

**FILED / PRODUIT**

Date: November 25, 2022  
CT- 2022-002

Annie Ruhlmann for / pour  
REGISTRAR / REGISTRAIRE

**CT-2022-002**

OTTAWA, ONT.

Doc. # 756

**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 -

**ATTORNEY GENERAL OF ALBERTA  
and VIDEOTRON INC.**

Intervenors

**RESPONDING WITNESS STATEMENT OF PAUL ALAN JOHNSON, PHD**

I, PAUL ALAN JOHNSON, of the City of Ottawa, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I have been a professional competition economist for over 20 years. I am the owner of Rideau Economics, a competition economics consultancy located in Ottawa. From 2016 to 2019, I served as the T.D. MacDonald Chair in Industrial Economics at the Competition Bureau. In that capacity, I was the Competition Bureau's Chief Economist.

2. I have been retained on behalf of Shaw Communications Inc. as an independent expert in this proceeding. I prepared an initial Expert Report dated September 23, 2022, which I attached to a Witness Statement of that same date.

3. I have reviewed the Report of Dr. Nathan Miller dated September 21, 2022, which I understand was delivered by the Commissioner of Competition on September 23, 2022. I have also reviewed a document titled "Recommendation regarding Rogers' proposed divestiture of Freedom Mobile to Quebecor" dated June 27, 2022, which I understand was produced by the Commissioner after my initial Expert Report was delivered.

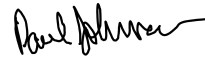
4. I have prepared a Responding Expert Report and have attached it to this Witness Statement as **Exhibit "1"**.

**SWORN** before me at the City of Ottawa, in the Province of Ontario on the 20<sup>th</sup> day of October, 2022.



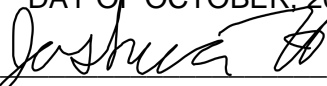
\_\_\_\_\_  
Commissioner for Taking Affidavits  
**Joshua Hollenberg**

}



\_\_\_\_\_  
**PAUL ALAN JOHNSON**

THIS IS EXHIBIT "1" REFERRED TO IN THE WITNESS  
STATEMENT OF PAUL ALAN JOHNSON SWORN BEFORE ME  
AT THE CITY OF OTTAWA, IN THE PROVINCE OF ONTARIO  
ON THE 20<sup>TH</sup> DAY OF OCTOBER, 2022.



---

A Commissioner for Taking Affidavits  
**Joshua Hollenberg**

## Table of Contents

I. Qualifications and assignment .....	2
II. Summary of conclusions .....	3
III. Dr. Miller's September Report contains an analysis of the Shaw Mobile launch that is identical to the analysis in his May Report.....	4
III.A. Seasonal patterns in consumer wireless sales have been widely acknowledged by Dr. Miller and other witnesses.....	4
III.B. Dr. Miller's new theory that [REDACTED] .....	7
III.C. Dr. Miller's analysis of porting data substantially overstates ports from Rogers to Shaw Mobile .....	8
IV. Appendices .....	10
IV.A. Materials relied upon.....	10
IV.A.1. Data .....	10
IV.A.2. Expert reports and declarations .....	10

## I. Qualifications and assignment

- (1) On September 23, 2022, I swore a Witness Statement to which I attached my Expert Report of that same date. I will refer to that Expert Report as my Initial Expert Report. My qualifications were provided in section I of my Initial Expert Report, and I do not propose to repeat them here.<sup>1</sup>
- (2) I have been retained on behalf of Shaw Communications Inc. (“Shaw”) as an independent expert in connection with an Application commenced by the Commissioner of Competition under section 92 of the Competition Act (the “Section 92 Application”) to block a proposed business combination between Shaw and Rogers Communications Inc. (“Rogers”) following a sale of Freedom Mobile Inc. (“Freedom”) to Videotron Inc. (“Videotron”), a subsidiary of Quebecor Inc. (“Quebecor”).
- (3) Although I have been retained on behalf of Shaw, I once again acknowledge that I am bound by and will comply with the Competition Tribunal’s code of conduct for expert witnesses. Specifically, I acknowledge that:
  - My duty is to assist the Competition Tribunal impartially on matters relevant to my areas of expertise;
  - That duty overrides any duty I might have to a party to this proceeding, including Shaw; and
  - I am to be independent and objective, and not an advocate for a party.
- (4) My Acknowledgment of Expert Witness is appended to my Initial Expert Report.
- (5) As stated in my Initial Expert Report, I am being compensated for my involvement in this matter at my standard hourly rate. My compensation does not depend on the contents of this Report or on the outcome of this proceeding. Bates White is also being compensated only for the time spent by its staff who are supporting me in connection with this matter at their standard hourly rates. Similarly, Bates White’s compensation does not depend on the content of this Report or on the outcome of this proceeding.
- (6) In the period after I delivered my Initial Expert Report, I have received and reviewed a Witness Statement sworn by Dr. Nathan H. Miller on September 21, 2022 that attached an Expert Report of that same date. I will refer to that Report as Dr. Miller’s September Report to distinguish it from the

