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OTTAWA, ONT.

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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 LTD.**

Intervenors

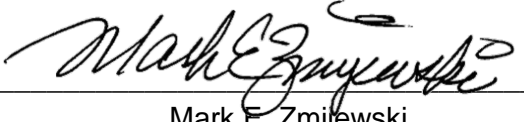
WITNESS STATEMENT OF MARK E. ZMIJEWSKI

1. My name is Mark E. Zmijewski. I am a senior consultant at Charles River Associates and an emeritus professor at the University of Chicago Booth School of Business. During my 30-year career at the Booth School of Business, I held the Charles T. Horngren Professorship and the Leon Carroll Marshall Professorship. In addition to my research and teaching activities, I also held the positions of Associate Dean for PhD Studies and Deputy Dean.

2. I earned my MBA as well as my PhD with a major in accounting with minors in economics and finance from the State University of New York at Buffalo.
3. I am a Senior Advisor to, and a member of, the Investment Committee at Patron Capital Partners (Funds IV and V), a private equity investment company with a focus on real estate related investments. I was a Founding Partner of Chicago Partners, LLC, which was acquired by Navigant Consulting. I was subsequently Managing Director of Navigant Economics and a former member of the Corporate Executive Committee of Navigant Consulting.
4. As a result of the foregoing, my expertise includes: accounting, economics, and finance as they apply to valuation, financial analysis, security analysis, and financial economics; and the assessment and measurement of synergies and associated efficiencies arising from mergers.
5. I have conducted analyses regarding projected merger efficiencies since 2003, both on a consulting basis and as a testifying expert in antitrust litigation. I have performed such analyses on behalf of both United States government enforcement agencies (specifically, the Federal Trade Commission and the Department of Justice) and on behalf of parties to transactions under review. I have also consulted on other issues arising in antitrust litigation, including the failing firm defense, and financial analyses of alleged anticompetitive behavior.
6. I have worked as a consultant or expert in litigation matters in US state and federal courts, in the Ontario Superior Court of Justice in Canada, in the Supreme Court of Victoria in Australia, and in international arbitrations.
7. In this case, I was asked by Counsel for the Commissioner, to prepare opinions in the form of an expert report to assist the Competition Tribunal in its review of the Claimed Efficiencies. Specifically, I was asked to assess, analyse, and opine on the opinions relating to the Claimed Efficiencies expressed in the Brattle Report.

8. I attach as Exhibit "A" to this witness statement my report.
9. I attached as Exhibit "B" to this witness statement my curriculum vitae.
10. I attach as Exhibit "C" to this witness statement my Acknowledgement of Expert Witness.
11. I attach as Exhibit "D" to this witness statement a list of the sources and documents relied upon in preparing my report.

Signed this 20th day of October, 2022.



Mark E. Zmijewski

CT-2022-002

THE COMPETITION TRIBUNAL

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Intervenors

EXPERT REPORT OF MARK E. ZMIJEWSKI

October 20, 2022

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I. QUALIFICATIONS

1. My name is Mark E. Zmijewski. I have conducted analyses regarding projected merger efficiencies since 2003, both on a consulting basis and as a testifying expert in antitrust litigation. I have performed such analyses on behalf of both United States government enforcement agencies (“**Agencies**”, specifically, the Federal Trade Commission (“**FTC**”) and the Department of Justice (“**DOJ**”)) and on behalf of parties to transactions under review. My qualifications and CV are included in the witness statement to which this expert report is attached.¹

2. I acknowledge that I have and will continue to comply with the Competition Tribunal’s code of conduct for expert witnesses to assist the Tribunal impartially on matters relevant to my area of expertise.²

II. BACKGROUND AND ASSIGNMENT

3. This matter pertains to the application under the *Competition Act* (“**Act**”) brought by the Commissioner of Competition (“**Commissioner**”) for an order preventing Rogers Communications Inc. (“**Rogers**”) from acquiring Shaw Communications Inc. (“**Shaw**”, and collectively, “**Respondents**” or “**Parties**” or “**Merged Company**”), among other relief.

4. On March 15, 2021, Rogers announced that it proposed to acquire all the issued and outstanding shares of Shaw (“**Rogers Transaction**”).³

¹ Affidavit of Mark E. Zmijewski, Affirmed October 20, 2022. The list of the sources and documents that I have relied upon in preparing my report is included as Exhibit D to my witness statement.

² My signed “Acknowledgement of Expert Witness” form is included as Exhibit C to my witness statement.

³ [REDACTED]

5. The Respondents submitted the expert report of Mr. Andrew Harington of The Brattle Group (“**Mr. Harington**”) dated November 8, 2021 (the “**Initial Brattle Report**”). This report set forth an initial quantification of claimed wireless and wireline productive efficiencies related to the Rogers Transaction.⁴

6. On May 9, 2022, the Commissioner of Competition (“**Commissioner**”) announced its application in which the Bureau challenged the Rogers Transaction, “by requesting an order from the Competition Tribunal to prevent it from proceeding. The Bureau [also requested] an injunction to stop the parties from closing the deal until its application can be heard.”⁵

7. On June 17, 2022, the Parties announced their intention to complete a divestiture of Shaw’s Freedom Mobile business to Videotron, which would occur immediately prior to the acquisition of Shaw by Rogers. On August 12, 2022, Rogers, Shaw, Shaw Telecom Inc., and Freedom Mobile Inc. (“**Freedom**”) executed a share purchase agreement with Quebecor Inc. (“**Quebecor**”) (the “**Share Purchase Agreement**”), pursuant to which Quebecor, through its wholly owned subsidiary, Videotron Ltd. (“**Videotron**”) would acquire Freedom (“**Videotron Divestiture**”).

8. On September 23, 2022, Rogers submitted the expert report of Mr. Harington dated September 23, 2022 (the “**Brattle Report**”).⁶ The Brattle Report contains a revised quantification of the “Productive Efficiencies arising from the integration at Rogers that would

⁴ [REDACTED]

⁵ RBCH00045_000000004.

⁶ Andrew C. Harington, “Report Assessing Productive Efficiencies Arising From The Proposed Transactions,” September 23, 2022.

be lost in the event of a Blocking Order” (“**Blocking Order**”).⁷ I refer to the efficiencies related to the Rogers Transaction as the “**Rogers Claimed Efficiencies.**” The Brattle Report also contains a quantification of the “Productive Efficiencies arising from the integration at Videotron that would be lost in the event of a Blocking Order” (“**Videotron Divestiture Claimed Efficiencies**”).⁸ I refer to the Rogers Claimed Efficiencies and the Videotron Divestiture Claimed Efficiencies collectively as the “**Claimed Efficiencies,**” or a specific claimed efficiency as a “**Claimed Efficiency.**”

9. I was asked by Counsel for the Commissioner, to prepare opinions in the form of an expert report to assist the Competition Tribunal in its review of the Claimed Efficiencies.⁹ Specifically, I was asked to assess, analyse, and opine on the opinions relating to the Claimed Efficiencies expressed in the Brattle Report. My opinions are based on my expertise in accounting, economics, and finance as they relate to financial economics in the context of merger efficiencies.

10. In carrying out my work, I apply principles in accounting, economics, and finance and employ standard, widely accepted, and reliable principles, methods, and analyses to measure, assess and opine on the Claimed Efficiencies. I also assessed the facts, data, and foundation of the analyses used to determine the Claimed Efficiencies in the Brattle Report.

⁷ Brattle Report, §J.

⁸ I have considered the Videotron Divestiture Claimed Efficiencies set out in the Brattle Report, §K, in the event the Tribunal considers that such efficiencies may be claimed in relation to the Commissioner’s application to challenge the Rogers Transaction. I understand from Counsel for the Commissioner that the claimed efficiencies discussed in Brattle Report, §L, which assume [REDACTED]

⁹ All figures in this report are denominated in Canadian dollars (CAD), unless otherwise stated

11. The work that I conducted in this matter and my opinions have also been informed by my education, knowledge, and experience in accounting, economics, and finance. I have prepared my expert report to state the opinions that I intend to express at the hearing; to describe the bases for those opinions and the reasons underlying them; to disclose the facts and data I considered in reaching my opinions; and to make all other appropriate disclosures. I express no legal opinions in this report.¹⁰

12. Regardless of whether the Respondents identify additional documents, I will review, evaluate, and analyse any other additional data, facts, or information as they become available and update my analyses and opinions, as I deem appropriate.¹¹

13. Various employees of Charles River Associates have assisted me in performing services under my direction in connection with this engagement, however the entirety of this report is the result of my work product. None of my compensation is contingent in any way on the substance of my opinions or the outcome of this matter.

III. SUMMARY OF OPINIONS

14. I have reviewed and analysed the evidence provided by Respondents related to the Claimed Efficiencies set forth in the Brattle Report. In this section, I summarize the opinions that I have formed in this matter.

