strategy:** The Shaw Mobile brand launch targeted existing Shaw wireline customers with very low-priced upsell offers,⁴⁵ adding mostly \$0 price lines.⁴⁶ After an initial

⁴¹ Davies Report (Sept. 23), ¶ 233. █

⁴² Shaw, Mobile Subscriber Summary 2017-2022, April 30, 2022 (SUBSCRIBER_SUMMARY_0_0_0.snappy.parquet), data as of April 2022

⁴³ Shaw, Shaw Response to Q.13 of Bureau RFI Dated May 5, 2021. █

⁴⁶ Paul McAleese, Examination for Discovery, August 22, 2022 (2022_08_22 - Transcript of Paul McAleese FNL (CT).pdf), p. 207: █

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wave of gross adds, Shaw saw diminishing returns with this acquisition strategy and the rate of gross adds slowed. This decline occurred even before the announcement of the Proposed Transaction in March 2021.⁴⁷ This suggests the strategy is limited in nature and is already seeing diminishing returns. In my view, this is not surprising given that Shaw's bundling strategy is limited to the subset of wireline subscribers that prefer bundling. Based on my experience, this type of strategy is not a necessary strategy to compete in wireless.

- ii. **Relatively Low Incidence of Bundling across Canada:** In my First Report, I provided analysis at paragraphs 97 to 105 on bundling preferences among Canadian consumers.⁴⁸ As I indicated, across all operators, most wireless customers (~73%⁴⁹) in Canada do not bundle with wireline.⁵⁰ This demonstrates that bundling is not required for success in wireless, as Mr. Davies appears to suggest.⁵¹
- iii. **Most Freedom Customers Cannot Bundle with Shaw's Wireline:** Most of Shaw's wireless customers (79%) do not or *cannot* bundle with



¶ 78

⁴⁸ Martin Report (Sept. 23)

⁴⁹ [ISED Canada. Competition Bureau Market Study: Consumer Switching in Broadband Providers – Final Report, May 23, 2019, p. 19 \(Competition Bureau Market Study-Consumer Switching in Broadband Providers.pdf\)](#). As discussed in my prior report, this consumer survey provides evidence that bundling is lower priority than other factors, and breaking a bundle was not cited in this survey as a top barrier to switching; see Martin Report (Sept. 23), ¶¶ 99-100

⁵⁰ Martin Report (Sept. 23), ¶ 104. In addition, the 27% prevalence of bundling in Canada is about the same as it would be if consumers selected their wireless and wireline providers independently, suggesting that bundles are not, on average, important to majority of Canadian consumers. Consumers often do not bundle for structural long-term reasons including: (a) Differences in wireline and wireless network coverage and quality where they live and work, for example, Provider A may have faster fixed broadband speeds and Provider B may have better in-house wireless coverage, (b) Differences in switching events for wireline versus wireless, for example, when moving homes, families may switch wireline but keep their wireless provider, and (c) Differences in household-level decision-making, for example, there is typically just one wireline connection for a household while family members each have distinct mobile devices and may prefer different mobile operators.

⁵¹ Davies Report (Sept. 23), ¶ 79. Mr. Davies attributes Shaw Mobile's growth to discounted pricing and bundling and then extrapolates the benefits of bundling to imply it is necessary to be competitive, ignoring there is significant market opportunity for wireless-only offers, supported by many Canadian and international examples of high wireless market share in areas with no wireline assets and no wireline-wireless offers (Martin Report (Sept. 23), starting at ¶ 67).

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Shaw wireline,⁵² which means Mr. Davies' claim about the importance of wireline-wireless bundling is not relevant to the vast majority of Shaw's current wireless subscribers that would be acquired as part of the Proposed Transaction by Videotron. Specifically, Mr. Davies opines that the "product offering of the proposed divested Freedom Mobile entity will lack a comprehensive facilities-based bundle with mobile services that can be added to existing fixed services as was the case with Shaw."⁵³ Yet he fails to acknowledge that Freedom Mobile today (with Shaw) lacks "a comprehensive facilities-based bundle with mobile services that can be added to existing fixed services" for the 79% of Shaw's wireless customers that are under the Freedom brand.

- iv. **Videotron is Able to Offer Attractive and Economically Viable Bundles:** Mr. Davies opines that Freedom "is unlikely to be able to match and sustain the pricing that Shaw Mobile has been able to offer."⁵⁴ Mr. Davies states that "TPIA economics are inferior to that of facilities-based infrastructure."⁵⁵ However, Mr. Davies ignores evidence of successful use of TPIA across Canada and fails to recognize that the incremental per unit contribution margin for Videotron via TPIA is similar to Shaw's.⁵⁶
- a. Mr. Davies' dismissal of TPIA's economic viability ignores the success of TPIA in Canada. Indeed, there are over 1.3 million TPIA lines across Canada.⁵⁷ For consumers that prefer to bundle, Freedom/Videotron will be able to compete economically with positive margins, including Freedom subscribers in Ontario that cannot bundle with Shaw today.⁵⁸ Videotron's planned consumer

⁵² Out of [REDACTED] million combined Shaw/Freedom subscribers, [REDACTED] million Freedom subscribers are located in Ontario, where Shaw does not have wireline assets and another [REDACTED] Freedom subscribers are in British Columbia and Alberta and are not Shaw wireline customers; see Figure 3 above

⁵³ Davies Report (Sept. 23), ¶ 232

⁵⁴ Davies Report (Sept. 23), ¶ 233

⁵⁵ Davies Report (Sept. 23), ¶ 239

⁵⁶ Shaw, Consumer F22 Results, April 2022 (SJRB-CCB00817625.pptx), p. 52. Videotron's incremental contribution margin for its bundles through TPIA is \$9-15 more than standalone wireless, which is similar to the incremental contribution margin of Shaw Mobile wireless lines, which is expected to be \$7.14 in F22.