---

<sup>1</sup> Around the same time of my Initial Expert Report, a whitepaper for which I was a co-author was released: <https://www.crea.ca/who-we-are/realtor-association-community/mls-systems-in-canada/>. Additionally, I was a panelist on a related CD Howe webinar: <https://www.cdhowe.org/essential-public-policy-events/open-house-who-should-have-access-property-listing-data>. I have also begun serving as the Chair of the Canadian Bar Association’s Reviewable Conduct committee.

Expert Report of Dr. Nathan H. Miller dated May 6, 2022, which I will refer to as Dr. Miller's May Report.

- (7) In my Initial Expert Report, I responded to an analysis found in section 6.1.3 of Dr. Miller's May Report. I have been asked to explain whether anything in Dr. Miller's September Report has affected my conclusions in that regard, and if so how.

## II. Summary of conclusions

- (8) This Expert Report consists of a single section that follows this summary. I summarize here the main conclusions.
- (9) I begin by noting that Dr. Miller's September and May Reports each present an identical analysis used to reach identical conclusions about the effects of the Shaw Mobile launch. Thus, the critiques I raised in my Initial Expert Report stand unchanged. Nevertheless, I make three additional points.
- First, one major part of my critique of Dr. Miller's conclusions and methodology concerned seasonality. In short, I showed that Dr. Miller wrongly attributed the effect of ordinary seasonal variation on new subscriber sign-ups, data usage, and the average price of data to the Shaw Mobile launch. In section III.A, I review the substantial evidence submitted since my Initial Expert Report on the importance of seasonality in the wireless industry. Dr. Miller's September Report, in particular, contains a new section that is replete with acknowledgments of seasonality in consumer wireless markets. Thus, while he recognizes the importance of seasonality in that section, Dr. Miller continues to fail to recognize its importance for his analysis of the effects of the Shaw Mobile launch.
  - Second, in section III.B I acknowledge that Dr. Miller's September Report contains a new theory alleging that [REDACTED]. While I take no position on the validity of that theory, which I understand depends on the determination of certain allegations, I note that this new [REDACTED] theory does not affect my critique of Dr. Miller's methodology or conclusions about the impact of the Shaw Mobile launch because the alleged [REDACTED] came well after the periods that Dr. Miller studied for purposes of evaluating the effects of the Shaw Mobile launch.
  - Third, in section III.C I note that Dr. Miller's September Report, just like his May Report, did not analyze Rogers data to assess the effects of the Shaw Mobile launch. Instead, he offers a set of results derived from porting data produced by Shaw that he interprets to indicate that "Rogers was particularly affected by... the launch of Shaw Mobile." In this section, I show that several

assumptions and restrictions imposed by Dr. Miller lead to a substantial overstatement of ports from Rogers to Shaw Mobile.

### **III. Dr. Miller's September Report contains an analysis of the Shaw Mobile launch that is identical to the analysis in his May Report**

- (10) In my Initial Expert Report, I assessed Dr. Miller's analysis of the effects of the Shaw Mobile launch, as set out in section 6.1.3 Dr. Miller's May Report. Section 6.1.3 of Dr. Miller's September Report is essentially *identical* to the same section of his May Report.<sup>2</sup> Thus, my critiques of his methodology and conclusions are unchanged. Dr. Miller has failed to give proper consideration to the causal inferences he means to draw for a second time.
- (11) Nevertheless, I wish to address certain other aspects of Dr. Miller's September Report, as well as other evidence filed by the Commissioner on September 23, 2022. I have organized my analysis into separate subsections below.