¹⁰ I reserve the right to update, modify or supplement my expert report as necessary to reflect any additional data, facts, reports, or other information I receive.

¹¹ My opinions are formed using the information available as of October 18, 2022.

A. Opinion 1: Bases of the Brattle Report Opinions

15. The Brattle Report states that the Claimed Efficiencies reported in its schedules are likely to occur. Its bases for that conclusion with respect to the Rogers Transaction are that the Claimed Efficiencies are “consistent with Rogers’ ordinary course integration planning documents,”¹² and that “the Productive Efficiencies provide a significant economic incentive to Rogers’ management to implement the integration plans.”¹³ The Brattle Report makes similar statements with respect to the Claimed Efficiencies from the Videotron Divestiture.¹⁴

16. The bases cited by the Brattle Report for its conclusions that the efficiencies are likely to occur do not meet reasonable standards for assessing whether the Claimed Efficiencies are likely to occur in the magnitude claimed. The Brattle Report opinions that the Claimed Efficiencies are likely to occur are not reliable conclusions based on that report’s stated reasons that they are consistent with integration planning documents and that management has incentives to implement the integration plan.

B. Opinion 2: The Claimed Efficiencies from the Rogers Transaction

17. While I have several comments on the Brattle Report that I express in the main body of this report, my review of that report’s Claimed Efficiencies from the Rogers Transaction revealed certain primary areas where I disagreed with the Brattle Report, which I discuss below.

¹² Brattle Report, ¶81.

¹³ Brattle Report, ¶81.

¹⁴ Brattle Report, ¶194.

18. The Brattle Report's calculations of [REDACTED]
[REDACTED] The Brattle Report employs two methods, each of which is flawed and thus, unreliable:

- a) The Brattle Report's [REDACTED] calculated using the KPI method are not reliable. The Brattle Report employs a method related to key performance indicators ("KPIs"). The Brattle Report assumes without foundation and without investigation that any differences in Rogers and Shaw KPIs represent differences in efficiency that can be at least partially remedied in the Rogers Transaction. The Brattle Report does not investigate whether there are other reasons unrelated to relative efficiency that explain differences in the measured Rogers and Shaw KPIs. Because the Brattle Report did not investigate other potential explanations for different Rogers and Shaw KPIs, the Brattle Report's [REDACTED] calculated using a KPI are not substantiated;
- b) The Brattle Report's [REDACTED] calculated based on assumed percentage [REDACTED] are not reliable. The Brattle Report calculates certain [REDACTED] by assuming a percentage [REDACTED] with no underlying data or analysis to support its assumed percentage [REDACTED]. The [REDACTED] calculated based on these unfounded [REDACTED] lack foundation and are not substantiated;

- c) Instead, for the [REDACTED] calculated based on assumed percentage [REDACTED] had the Brattle Report used its KPI method and the KPI used by Rogers in the ordinary course of business, these [REDACTED] [REDACTED] in Brattle Report would be substantially lower;
- d) Omitted negative efficiencies - The Brattle Report inappropriately omits what it would calculate to be negative [REDACTED] efficiencies in its calculations, thus overstating the Claimed Efficiencies.

19. The calculations of certain Brattle Report efficiencies require inputs that are derived from technical scientific/engineering analysis, including, but not limited to, telecommunications engineering, information technology, and other engineering and scientific analysis, which I refer to as “**Engineering Inputs.**” Generally, the Brattle Report does not investigate the bases of Engineering Inputs, if any, and does not claim to have the expertise to do so. Rather, for efficiencies dependent on Engineering Inputs, the Brattle Report accepts the assertions of Rogers’ management. Where the Brattle Report does not examine the underlying bases of Engineering Inputs, the Brattle Report does not have a reliable basis for an independent opinion that the efficiency is likely to occur.

20. I additionally identify a calculation error in the Brattle Report which, when corrected, reduces the Brattle Report’s calculation of the undiscounted value of the Claimed Efficiencies by approximately [REDACTED] over 10 years, undiscounted.¹⁵

21. I classify the following Rogers Claimed Efficiencies from the Brattle Report as substantiated: a portion of the [REDACTED] savings from [REDACTED] and [REDACTED]. I present a calculation of the 10-year discounted and undiscounted substantiated efficiencies related to the Rogers Transaction in Exhibit [REDACTED].

C. Opinion 3: The Claimed Efficiencies from the Videotron Divestiture

22. While I have several comments on the Brattle Report that I express in the main body of this report, my review of that report's Claimed Efficiencies from the Videotron Divestiture revealed two primary areas where I disagreed with the Brattle Report, which I discuss below:

- a) The Brattle Report calculates [REDACTED] based on a [REDACTED] that lacks foundation. The [REDACTED] are not substantiated;
- b) I identify several Claimed Efficiencies in the Videotron Divestiture that I classify as Engineering Opinions. The Brattle Report opines that these Claimed Efficiencies are likely to occur, but it does not indicate that it examined the underlying backup, instead appearing to accept the assertions of management. The Brattle Report does not have reliable bases for its opinions that these Claimed Efficiencies are likely to occur.

23. I classify the following Videotron Divestiture Claimed Efficiencies from the Brattle Report as substantiated: [REDACTED]

██████████ I present a calculation of the 10-year discounted and undiscounted substantiated efficiencies related to the Videotron Divestiture, which I show in ██████████

IV. METHODOLOGY FOR ASSESSING WHETHER THE CLAIMED EFFICIENCIES ARE LIKELY TO OCCUR IN THE MAGNITUDE CLAIMED

24. In this section of the report, I discuss the methodology I have consistently used, and believe should be used, for assessing whether the Claimed Efficiencies are likely to occur in the magnitude claimed. I first briefly review the guidance on efficiencies in section 96 of the Act and the Bureau's *Merger Enforcement Guidelines* ("MEGs").¹⁶ I then discuss the methodology for assessing whether the Claimed Efficiencies are likely to occur in the magnitudes claimed.

A. The Merger Enforcement Guidelines

25. I have been asked by the Bureau to provide opinions that will assist the Tribunal in assessing the Claimed Efficiencies, including whether the Claimed Efficiencies are cognizable under section 96 of the Act. Counsel for the Commissioner has informed me that the MEGs provide appropriate guidance for the quantification of merger efficiencies under the Act. Below, I set out section 96 of the Act and the MEGs as they relate to efficiencies.

26. Section 96 of the Act states:

96 (1) The Tribunal shall not make an order under section 92 if it finds that the merger or proposed merger in respect of which the application is made has brought about or is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition that will result or is likely to result from the merger or proposed merger and that the gains in efficiency would not likely be attained if the order were made.

Factors to be considered

¹⁶ RBCH00045_000000005 ("MEGs").

(2) In considering whether a merger or proposed merger is likely to bring about gains in efficiency described in subsection (1), the Tribunal shall consider whether such gains will result in

(a) a significant increase in the real value of exports; or

(b) a significant substitution of domestic products for imported products.

Restriction

(3) For the purposes of this section, the Tribunal shall not find that a merger or proposed merger has brought about or is likely to bring about gains in efficiency by reason only of a redistribution of income between two or more persons.

27. The MEGs state that "... the parties must be able to validate efficiency claims to allow the Bureau to ascertain the nature, magnitude, likelihood and timeliness of the asserted gains, and to credit (or not) the basis on which the claims are being made."¹⁷

28. The MEGs discuss the categories of efficiencies that are relevant to the merger analysis:

In general, categories of efficiencies that are relevant to the trade-off analysis in merger review include the following:

- allocative efficiency: the degree to which resources available to society are allocated to their most valuable use;
- technical (productive) efficiency: the creation of a given volume of output at the lowest possible resource cost; and
- dynamic efficiency: the optimal introduction of new products and production processes over time.¹⁸

29. The MEGs define productive efficiencies as follows:

Productive efficiencies result from real cost savings in resources, which permit firms to produce more output or better quality output from the same amount of input. In many cases, such efficiencies can be quantifiably measured, objectively ascertained, and supported by engineering, accounting or other data, subject to a discount, as appropriate,

¹⁷ MEGs, ¶12.3.