⁵⁷ [Competition Bureau. Annual Highlights of the Telecommunications Sector. 2020](#) (CRTC Annual Highlights of the Telecommunications Sector 2020.pdf) pp. 13, 32. Wholesale-based competitors serve more than 1.3 million lines across Canada as of 2020; this number grew at an annual rate of 4.8% from 2016-2020. In addition, "countless other households [that don't use wholesale internet providers] use the presence of wholesale-based competitors to negotiate better rates with other competitors in the marketplace;" see [Competition Bureau: Delivering Choice: A Study of Competition in Canada's Broadband Industry. 2019](#) (Competition Bureau Delivering Choice A Study of Competition on Canada's Broadband Industry.pdf), p. 21. These data demonstrate that providers are effectively competing using TPIA and that wholesale-based providers promote competition.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. Mr. Davies incorrectly assesses the impact of the Transaction on Freedom distribution channels.

30. Mr. Davies argues that Freedom would have a weaker distribution network once divested from Shaw, stating “Videotron will not have access to the Shaw retail outlets as part of the transaction.”⁶⁷ However, Freedom products and services are currently only sold in Freedom retail locations, which will remain with Freedom as part of the Proposed Transaction. Losing access to the Shaw locations will have no impact to Freedom.

31. [REDACTED]

[REDACTED]

⁶⁷ Davies Report (Sept. 23), ¶ 181

⁶⁸ Davies Report (Sept. 23), ¶ 181

[REDACTED]

[REDACTED]

32. Furthermore, 93% of Shaw Mobile locations are within 1km of a Freedom location, indicating that Freedom has virtually the same retail footprint as Shaw in addition to its retail presence outside of Shaw areas. **Figure 5** below shows the distance from all Shaw mobile locations to the closest Freedom location.⁷⁰

Figure 5. Distance from Shaw Locations to Closest Freedom Location

Distance	# of Locations	% of Total
0-1 km	146	93.0%
1.01-5 km	2	1.3%
5.01+ km	9	5.7%
<i>Total</i>	<i>157</i>	<i>100%</i>

33. Mr. Davies also argues that Freedom will lose access to a large amount of organic traffic that comes through the Shaw website. He states that “SimilarWeb reports 11.6M visits to Shaw.ca in January 2022, and 2.6M visits to Freedom. Reliance only on Freedom would represent an [REDACTED] % drop in web traffic due to the transaction.”⁷¹

34. Mr. Davies appears to be implying that Freedom’s website would lose [REDACTED] M visits ([REDACTED] % of 14.2M total visits) due to the transaction. However, that is not correct as Shaw.ca does not send traffic to Freedom, and Freedom’s domain will stay with Freedom as part of the transaction.

c. Mr. Davies overstates the benefits of Wi-Fi

35. I already explained in my previous report at paragraphs 83 to 96 the limited impact of Shaw Go Wi-Fi on Freedom’s economics. The Updated Davies Report does not alter or change my analysis in my First report.

[REDACTED]

⁷¹ Davies Report (Sept. 23), ¶ 182

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This is Exhibit "B" referred to in the Affidavit of Kenneth J. Martin sworn by Kenneth J. Martin at the City of Boston, in the Commonwealth of Massachusetts, before me at the City of Toronto, in the Province of Ontario, on October 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

PATRICK WODHAMS

PUBLIC

CT-2022-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 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 one or more orders pursuant to section 92 of the *Competition Act*.

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

ROGERS COMMUNICATIONS INC. AND SHAW COMMUNICATIONS INC.

Respondents

- and -

THE ATTORNEY GENERAL OF ALBERTA AND VIDEOTRON LTD.

Intervenors

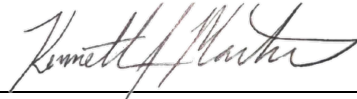
ACKNOWLEDGEMENT OF EXPERT WITNESS

I, Kenneth J. Martin, acknowledge that I will comply with the Competition Tribunal's code of conduct for expert witnesses which is described below:

1. An expert witness who provides a report for use as evidence has a duty to assist the Tribunal impartially on matters relevant to his or her area of expertise.

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2. This duty overrides any duty to a party to the proceeding, including the person retaining the expert witness. An expert is to be independent and objective. An expert is not an advocate for a party.



October 20, 2022

Kenneth Martin
Altman Solon
101 Federal Street, 28th Floor
Boston, MA 02110 USA
Ken.Martin@altmansolon.com