#### **III.A. Seasonal patterns in consumer wireless sales have been widely acknowledged by Dr. Miller and other witnesses**

- (12) One major part of my critique of the methodology adopted and conclusions reached by Dr. Miller in his May Report (and now again in his September Report) concerned the issue of seasonality. In my Initial Expert Report, I demonstrated that the effects that Dr. Miller attributed to the Shaw Mobile launch are present in other time periods when the Shaw Mobile launch could not possibly have caused them. This was the basis for my conclusion that Dr. Miller wrongly attributed the effect of

<sup>2</sup> I have reviewed all differences between section 6.1.3 of Dr. Miller's two Reports. The only differences that are arguably significant are limited to Exhibit 17 and ¶ 135 of his September Report (which was ¶ 130 of his May Report). More specifically, the Rogers and Other share of Freedom and Shaw Mobile port-ins has changed as follows: [REDACTED]

[REDACTED] Review of his computer code produced as back-up to his September Report reveals no obvious changes that would explain these changes. Because they appear to be small in magnitude, I have not investigated the reason for these differences and provide no further comment on them.

Additionally, there appear to be minor stylistic changes to the Report. For example, Dr. Miller's May Report refers to "Freedom Mobile" while his September Report refers to "Freedom."

ordinary seasonal variation on new subscriber sign-ups, data usage, and the average price of data to the Shaw Mobile launch.

(13) When I submitted my Initial Expert Report, I understood there to be no controversy about the fact of seasonal patterns in wireless markets. That has not changed in the period since I delivered my Initial Expert Report. In fact, evidence that has now been submitted by the Commissioner and Shaw underscores the importance of seasonality in the wireless industry. For example:

- Sudeep Verna, a witness for the Commissioner, identified the back-to-school and holiday seasons as critical to Freedom dealers.<sup>3</sup>
- Sameer Dhamani, a witness for the Commissioner, identified the need for “aggressive promotional activities” during the critical back-to-school period.<sup>4</sup>
- Blaik Kirby, a senior executive at BCE, who is a witness for the Commissioner, identified the period around Black Friday as a “key sales period in the wireless industry.”<sup>5</sup>
- Shaw recognized the importance of seasonality in wireless subscriber activity in its Annual Report for fiscal 2020, a copy of which was attached as Exhibit B to the Witness Statement of Christopher Hickey, a witness for the Commissioner.<sup>6</sup>
- Paul McAleese, a witness for Shaw, corroborated these perspectives and also pointed out the importance of the launch of the new model of iPhone in September each year.<sup>7</sup>

---

<sup>3</sup> Witness statement of Sudeep Verma, ¶ 12 (“This was most recently demonstrated in the back-to-school promotional period. For Freedom dealers, the back-to-school period (a period of approximately six to eight weeks) is critical to dealer profitability. Combined with the holiday season, these periods account for approximately 80 percent of overall dealer profitability.”).

<sup>4</sup> Witness statement of Sameer Dhamani, ¶ 5 (“I agree with Sudeep Verma’s witness statement dated September 22, 2022, including in particular his explanation of the importance of the back-to-school period for Freedom dealers and the need for aggressive promotional activities during this critical period.”).



<sup>5</sup> Witness Statement of Blaik Kirby, ¶ 37 (“Black Friday (i.e., the day after the U.S. Thanksgiving holiday) and the full five day Black Friday period (i.e., the Tuesday before U.S. Thanksgiving to the Saturday immediately following it) is a key sales period in the wireless industry.”).

<sup>6</sup> Witness Statement of Christopher Hickey, Exhibit B (“**Seasonality in Wireless Subscriber Activity.** Wireless subscriber activity is influenced by the launch of popular new mobile devices, seasonal promotional periods, and the level of competitive intensity. Our first and fourth quarters typically experience higher volumes of wireless competitive activity as a result of back to school and holiday season-related consumer behaviour. Aggressive promotional offers are often advertised during these periods which can impact our Wireless subscriber metrics.”).