¹⁸ MEGs, ¶12.4.

for likelihood in practice. Timing differences in the realization of these savings are accounted for by discounting to the present value.¹⁹

30. The MEGs provide certain examples of productive efficiencies:²⁰

- cost savings at the product, plant and multi-plant levels;
- savings associated with integrating new activities within the firm; and
- savings arising from transferring superior production techniques and know-how from one of the merging parties to the other.²¹

31. The MEGs state:

The parties' burden includes proving that the gains in efficiency

- are likely to occur. In other words, the parties must provide a detailed explanation of how the merger or proposed merger would allow the merged firm to achieve the gains in efficiency. In doing so, the parties must specify the steps they anticipate taking to achieve the gains in efficiency, the risks involved in achieving these gains and the time and costs required to achieve them.
- are brought about by the merger or proposed merger (i.e., that they are merger specific). The test under section 96(1) is whether the efficiency gains would likely be realized in the absence of the merger...
- are greater than and offset the anti-competitive effects. The parties must provide a quantification of the gains in efficiency and a detailed and robust explanation of how the quantification was calculated...
- would not likely be attained if an order under section 92 were made. Gains in efficiency that would likely be achieved, even if an order prohibiting all or part of the merger were made, are not counted for the purposes of section 96.²²

32. The MEGs specify certain types of efficiencies that are excluded from the trade-off

analysis:

- gains that would likely be attained in any event through alternative means if the potential orders were made (examples include internal growth, a merger with a third

¹⁹ MEGs, ¶12.14.

²⁰ The Brattle Report does not contain any quantification of dynamic or allocative efficiencies. Accordingly, I do not examine dynamic efficiencies or allocative efficiencies in this report.

²¹ MEGs, ¶12.15 (footnotes omitted).

²² MEGs, ¶12.13 (footnote omitted).

- party, a joint venture, a specialization agreement, and a licensing, lease or other contractual arrangement);
- gains that would not be affected by an order, when the order sought is limited to part of a merger;
 - gains that are redistributive in nature, as provided in section 96(3) of the Act (examples include gains anticipated to arise from increased bargaining leverage that enables the merging parties to extract wage concessions or discounts from suppliers that are not cost-justified, and tax-related gains);
 - gains that are achieved outside Canada (examples include productive efficiency gains arising from the rationalization of the parties' facilities located outside Canada that do not benefit the Canadian economy); and
 - savings resulting from a reduction in output, service, quality or product choice.²³

B. An assessment of the Claimed Efficiencies should be based on facts, data, and well-accepted standard economic methods of analysis

33. In this section, I discuss what is, in my opinion, the appropriate process to use to conduct an independent assessment of whether the Claimed Efficiencies are likely to occur, and in what magnitudes. As discussed above, the MEGs indicate that, “The parties' burden includes proving that the gains in efficiency,” a) “are likely to occur,” b) “are brought about by the merger or proposed merger,” c) “are greater than and offset the anti-competitive effects”, and d) “would not likely be attained if an order under section 92 were made.”²⁴

34. In analyzing the Claimed Efficiencies, I apply basic principles in accounting, economics, and finance to assess whether the data and economic analyses set forth in the Brattle Report substantiates the magnitude, likelihood, and timeliness of the asserted gains without reductions in

²³ MEGs, ¶12.20 (footnotes omitted).

²⁴ MEGs, ¶12.13.

quantity or quality of output. I do so by assessing whether, based on an independent analysis, the support – facts, data, and analyses – for the Claimed Efficiencies:

- Provides adequate documentation to support and explain the Claimed Efficiencies;
- Uses standard, widely accepted and reliable principles, methods, and analyses to measure the Claimed Efficiencies and employ them appropriately; and
- Uses facts and data, the foundation of any economic analyses, to support the inputs and assumptions used in the analyses.

35. I refer to these criteria as the “**Substantiation Criteria.**” Generally:

- If the Brattle Report provides support for the Claimed Efficiencies that meets the Substantiation Criteria, I conclude that the efficiency is “**Substantiated.**” In such instances, I conclude that the efficiency is likely to occur in the magnitude claimed.
- If the Brattle Report does not provide support for the Claimed Efficiencies that meets the Substantiation Criteria, I conclude that the efficiency is “**Not Substantiated.**” In such instances, the Brattle Report does not demonstrate that the efficiency is likely to occur in the magnitude claimed.

C. Merger specificity

36. The MEGs require that Claimed Efficiencies are a result of the merger. Specifically, the MEGs require that the claimed gains:

are brought about by the merger or proposed merger (i.e., that they are merger-specific). The test under section 96(1) is whether the efficiency gains would likely be realized in the absence of the merger. Thus, if certain gains in efficiency would likely be achieved absent the merger, those gains are not counted for the purposes of the trade-off.²⁵

²⁵ MEGs, ¶12.13.

37. It is thus appropriate to consider merger specificity in assessing whether a planned cost savings is an efficiency.

D. Business Judgment, Best Practices, and Reduction in Output, Service, Quality or Product Choice

38. In this section, I discuss other situations in which a Claimed Efficiency would not be substantiated.

1. Business Judgment

39. A Claimed Efficiency based on a manager's business judgment cannot be independently substantiated by a third party. Business judgment is not based on facts or data or analyses that an independent third party can analyse; rather it is based on the manager's subjective views. While a manager's subjective view may be based on the manager's experience and knowledge base, an independent third party or adjudicator has no ability to independently substantiate the manager's subjective view.

40. In addition, while the manager may have an incentive to "get it right," an independent third party has no ability to independently analyse the manager's ability to "get it right" or the bias the manager might have, for example, to set aspirational goals instead of the most likely outcome for the Claimed Efficiencies. Managers may also have an incentive to close the transaction, for example, even when the transaction will result in low or no cost reductions, which might (knowingly or unknowingly) bias the manager's subjective judgment.

41. In summary, a Claimed Efficiency based on a manager's business judgment cannot be independently substantiated by a third party.

2. Best Practices

42. Managers of merging parties may believe that they can reduce costs by adopting each other's "best practices" or by purchasing more efficient equipment, establishing more efficient processes, or rationalizing assets. If a "best practice" is protected by intellectual property rights, then it could be the basis for a merger-specific efficiency claim. However, it is often likely that best practices not protected by intellectual property rights could be achieved without the proposed merger, although one would include an adjustment for the time and resources it would take to adopt the best practice relative to the proposed merger. The best practices portion of efficiencies that would likely be achieved through other means are not merger specific.

3. Reduction in Output, Service, Quality or Product Choice

43. As summarized above, the MEGs state: productive efficiencies "result from real cost savings in resources, which permit firms to produce more output or better quality output from the same amount of input."²⁶ The MEGs also state that "Not all efficiency claims qualify for the trade-off analysis": for instance, "savings resulting from a reduction in output, service, quality or product choice" are excluded.²⁷ These statements are based on the same economic concept, but stated in the positive and negative form. That is, efficiencies result from real cost savings that must allow for a firm to produce more or better-quality output from the same input, or, equivalently, cost savings that result from a reduction in quantity or quality of output are to be excluded from the tradeoff analysis.

²⁶ MEGS, ¶12.14.

²⁷ MEGS, ¶12.20 (footnotes omitted).

44. A merger may result in various types of cost reductions, however, cost reductions are only efficiencies within the definition of the MEGs if they allow the firm to “produce more output or better quality output from the same amount of input”²⁸ and are not “savings resulting from a reduction in output, service, quality or product choice.”²⁹ Simply assuming, without any independent analysis, that cost reductions will not lead to a reduction in quantity and quality of output does not provide an appropriate basis for an opinion that the identified cost reductions result in gains in efficiency within the definition of the MEGs. An independent assessment of claimed efficiencies is appropriately based on an independent analysis of data assessing whether the quantity or quality of output is reduced by the cost reductions.

E. Efficiency Calculations Dependent on Engineering or Scientific Inputs

45. The appropriate calculations of certain efficiencies require inputs that are derived from technical scientific/engineering analysis, including, but not limited to, telecommunications engineering, information technology, and other engineering and scientific analysis, or Engineering Inputs. An independent assessment of whether Claimed Efficiencies that are dependent on Engineering Inputs are likely to occur, and if so, in what magnitudes, requires the independent third party opinion on whether the Claimed Efficiencies are likely to occur to have the skills, knowledge, and experience to make such an assessment. I classify certain of the Brattle Report’s Claimed Efficiencies as Not Substantiated because they are or appear to be

²⁸ MEGs, ¶12.14.

²⁹ MEGs, ¶12.20.

dependent on Engineering Inputs for which the Brattle Report has not offered independent substantiating evidence or analysis.³⁰

46. In my assessment of the Claimed Efficiencies, if the calculation of the efficiency is dependent on Engineering Inputs, I categorize the calculated value of the Claimed Efficiency as an “**Engineering Opinion.**” Generally, these Claimed Efficiencies are Not Substantiated.

F. Summary

47. An assessment of whether the Claimed Efficiencies are likely to occur in the magnitudes claimed is appropriately performed by examining the underlying data and analyses. Specifically, I assess each Claimed Efficiency based on the Substantiation Criteria discussed.

48. Additionally, I categorize certain Claimed Efficiencies as based on Engineering Opinions, which is when the calculation of the Claimed Efficiency depends on Engineering Inputs. The assessment of whether the Claimed Efficiency is likely to occur in the magnitude claimed depends on whether the underlying Engineering Inputs are shown to be reliable. I note that I do not offer opinions on whether Engineering Opinion-based Claimed Efficiencies are likely to occur, or in what magnitude they are likely to occur.

V. THE METHODOLOGY USED IN THE BRATTLE REPORT DOES NOT MEET REASONABLE STANDARDS FOR ASSESSING WHETHER THE CLAIMED EFFICIENCIES ARE LIKELY TO OCCUR IN THE MAGNITUDE CLAIMED

49. In this section of the report, I discuss the Brattle Report’s opinions on whether the Claimed Efficiencies are likely to occur in the magnitude claimed and the methodology used in

³⁰As I discuss later in my report, certain documents relied upon as foundation for these efficiencies are labeled as “Preliminary & Work in Progress” or “Draft” (see Section VI.F, VI.K).

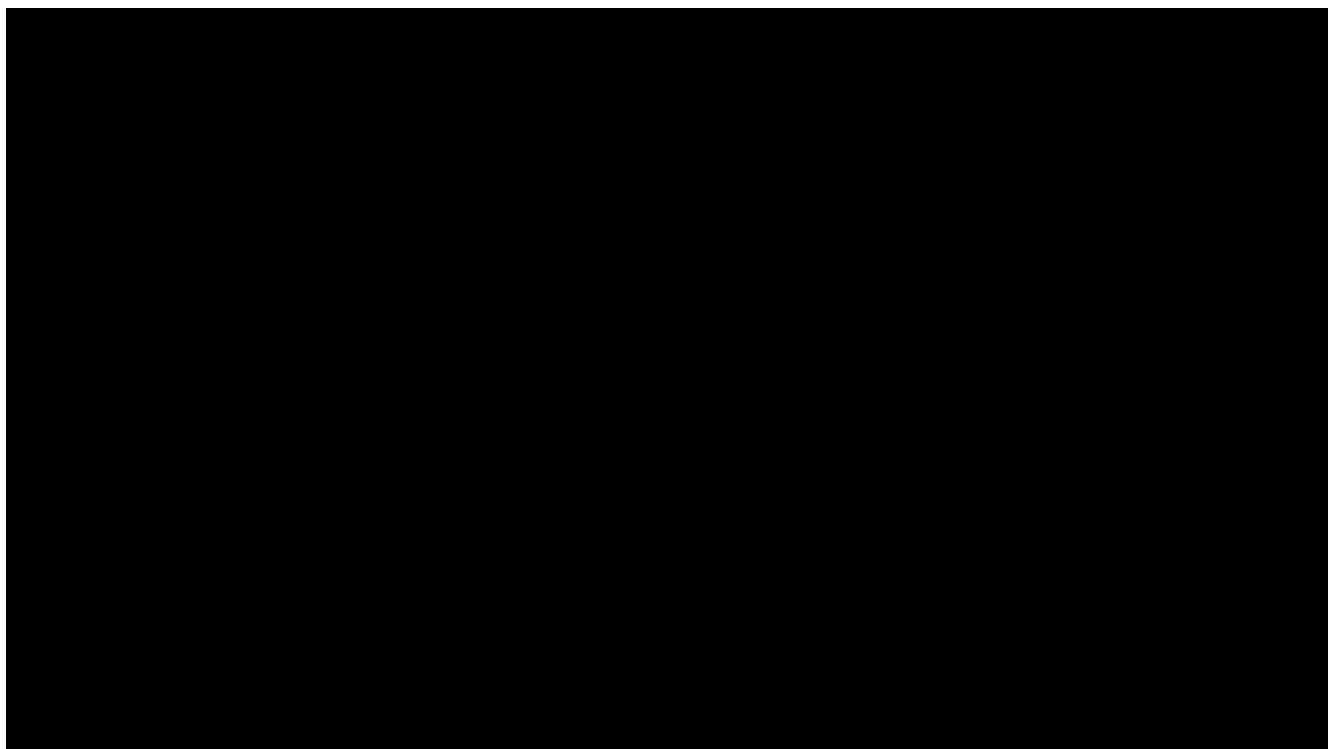
the Brattle Report to reach those opinions. As I discuss below, the Brattle Report's opinions on whether the Claimed Efficiencies are likely to occur are based on a methodology that accepts the intentions and incentives of Rogers' management and Videotron's management as likely to occur. In my opinion, such a methodology does not result in an independent opinion on whether Claimed Efficiencies are likely to occur in the magnitude claimed and it is not a valid methodology. Thus, opinions based on that methodology are flawed and not reliable.

50. In addition, the Brattle Report's methodology focuses on claimed reductions in cost, rather than expansions of output, so it is natural to examine whether the Brattle Report provides evidence that its claimed cost savings do not result from a reduction in output, service, quality or product choice, which I sometimes refer to as a "reduction in quantity or quality of output." My examination of whether the Brattle Report's claimed cost savings result from a "reduction in quantity or quality of output" is equivalent to examining whether they are real cost savings which permit the firm to produce more output or better quality output for the same cost. Lastly, the Brattle Report does not appear to identify any efficiencies related to a significant increase in the real value of exports or significant substitution of domestic products for imported products.

51. In the remainder of this section, I discuss the Brattle Report's opinions related to Rogers Claimed Efficiencies, the Brattle Report's opinions related to the Videotron Divestiture Claimed Efficiencies, the Brattle Report's ability to assess whether the Claimed Efficiencies are likely to occur in the magnitude claimed when the Claimed Efficiencies are based on Engineering Inputs.

A. The Brattle Report's summary opinion on the Rogers Claimed Efficiencies

52. The Brattle Report presents its summary opinion of the Rogers Claimed Efficiencies in its [REDACTED] which I reproduce below:³¹



53. The Brattle Report summarizes its opinions on the Rogers Claimed Efficiencies and the bases for that opinion:

I am of the view that Productive Efficiencies summarized in [REDACTED] above are likely to occur. First, they are consistent with Rogers' ordinary course integration planning documents. Second, in my opinion, the Productive Efficiencies provide a significant economic incentive to Rogers' management to implement the integration plans.³²

³¹ Brattle Report, [REDACTED]

³² Brattle Report, ¶81. The Brattle Report also notes that, "In addition to the Productive Efficiencies that I have quantified, Rogers has quantified other expected synergies in the ordinary course of business that I have not included in my quantification of Productive Efficiencies because they are ineligible based on any of the exclusions summarized above in Section H. These additional synergies will further incentivize management to undertake the integration activities (as these synergies benefit Rogers)" (Footnote omitted).

54. I do not agree with the Brattle Report's stated reasons for its opinion that the Rogers Claimed Efficiencies are likely to occur. As discussed above, "cost savings resulting from a reduction in output, service, quality or product choice" are not efficiencies.³³ The Brattle Report's stated bases, consistency with planning documents or management incentives to reduce costs, do not imply that management's asserted cost savings are efficiencies. Rather, it must be demonstrated that the asserted cost savings do not result from, or cause, a reduction in quantity or quality of output.³⁴ Demonstrating that planned cost savings do not result from, or cause, a reduction in the quantity or quality of output requires data and analysis, and not simple reliance on management's planning documents or management's incentives.

55. Additionally, the Brattle Report's assertion that the Claimed Efficiencies are "consistent with Rogers' ordinary course integration planning documents"³⁵ is not an appropriate basis for concluding that the Rogers Claimed Efficiencies are likely to occur in the magnitude claimed. In the instances in which such documents are provided, I disagree that the integration planning for the integration of Shaw's wireline operations into Rogers has occurred in the "ordinary course" of the Rogers business.³⁶ The proposed Rogers integration of the Shaw wireline business would

³³ MEGs, ¶12.20.

³⁴ Equivalently, they are not efficiencies unless it is demonstrated that they are real cost savings that allow the firm to increase the quantity or quality of output. MEGs 12.14.

³⁵ Brattle Report, ¶81.

³⁶ For instance, in the Arrangement Agreement in which Rogers agreed to purchase Shaw, "Ordinary Course" is defined:

"Ordinary Course" means, with respect to an action taken by the Company or its Subsidiaries, that such action is consistent with the past practices of such Party or such Subsidiary and is taken in the ordinary course of the normal day-to-day operations of the business of the Company or such Subsidiary, including any commercially reasonable deviations therefrom taken in good faith by the Company as a result of or in response to natural disasters, calamities, crises and any COVID-19 Measures.

be a unique event which has never occurred, and there is no assurance that the integration planning documents intend to maintain the quantity and quality of output. Simply because a dollar cost-saving figure is included in an integration plan does not imply that those cost savings are likely to occur or that they will not result in or cause a reduction in quantity or quality of output.³⁷

56. Further, efficiencies claims almost always arise out of integration planning. A standard which assumes that any efficiencies identified in the course of integration planning is likely to occur would lead to the acceptance of almost all efficiencies claims, regardless of whether the claim has merit.