<sup>7</sup> Witness Statement of Paul McAleese, ¶ 247 (“We specifically timed the launch of Shaw Mobile to



- (14) Dr. Miller's September Report contains a new section (8.4) claiming that "the decline in the Shaw Mobile gross adds does not well reflect how Shaw Mobile would compete absent the merger."<sup>8</sup> In addition to the references I cited above, Dr. Miller's new section is replete with acknowledgments of seasonality in consumer wireless markets.<sup>9</sup> These acknowledgments fall into two categories:
- Recognition of *seasonal variation in the number of new subscriber sign ups* (e.g., back-to-school and the holiday season). That seasonality would have increased new subscriber sign ups in the period after the Shaw Mobile launch and is analyzed in section IV.B.1 of my Initial Expert Report.
  - Recognition that *seasonal promotional activity* is normal course in the industry. This is one fact that causes Dr. Miller's analysis of usage and average price of data to wrongly attribute seasonal effects to the Shaw Mobile launch, which I discussed in section IV.B.2 of my Initial Expert Report.
- (15) I find footnote 439 in Dr. Miller's September Report to be particularly noteworthy. That footnote reads as follows:

  
 Annual  
reports from other firms in the industry confirm this...

- (16) While Dr. Miller recognizes the importance of seasonality in his new section 8.4, he does not recognize its obvious implications for his analysis of the effects associated with the Shaw Mobile launch, which is contained in his section 6.1.3. Dr. Miller's recognition of seasonality in the sale of wireless services directly undermines the methodology he used to conclude that the Shaw Mobile launch *caused* carriers to add new data subscribers, *caused* users to increase data usage, and *caused* users to pay a lower average price for data.

---

coincide with the busiest selling periods in our industry. It is well known that substantial volumes of sales in the telecommunications industry occur in two main periods: (i) the Back to School Season, from roughly early August through late September; and (ii) the Holiday Season, from Black Friday through Boxing Day. Additionally, it is also well known that the launch of Apple's new iPhone in or around the second or third week in September each year is a significant driver of new sales, including because carriers offer promotions to make room in their inventory for the new iPhone models.").

<sup>8</sup> Miller September Report, section 8.4.

<sup>9</sup> See, for example, the following paragraphs and footnotes in Dr. Miller's September Report: ¶¶ 344-348, ¶ 353, FN 408, FN 416, FN 438, FN439.

### III.B. Dr. Miller's new theory that [REDACTED]

- (17) Dr. Miller offers a new theory in section 8.4 of his September Report that [REDACTED]  
[REDACTED]  
[REDACTED]”<sup>10</sup> I do not assess the validity of Dr. Miller's theory.
- (18) However, in light of Dr. Miller's new [REDACTED] theory, it is important to be clear that Dr. Miller analyzed a time period that predated the alleged [REDACTED] to study the impact of the Shaw Mobile launch on competition. Thus, even if his new [REDACTED] theory were valid, it would not affect his analysis or correct his errors in relation to the effects of the Shaw Mobile launch.
- (19) In my Initial Expert Report, I offered two separate critiques of Dr. Miller's analysis of the Shaw Mobile launch.
- I showed that Dr. Miller had ignored important confounds, which caused him to wrongly attribute changes in outcomes to the Shaw Mobile launch.
    - My analysis used data from Bell, Virgin, and Telus available through February 2021—a time period that predates the alleged [REDACTED]<sup>11</sup> Thus, the validity of Dr. Miller's [REDACTED] theory does not affect this analysis.
    - My analysis also used data from Freedom that both pre-dated and post-dated the alleged [REDACTED] [REDACTED] Even if Dr. Miller's new theory implies that data generated during or after the alleged [REDACTED] should be disregarded, my comparisons of the period on which Dr. Miller focuses to earlier periods would remain valid.
  - I showed that the assignment of Ontario to the control group or treatment group had highly consequential implications for Dr. Miller's conclusions.
    - This analysis was based on only data used by Dr. Miller, all of which pre-dates the alleged [REDACTED] As such, the validity of Dr. Miller's [REDACTED] theory does not affect my critique of Dr. Miller's analysis in this regard.