57. As an additional basis of its summary opinion, the Brattle Report states, “[s]econd, in my opinion, the Productive Efficiencies provide a significant economic incentive to Rogers’ management to implement the integration plans.”³⁸ I do not agree that management’s incentives to implement the integration plan is a reasonable basis to conclude that the Rogers Claimed Efficiencies are likely to occur in the magnitudes claimed.

58. Almost all public companies provide incentives for their management to meet their financial goals. Nevertheless, despite these incentives, companies frequently fail to meet their financial objectives, and are thus less profitable than planned, or even suffer losses or bankruptcy.

Arrangement Agreement, Rogers Communications Inc. and Shaw Communications Inc., p. 17.

³⁷ Equivalently, they are not efficiencies unless it is demonstrated that they are real cost savings that allow the firm to increase the quantity or quality of output. MEGs ¶12.14.

³⁸ Brattle Report, ¶81.

59. Additionally, claims of merger efficiencies can be helpful to facilitate the approval of the merger. To the extent that Rogers has an incentive for the merger to be approved, Rogers management has a conflict over its incentives to assert reliable efficiencies claims in these proceedings.

60. A standard which assumes that any efficiencies claim is likely to occur because management has incentives to implement the integration plan would lead to the acceptance of almost all efficiencies claims, regardless of whether those efficiencies claims have merit, and regardless of management's conflicting incentives to assert reliable efficiencies claims.

61. In summary, the Brattle Report opinion that the Rogers Efficiencies Claims are likely to occur is not a reliable conclusion based on the stated reasons that they are consistent with the integration planning documents and that management has incentives to implement the integration plan.

B. The Brattle Report's summary opinions on the Videotron Divestiture Claimed Efficiencies

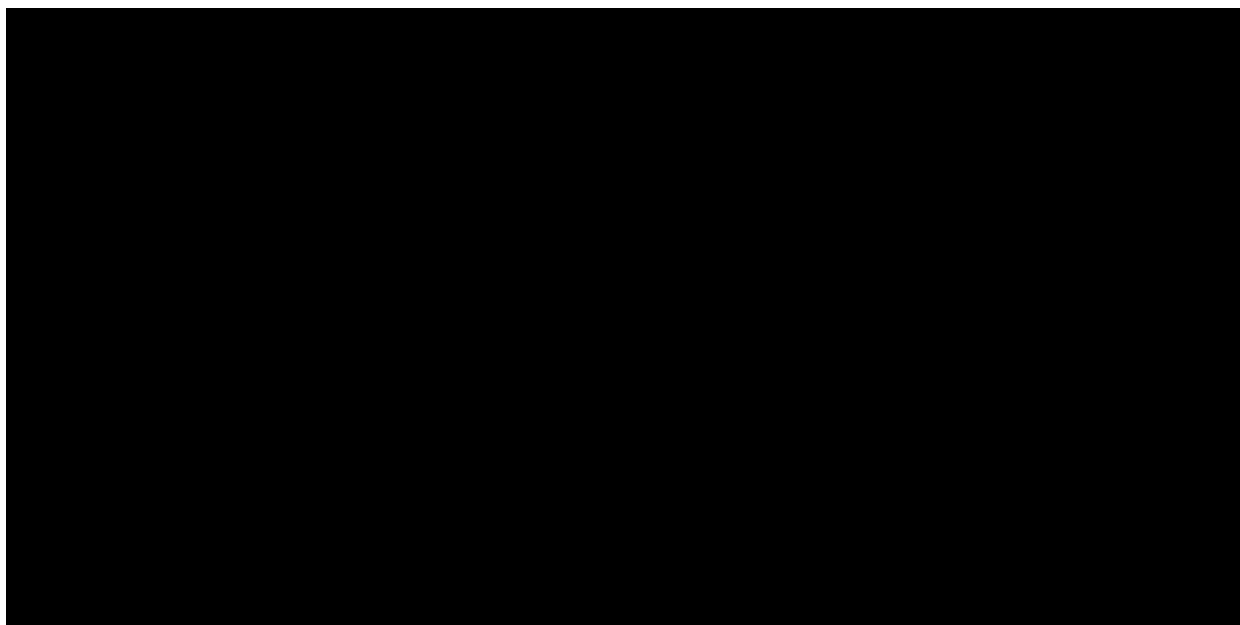
62. The Brattle Report, Section K, sets forth what it describes as, "the Productive Efficiencies to the Canadian economy likely to be realized as a result of the Videotron Transaction and likely to be lost in the event of a Blocking Order, [REDACTED]

[REDACTED]"³⁹ As noted above, I refer to the Brattle Report Section K Claimed Efficiencies as the Videotron Divestiture Claimed Efficiencies.⁴⁰

³⁹ Brattle Report, ¶192, emphasis in original.

⁴⁰ The Brattle Report discusses additional efficiencies that it claims would arise in the Videotron MVNO Strategy scenario in its Section L. As noted above, I understand from Counsel for the Commissioner that that scenario is unlikely and therefore I do not consider them in this report.

63. The Brattle Report presents its summary opinion on the Videotron Divestiture Claimed Efficiencies in its [REDACTED]⁴¹ which I reproduce below:



64. The Brattle Report offers a similar summary opinion and similar bases for the Videotron Divestiture Claimed Efficiencies as it did for the Rogers Claimed Efficiencies:

I am of the view that the Productive Efficiencies summarized in [REDACTED] above are likely to occur. First, they are consistent with Videotron's integration planning documents and its intentions in this regard, which I have discussed with Videotron and are reflected in its witness statements in this proceeding. Second, in my opinion, the Productive Efficiencies provide a significant economic incentive to Videotron management to implement the integration plans necessary to achieve those Productive Efficiencies, individually and collectively.⁴²

65. As with the Rogers Claimed Efficiencies, the Brattle Report bases its opinions that the Videotron Divestiture Claimed Efficiencies are likely to occur on their being "consistent with Videotron's integration planning documents" and because, "the Productive Efficiencies provide a significant economic incentive to Videotron management to implement the integration plans

⁴¹ Brattle Report, p. 74.

⁴² Brattle Report, ¶194.

necessary to achieve those Productive Efficiencies.”⁴³ As I discussed above in the preceding section, the Brattle Report opinions that the Videotron Divestiture Claimed Efficiencies are likely to occur is not a reliable conclusion based on the stated reasons that they are allegedly consistent with the integration planning documents and that management has incentives to implement the integration plan. Demonstrating that planned cost savings do not result from, or cause, a reduction in the quantity or quality of output requires data and analysis, and not simple reliance on management’s planning documents or management’s incentives.

C. Efficiency calculations dependent on Engineering or Scientific Inputs

66. In my assessment of the Claimed Efficiencies, if the calculation of the efficiency is dependent on Engineering Inputs, I categorize the calculated value of the Claimed Efficiency as an Engineering Opinion.

67. Contrary to this view, generally, the Brattle Report does not investigate the bases of Engineering Inputs, if any, and does not claim to have the expertise to do so. Rather, for efficiencies dependent on Engineering Inputs, the Brattle Report appears to accept the assertions of Rogers’ management. Where the Brattle Report does not examine the underlying bases of Engineering Inputs, the Brattle Report does not have a reliable basis for an independent opinion that the efficiency is likely to occur.

⁴³ Brattle Report, ¶194.

D. Conclusion: the methodology used in the Brattle Report is flawed and the resulting opinions are not reliable

68. The Brattle Report opinions that the Claimed Efficiencies are likely to occur are not reliable conclusions because they are not based on independent analysis of the underlying facts but are instead based on that report's stated reasons: that the Claimed Efficiencies are consistent with integration planning documents and that management has incentives to implement the integration plan. Consistent with the methodology I describe in the previous section, an appropriate assessment of Claimed Efficiencies is based on data and analyses that demonstrate that Claimed Efficiencies are likely to occur in the magnitudes claimed, and that the quantity and quality of output is not reduced by the claimed cost reductions.

VI. ASSESSMENT OF THE ROGERS CLAIMED EFFICIENCIES

69. In this section of the report, I assess the Rogers Claimed Efficiencies. I focus my analysis on the bases for the long-term run rate for the claimed efficiency. That is, I analyse the data and/or model that is used to calculate the annual claimed value of the efficiency once it is fully implemented (i.e., the claimed long-term "**Steady State Value**" of the efficiency once implemented). In most cases, the Steady State Value is used by the Brattle Report, in conjunction with an assumption on the timing of the realization of the efficiencies and their implementation costs, to calculate its discounted and undiscounted 10-year values.

A. [REDACTED]

70. The largest component of the Rogers Claimed Efficiencies is the efficiencies related to [REDACTED] The Brattle Report claims an

undiscounted 10-year value of [REDACTED] and a 10-year discounted value of [REDACTED]
[REDACTED]⁴⁴ The claimed Steady State Value is [REDACTED]⁴⁵

71. The Brattle Report calculates the [REDACTED] using two primary methods: (i) savings calculated using key performance indicators (“**KPI Method**”), and, (ii) savings calculated based on assumed [REDACTED] percentages (“**Assumed Percentage [REDACTED] Method**”). I summarize the claimed labour cost savings in Exhibit VI-1. The KPI Method assesses KPIs for each [REDACTED] and uses those KPIs to estimate [REDACTED] [REDACTED]. The KPI Method accounts for [REDACTED] of the Steady State Value of [REDACTED]. In the Assumed Percentage [REDACTED] Method, the Brattle Report assumes [REDACTED] to calculate the remainder of the [REDACTED]. The Brattle Report’s Assumed Percentage [REDACTED] Method account for [REDACTED] of the Steady State Value of the [REDACTED]. The [REDACTED] calculated by assuming percentage [REDACTED] thus represent approximately [REDACTED] in the Brattle Report.

72. As I discuss below, the Brattle Report’s analyses of the [REDACTED] yield values that are Not Substantiated.

⁴⁴ [REDACTED]

⁴⁵ [REDACTED]

1. KPI Method

73. The Brattle Report relies on the KPI Method of calculating [REDACTED] in respect of [REDACTED] Steady State Value, or approximately [REDACTED]

[REDACTED] This method is based on the assessment of key performance indicators, which are measures of efficiency. The Brattle Report utilizes the KPI Method to calculate [REDACTED]

[REDACTED]

[REDACTED] The Brattle Report lists in its Table 4, reproduced below, the KPIs that it uses:⁴⁷

[REDACTED]

74. For each [REDACTED] the Brattle Report measures the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁶ [REDACTED]

⁴⁷ [REDACTED]

[REDACTED]

[REDACTED]

75. The savings (or costs) from [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

48

76. Below I present several comments on the Brattle Report's usage of the KPI Method.

a) **The Parties have not identified any specific**

[REDACTED]

77. The KPI Method used by the Brattle Report assumes that, whenever a Rogers KPI appears to be more efficient than the comparable Shaw KPI, it is because Rogers is more efficient in some way. It is additionally based on the assumption that some or all of this greater efficiency can be achieved by [REDACTED]. However, simply assuming greater Rogers efficiency is not appropriate. Rather than assuming that any differences must relate to differential efficiency, it would have been appropriate to first, investigate to identify the reasons why the measured KPIs might differ, and second, if found to be due to a difference in efficiency, "specify the steps they anticipate taking to achieve the gains in efficiency."⁴⁹

78. Specifically, the Brattle Report, in conjunction with the Parties' management, could have identified the specific technologies, policies, practices, or other factors that lead to supposed greater efficiency. The Brattle Report makes no attempt to identify any such best practices. It

⁴⁸ Brattle Report, ¶105.

⁴⁹ MEGs, ¶12.13.

does not appear that Rogers or Shaw had identified any such efficient practices as of April 2022, based on both the examination of Marisa Fabiano, a representative of Rogers (“**Ms. Fabiano**”) examined pursuant to the Efficiency Timing Agreement (“**ETA**”) between Rogers and Shaw and the Commissioner (“**Fabiano Examination**”), and the examinations of Linda Thomas and Damian Poltz, representatives of Shaw (“**Ms. Thomas**” and “**Mr. Poltz**”), who were also examined pursuant to the ETA (“**Thomas/Poltz Examination**”).⁵⁰

79. Nevertheless, the Brattle Report assumes, without foundation, that any differences in Rogers and Shaw KPIs where Rogers is allegedly more efficient than Shaw are due to relative Shaw inefficiency and not simply measurement error or differences in operational conditions between the two firms. For example, the Brattle Report calculates a Rogers KPI for the [REDACTED]

[REDACTED] but it offers no explanation or analysis describing to what this

⁵⁰ Ms. Thomas “hypothesize[d]” on how or why Rogers has “better or more efficient methods or policies or procedures than Shaw.” She stated, “I can hypothesize, I can’t say because I haven’t been inside their organization, but they’re a larger organization with more scale, and so they may have had the opportunity to implement better systems or better management practices. And, you know, perhaps they’ve been – had better assessment of KPIs and managing the performance...I assume it’s, you know, better operations as a result of their relative scale relative to ours.” (Thomas/Poltz Examination, Q159-160, 60:24 – 61:14) RDMM00001_000000003.

Ms. Thomas further explained that “we don’t really have visibility to what their plans are from an organizational perspective, so I can speculate, but I really don’t know what their organizational plans are. And I don’t think we’ll know that before close.” (Thomas/Poltz Examination, Q170, 64:18-22). Ms. Thomas agreed that “so far [there has] not been any underlying analysis or, sort of, draft projections or talk about how you would implement Rogers’ [REDACTED] methods and policies to Shaw.” (Thomas/Poltz Examination, Q177, 66:2-9) RDMM00001_000000003.

Similarly, Ms. Fabiano, when asked in her ETA Examination what are “the methods or policies and procedures that would be implemented in Shaw’s [REDACTED]...labour function that would help you get this efficiency?”, Ms. Fabiano replied, “...I don’t have those measures in front of me. I would imagine if I were in charge of that area for [REDACTED] they would have the procedures, the tools that we have on our side, we would be then implementing those same policies, procedures onto the Shaw side, and that would be how we would gain that efficiency.” (Fabiano Examination, Q316, 96:8-22) RDMM00001_000000006.

measured difference is attributable.⁵¹ Assuming without investigation that differences in KPIs reflect differences in relative efficiency and that the [REDACTED] [REDACTED] is speculative and without foundation.

b) The Brattle Report does not investigate why KPIs differ between Rogers and Shaw

80. The Brattle Report assumes that differences in KPIs between Rogers and Shaw represent different levels of efficiency that could be partially or fully ameliorated with the Rogers Transaction. However, this is not necessarily the case. There are other reasons why a measured KPI could differ between Rogers and Shaw that do not relate to different levels of efficiency.

81. It is well understood that, “[c]ausation is not the same as association. The association between two variables may be driven by a lurking variable that has been omitted from the analysis.”⁵² Generally, “lurking variables are called confounders or confounding variables.”⁵³ For instance, in the [REDACTED]

[REDACTED] Similarly, the KPI could differ because Rogers uses other resources besides [REDACTED] leading the Rogers KPI to erroneously appear to be more efficient. As an example, if Rogers [REDACTED] [REDACTED] then Rogers will appear on a [REDACTED] KPI to be more

⁵¹ Brattle Report, [REDACTED]

⁵² Kaye, David H. and David A. Freedman, “Reference Guide on Statistics,” in, *Reference Manual on Scientific Evidence, Third Edition*, Federal Judicial Center 2011, p. 262 [RBCH00045_000000007].

⁵³ Kaye, David H. and David A. Freedman, “Reference Guide on Statistics,” in, *Reference Manual on Scientific Evidence, Third Edition*, Federal Judicial Center 2011, p. 264 [RBCH00045_000000007].

efficient than Shaw for reasons that are unrelated to relative efficiency. I refer to factors that explain the differences between measured Rogers and Shaw KPIs, but which do not relate to different levels of efficiency, as “**Confounding Factors.**”

82. In the presence of potential Confounding Factors, the appropriate response is to investigate and, if necessary, control for such confounding factors. However, the Brattle Report does not investigate whether Confounding Factors explain any differences in Rogers and Shaw KPIs. Rather, the Brattle Report assumes without investigation that differences in Rogers and Shaw KPIs arise from differences in efficiency that can be wholly or partially remedied in the Rogers Transaction.

83. However, as I show below, at least certain differences in KPIs [REDACTED] appear to relate to different operating environments of Rogers and Shaw, which would be Confounding Factors, and do not necessarily relate to differences in efficiency.

(1) [REDACTED]

84. I first discuss the Confounding Factor related to the measurement of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵⁴ The Brattle Report uses a KPI of [REDACTED]
[REDACTED] The Brattle Report calculates that each [REDACTED] supports [REDACTED] while

⁵⁴ Brattle Report, ¶98.

each [REDACTED] supports [REDACTED]⁵⁵ Under this measure of productivity, a measured KPI which shows Rogers' Field Operations Clerical employees supporting a greater number of subscribers than Shaw's would indicate that Rogers is more efficient than Shaw. The Brattle Report then assumes that post-merger, legacy Shaw Field Operations Clerical employees will support [REDACTED]⁵⁶

85. The Brattle Report acknowledges both that there is [REDACTED]

[REDACTED]

[REDACTED]⁵⁸ As a result, it is reasonable to conclude that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Brattle Report could have analysed this Confounding Factor by [REDACTED]

[REDACTED] Such an analysis could have revealed

[REDACTED]

[REDACTED]

⁵⁵ Brattle Report, Schedule 2.1, row [5].