---

<sup>10</sup> Miller September Report, ¶ 350.

<sup>11</sup> I presented Bell and Virgin data through July 2021 in Figure 3 and Figure 4 of my Initial Expert Report.

### III.C. Dr. Miller's analysis of porting data substantially overstates ports from Rogers to Shaw Mobile

- (20) As I noted in my Initial Expert Report, Dr. Miller's May Report did not analyze data from Rogers to assess the effects of the Shaw Mobile launch. His September Report changed nothing in that respect. Instead, Exhibit 17 to both Reports summarizes results derived from porting data produced by ██████ that he interprets to indicate that "Rogers was particularly affected by competition from Shaw in the context of the launch of Shaw Mobile."<sup>12</sup> In this section, I discuss certain aspects of his calculations.
- (21) Dr. Miller's Exhibit 17 shows the combined Freedom and Shaw Mobile share of port-ins by carrier in the period from August 2020 through October 2020 (i.e., in the first three months after the Shaw Mobile launch). I briefly address three aspects of his calculations:
- First, Dr. Miller's calculations are based on port-ins to both Freedom and Shaw Mobile. Given the sale of Freedom to Videotron that is proposed to occur before Rogers acquires Shaw, a more relevant calculation would consider only the Shaw Mobile share of port-ins by carrier.
  - Second, and related to the first point, Dr. Miller excludes from his calculations port-ins from Freedom to Shaw Mobile. Again, in light of the fact that Freedom and Shaw Mobile are distinct brands, one of which is slated to be sold to Videotron before Rogers acquires Shaw, a more relevant calculation would not make this exclusion.<sup>13</sup>
  - Third, Dr. Miller's calculations consider only port-ins (i.e., consumers who port their phone number from one carrier to another) and exclude other sources of gross adds, which likely include some new-to-wireless consumers.
- (22) In light of these remarks, Figure 1 below shows the share of Shaw Mobile total gross adds accounted for by port-ins from all carriers, including Freedom, as well as gross adds that are not port-ins. For additional clarity, I note that Figure 1 shows shares as a fraction of Shaw Mobile's total gross adds.

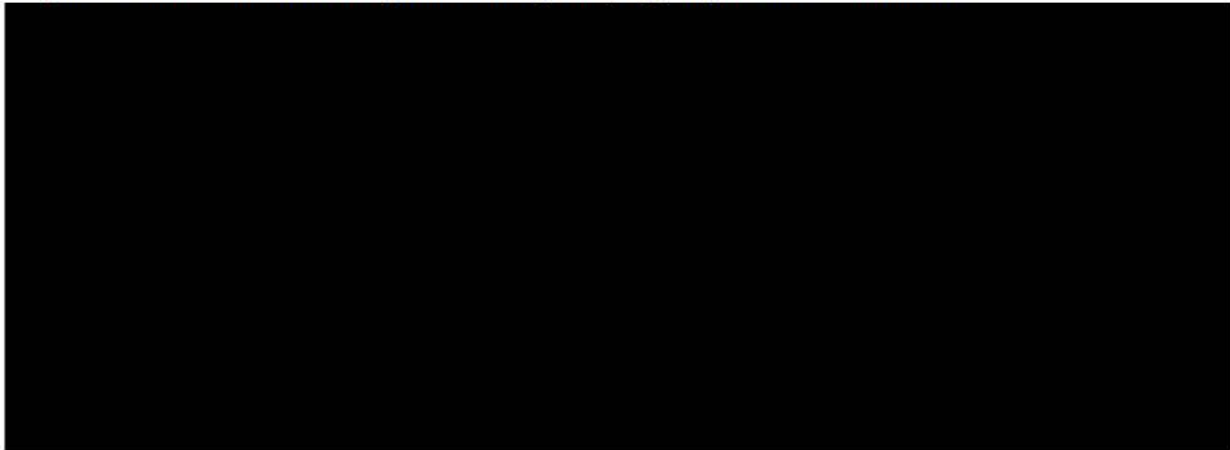
---

<sup>12</sup> Miller Report, ¶ 135.