⁵⁶ Brattle Report, Schedule 2.1.3. The Brattle Report explains, "In the wireline segment, since Rogers is more efficient than Shaw (has higher wireline subscribers per employee), I assume the post-transaction efficiency of Shaw employees as the weighted average of 80.0% of Rogers pre-transaction efficiency and 20.0% of Shaw pre-transaction efficiency." (Brattle Report, Schedule 2.1.3, note [7]).

⁵⁷ Brattle Report, Schedule 2.1.3.

⁵⁸ The Brattle Report states, "For example, I have assumed that Shaw's field operations personnel will not achieve the level of efficiency of Rogers due to less population density." (Brattle Report, fn 102). The Brattle Report uses an assumption of 80% to account for this difference and explains, "In the wireline segment, since Rogers is more efficient than Shaw (has higher wireline subscribers per employee), I assume the post-transaction efficiency of Shaw employees as the weighted average of 80.0% of Rogers pre-transaction efficiency and 20.0% of Shaw pre-transaction efficiency." (Brattle Report, Schedule 2.1.3, note [7])

█ The Brattle Report did not perform this analysis, however, and there is no reliable evidence that Rogers has a more efficient █

86. Because the Brattle Report offers no reliable evidence that █

█ are Not Substantiated.

(2) █

87. I next discuss the Confounding Factor related to the measurement of Supply Chain labour efficiencies using the KPI Method. The Supply Chain function “includes employees who oversee supply chain and logistics strategy, including order fulfillment (e.g., for Rogers, shipping wireless devices ordered through its digital channel)”.⁵⁹ The Brattle Report uses a KPI of subscribers per employee to calculate the claimed Supply Chain labour efficiency. The Brattle Report calculates that each Shaw Supply Chain Clerical employee supports █

█⁶⁰ That is, the Brattle Report calculates that, on average, █ supports █

88. This █

█ is an indication that the Brattle Report is not █

⁵⁹ Brattle Report, ¶98b.

⁶⁰ █

[REDACTED] [REDACTED] The Brattle Report notes in a footnote to its exhibit that [REDACTED]

[REDACTED]

[REDACTED]⁶¹

89. The fact that Rogers [REDACTED] means that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Brattle Report did not do so. As a result, there is no reliable evidence that the [REDACTED]

[REDACTED]

90. Because the Brattle Report offers no reliable evidence that Rogers has a more efficient

[REDACTED] than Shaw, the calculated [REDACTED]

[REDACTED] Not Substantiated.

(3) [REDACTED]
[REDACTED]

91. I next discuss the Confounding Factor related to the measurement of [REDACTED]

[REDACTED] using the KPI Method. The [REDACTED]

[REDACTED]

[REDACTED]⁶² The Brattle Report uses a KPI of [REDACTED]

⁶¹ Brattle Report, Schedule 2.1.3, Note [29].

⁶² Brattle Report, ¶98d.

[REDACTED] to calculate the claimed [REDACTED] This Claimed Efficiency arises for two reasons: [REDACTED]

[REDACTED] The Brattle Report calculates that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

92. The [REDACTED]
[REDACTED] The Brattle Report could have analysed [REDACTED]
[REDACTED] but it did not do so. [REDACTED]
[REDACTED] Not Substantiated.

(4) [REDACTED]

93. The Brattle Report does not include [REDACTED]
[REDACTED]
[REDACTED]⁶⁴ This omission serves to overstate the Claimed Efficiencies.

94. The KPI used by the Brattle Report is the [REDACTED] The Brattle Report measures that [REDACTED]

⁶³ Brattle Report, Schedule 2.1.5.

⁶⁴ Brattle Report, Schedule 2.1.2, Row [6]

[REDACTED]

[REDACTED]

[REDACTED] However, this assumption is in conflict with the remainder of the Brattle Report's labour efficiency analyses. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

96. The fact that there are [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(5) Summary – KPI Method

97. The Parties have not identified any specific [REDACTED] The Brattle Report’s KPI Method begins by measuring KPIs, but it does not investigate why those KPIs might differ. Specifically, the Brattle Report assumes with no investigation that differences in measured KPIs reflect differences in relative efficiency that can be at least partially ameliorated in the Rogers Transaction.

98. The Brattle Report does not examine the extent to which Confounding Factors are the cause of different Rogers and Shaw KPIs. As I demonstrated above, there are several [REDACTED]

[REDACTED]

[REDACTED] In the presence of potential Confounding Factors, the appropriate response is to investigate and, if necessary, control for confounding factors. Based upon the observed shortcomings in the Brattle Report’s analysis, I classify the Claimed Efficiencies calculated using the KPI Method as Not Substantiated.

2. Assumed Percentage Reduction Method

99. The Brattle Report's [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

a) The Brattle Report's calculations

100. [REDACTED]
[REDACTED]

Below, I present an example of this Brattle Report calculation for the [REDACTED]
[REDACTED]⁶⁸

101. As shown in the table above, for each [REDACTED]
[REDACTED] In this case, the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

102. As seen in this above example, the calculation of this efficiency is determined by the

[REDACTED] assumed by the Brattle Report. The [REDACTED]
[REDACTED]

[REDACTED]

69 [REDACTED]
[REDACTED]

103. As seen in this table, the Brattle Report assumes [REDACTED]
[REDACTED] The Brattle Report states the bases for
these [REDACTED]
[REDACTED]
[REDACTED]”⁷⁰ The Brattle
Report provides no factual or analytical foundation for any of the [REDACTED]
[REDACTED] The Brattle Report provides no independent substantiating evidence or analysis for
the [REDACTED] that it applies. The Brattle Report does not provide evidence
that [REDACTED]
[REDACTED]

104. Because there is no economic analysis underlying these calculations, and the [REDACTED]
[REDACTED] I classify the [REDACTED]
[REDACTED] as Not Substantiated.

b) [REDACTED]
[REDACTED]
[REDACTED]

105. As I discuss above, the Brattle Report does not consistently use its KPI Method but
instead used an [REDACTED]
which yields results that are Not Substantiated. In this section, I prepare alternative illustrative
calculations of these [REDACTED] using the KPI Method. While it is subject to
the same shortcomings of the KPI Method discussed above, the KPI Method is based on factual

⁷⁰ Brattle Report, ¶109.

data and is, in my opinion, more reliable than the unfounded Brattle Report's [REDACTED]
[REDACTED]

106. The Brattle Report states that it employed the [REDACTED]
because, "there is no KPI that would meaningfully evaluate [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

107. Thus, as an alternative to the Brattle Report's [REDACTED] I
calculate these efficiencies using the KPI based on [REDACTED]
[REDACTED]

108. Note that using the KPI Method has the limitations discussed above – for example,
Confounding Factors – but, even so, using KPIs [REDACTED]
[REDACTED]
[REDACTED] Though I

⁷¹ Brattle Report, ¶109.

⁷² [REDACTED]
[REDACTED]

⁷³ [REDACTED]
[REDACTED]

am not able to investigate potential Confounding Factors, the KPI Method's [REDACTED]
[REDACTED]s are based on an objective KPI measure of efficiency, whereas the [REDACTED]
[REDACTED] Rather, the [REDACTED]
[REDACTED] are simply what the Brattle Reports assumes they are.

109. I utilize the KPI method using the [REDACTED] KPI in the same fashion as the
Brattle Report did for the [REDACTED]

[REDACTED] As the Brattle
Report explains, [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] In my calculation using the

[REDACTED] I have also assumed, consistent with the Brattle Report, that [REDACTED]

[REDACTED] Like
the Brattle Report, I assume that [REDACTED] even though

[REDACTED] 76

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

110. I summarize the results of the [REDACTED]
[REDACTED]
[REDACTED] This occurs because Rogers
is [REDACTED]
[REDACTED] I thus calculate a
net estimated [REDACTED]
[REDACTED]⁷⁷

111. [REDACTED]
[REDACTED]⁷⁸

3. [REDACTED]

112. In this section, I present an illustrative calculation of the [REDACTED]
[REDACTED] which is an alternative to the [REDACTED]
[REDACTED] in the Brattle Report. In this calculation, I include the Claimed Efficiencies
calculated by the Brattle Report under the KPI Method for the Field Operations, Network, Credit
Fraud & Billing, and Corporate Real Estate Labour, despite the methodological problems in the
Brattle Report's calculations that I described above. For the reasons discussed above, [REDACTED]
[REDACTED]
[REDACTED] I omit the Brattle Report's KPI Method analysis of the
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] because that analysis is skewed [REDACTED]

For all other [REDACTED] I use the values from my [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Other [REDACTED] issues

115. In this section, I discuss the assumptions the Brattle Report uses to estimate the [REDACTED]

[REDACTED] The

Brattle Report presents the “[REDACTED]

[REDACTED]

[REDACTED]

⁷⁹ Brattle Report, Schedule 2.1.