<sup>13</sup> Interestingly, this point appears to be central to the perspective articulated by Sameer Dhamani, a witness for the Commissioner, who states in his Witness Statement that Shaw Mobile has "cannibalized" Freedom customers and harmed Freedom dealers. See Witness Statement of Sameer Dhamani, ¶ 10 ("The phenomenon of Shaw mobile persistently undercutting Freedom franchisees in Alberta is not a new phenomenon. I described this in my March 3<sup>rd</sup> affidavit. Shaw continues to cannibalize Freedom customers and dealers' businesses. While Shaw said that so-called special introductory rates would be time-limited, as I described in my March 3<sup>rd</sup> affidavit, Shaw's aggressive marketing towards Freedom customers has persisted...").

This differs from Dr. Miller's Exhibit 17, which calculates shares as a fraction of port-ins to Shaw Mobile and Freedom.

Figure 1: Share of Shaw Mobile gross adds by category, August 2020-October 2020



- (23) One obvious aspect of the calculations in Figure 1 is that the fraction of Rogers port-ins of Shaw Mobile gross adds (█████ in AB, █████ in BC) is ██████████ than the fraction of Shaw Mobile and Freedom gross adds Dr. Miller reported in his Exhibit 17 (█████ in AB, █████ in BC as reported in his May Report and █████ and █████ in his September Report). To understand this difference, note that Dr. Miller's Exhibit 17 reported shares of port-ins only, which are a subset of all gross adds (i.e., the shares reported in Dr. Miller's Exhibit 17 exclude port-ins from Freedom as well as gross adds that are not attributable to port-ins). Those exclusions are of substantial magnitude: Dr. Miller's analysis excludes █████ of all Shaw Mobile's gross adds in AB and █████ in BC.
- (24) Non-port gross adds account for █████ of all gross adds in AB and █████ in BC. On that basis, non-port-in gross adds are material to Shaw Mobile so are relevant to consider further. Non-port-in gross adds could be new wireless connections (e.g., new-to-wireless customers or existing wireless customers who choose to add an additional device). They could also be customers who switched from another carrier (i.e., Bell, Freedom, Rogers, Telus, or other wireless carriers) but, for whatever reason, did not port-in their telephone number. New wireless connections, by definition, do not come to Shaw Mobile from another carrier or brand; instead, they are expansions of the relevant market. The declaration of Paul McAleese indicates that Shaw offered its wireline customers the option of adding as many as six wireless lines, with the intention of attracting many such new wireless connections rather than just port-ins.<sup>14</sup>

---

<sup>14</sup> McAleese Witness Statement, ¶ 252 ("Our wireline customers were given the option of adding as many as six wireless lines to their plan. This was intended to attract, among others, upscale

## IV. Appendices

### IV.A. Materials relied upon

#### IV.A.1. Data

- Shaw migration and porting data (“MIGRATION\_PORT\_SUMMARY” table).
- Dr. Miller’s processed Shaw billing data (“build\_shaw\_billing\_monthly” table).

#### IV.A.2. Expert reports and declarations

- Expert Report of Nathan H. Miller, PhD, May 6, 2022.
- Expert Report of Nathan H. Miller, PhD, September 21, 2022.
- Witness Statement of Sudeep Verma, September 22, 2022.
- Witness Statement of Sameer Dhamani, September 22, 2022.
- Witness Statement of Blaik Kirby, September 23, 2022.
- Witness Statement of Christopher Hickey, September 21, 2022.
- Witness Statement of Paul McAleese, September 23, 2022.
- Expert Report of Paul A. Johnson, PhD, September 23, 2022.

---

families who may have been interested in adding multiple wireless lines for children who would predominantly use their smartphones while in their homes using a wireline WiFi, rather than wireless services, as well as so-called “glovebox users”, who are wireless customers that tend to use their smartphones only sparingly. The term “glovebox” refers to the fact that these customers – either literally or figuratively – place their smartphones in their gloveboxes and leave them there for extended periods other than for emergency or highly incidental use.”).