⁸⁰ Brattle Report, Schedule 2.1.8.

a) **The Brattle Report's use of [REDACTED]**

116. The Brattle Report states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] When assessing the assumption as to whether the

[REDACTED] one would

expect an analysis that may compare the [REDACTED]

[REDACTED] The Brattle Report has provided no such analysis.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) **Rogers' estimated [REDACTED]**

118. The Brattle Report's assumptions used to calculate [REDACTED]

[REDACTED] for the Rogers Transaction is inconsistent with its own assumption used to

⁸¹ Brattle Report, Schedule 2.1.8.

⁸² ROG00130458, p. 6.

⁸³ ROG00130458, p. 39.

[REDACTED]

119. However, the [REDACTED] assumptions used to calculate the Videotron Productive Efficiencies are inconsistent with the [REDACTED]

[REDACTED]⁸⁷ As an illustration of the effect of this inconsistency, in

[REDACTED]

⁸⁴ Brattle Report, ¶198.

⁸⁵ Brattle Report, Schedule 3.1.

⁸⁶ Brattle Report, ¶198.

[REDACTED]

⁸⁸ Brattle Report, ¶198.

[REDACTED]

[REDACTED]

[REDACTED]

120. When assessing and estimating the Parties' [REDACTED] one would expect an analysis that may include, for example, a [REDACTED]

[REDACTED] The Brattle Report has provided no such documentation, foundation, or analysis and in fact, as I showed above, [REDACTED]

[REDACTED]

[REDACTED]

B. [REDACTED]

121. The Brattle Report explains that the [REDACTED] will be realized because the Merged Company will benefit from [REDACTED]

[REDACTED]⁹⁰ As shown in the Brattle Report's [REDACTED]

[REDACTED]

122. The Brattle Report calculated this figure based on its [REDACTED]

[REDACTED] The magnitude of the [REDACTED] utilized in this calculation by the Brattle Report is Not Substantiated for the reasons discussed above.

[REDACTED]

[REDACTED]

123. In Exhibit [REDACTED]
[REDACTED]
[REDACTED]

C. [REDACTED]

124. The Brattle Report calculates the savings [REDACTED]
[REDACTED]⁹¹ The Brattle Report
provides the [REDACTED]
[REDACTED] I first discuss the Brattle Report’s analysis of the [REDACTED] and
then discuss a Brattle Report error in how it treated the cost to achieve this Claimed Efficiency.

1. **Analysis of the [REDACTED]**

125. The Brattle Report does not appear to undertake any investigation of whether the [REDACTED]
[REDACTED] can be let go without compromising quantity or quality of service. For the
purposes of this efficiency, however, I conservatively assume this [REDACTED]
[REDACTED]

126. [REDACTED]
[REDACTED]
[REDACTED] real estate is
likely to be reduced absent the Rogers Transaction. [REDACTED]

⁹¹ [REDACTED]

⁹² [REDACTED]

⁹³ Brattle Report, ¶71a.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁹⁴ RBCH00045_000000006.

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

127. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The Claimed Efficiencies with respect to [REDACTED] are Not Substantiated.

128. Based on these results, it does not appear that the Brattle Report investigated whether these [REDACTED] were likely to occur in the absence of the Rogers Transaction. Nevertheless, I conservatively assume that the Claimed Efficiencies for the [REDACTED]
[REDACTED]

2. Error in treatment of cost to achieve

129. The Brattle Report calculates that the cost to achieve the [REDACTED] Claimed Efficiencies is a one-time undiscounted [REDACTED]⁹⁵ which the Brattle Report assumes would occur equally in Years 1 and 2 after the Rogers Transaction [REDACTED]
[REDACTED]⁹⁶ However, when calculating the net resource savings, the Brattle Report

⁹⁵ [REDACTED]

⁹⁶ [REDACTED]

erroneously adds this cost to achieve to this Claimed Efficiency, rather than appropriately subtracting this cost to achieve.⁹⁷ Correcting this error by subtracting, rather than adding, the cost to achieve has the effect of reducing the Brattle Report's estimate of the 10-year undiscounted [REDACTED] by [REDACTED]

D. [REDACTED]

130. The Brattle Report explains that, [REDACTED]
[REDACTED]
[REDACTED]⁹⁸ The Brattle Report calculates the efficiencies as equal to [REDACTED]
[REDACTED]⁹⁹

131. There is no supporting calculation or analysis underpinning the assumptions of the 95% savings percentage for ad agency costs or the 75% savings of the content creation costs, and Rogers has conceded that "[REDACTED]"
[REDACTED]¹⁰⁰ Nevertheless, the fact that Rogers will cease the use of the Shaw brand implies that some savings are likely to occur.

132. I conservatively classify these Claimed Efficiencies as Substantiated.

⁹⁷ Brattle Report, Schedule 2, row [7].

⁹⁸ Brattle Report, ¶137.

⁹⁹ Brattle Report, ¶139.

¹⁰⁰ RBCH00012_000000996.

E. Savings from [REDACTED]

133. The Brattle Report states that, “Rogers intends to consolidate the Shaw and Rogers wireline networks to create a national wireline network.”¹⁰¹ In doing so, Rogers has a [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁰³

134. The Brattle Report calculates this Claimed Efficiency based on the [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁰¹ Brattle Report, ¶146.

¹⁰² Brattle Report, ¶¶145-147.

¹⁰³ Brattle Report, ¶149.

¹⁰⁴ Brattle Report, Schedule 2.5.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As a result, it is an Engineering Input. The Brattle Report does not analyse the reliability of this input.

137. The Brattle Report offers no independent analysis of the Synergy % Engineering Input and appears instead to accept the assertions of Rogers' management. The Brattle Report has offered no analysis indicating that the claimed cost reductions will occur with no reduction in quantity or quality of output. The Brattle Report thus has no reliable basis for its opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this Claimed Efficiency as Not Substantiated.

138. Since this efficiency is calculated on the basis of Engineering Inputs, I classify this efficiency as an Engineering Opinion.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F. [REDACTED]

139. The Brattle Report states that, [REDACTED]
[REDACTED]¹⁰⁷ The Brattle Report states
that, [REDACTED]
[REDACTED]
[REDACTED]¹⁰⁸

140. The total undiscounted amount of this efficiency is a one-time savings of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹¹⁰

141. The calculation of the [REDACTED] is based on technical engineering analysis and this input is thus an Engineering Input.

142. The Brattle Report offers no independent analysis of the claim that Rogers will save on the claimed [REDACTED] and appears instead to accept the assertions of management, and possibly McKinsey. The Brattle Report has offered no analysis indicating that the claimed cost

¹⁰⁷ Brattle Report, ¶155.

¹⁰⁸ Brattle Report, ¶156. Note that the Brattle Report does not consider whether there might be an offset as the divested Freedom will not be able to use these assets for its small cells.

¹⁰⁹ Prevost Witness Statement, ¶111.

¹¹⁰ Prevost Witness Statement, Exhibit 55, p. 8.

reductions will occur with no reduction in quantity or quality of output. The Brattle Report thus has no reliable basis for its opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this Claimed Efficiency as Not Substantiated.

143. Since the calculation of this efficiency is based on Engineering Inputs, I classify this efficiency as an Engineering Opinion.

G. [REDACTED]

144. The Brattle Report states that there are three other components to network-related integration activities, which I discuss below.

1. Elimination of duplicate long-haul routes

145. The Brattle Report describes this Claimed Efficiency:

[REDACTED]

146. The Brattle Report presents its value of this Claimed Efficiency in its [REDACTED]

The claimed [REDACTED]

[REDACTED] The notes to the schedule indicates that the Brattle Report source for these figures is the

[REDACTED]

[REDACTED]¹¹² which likewise contains hard-coded values. It appears that the source of

these figures is a Rogers presentation, [REDACTED]

111 [REDACTED]

112 [REDACTED]

147. Based upon my review of this presentation, I conclude that these efficiencies are calculated based on Engineering Inputs.

148. The Brattle Report offers no independent analysis of the claimed [REDACTED] and appears instead to accept the assertions of management. The Brattle Report has offered no analysis indicating that the claimed cost reductions will occur with no reduction in quantity or quality of output. The Brattle Report thus has no reliable basis for its opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this Claimed Efficiency as Not Substantiated.

149. I classify the calculated efficiencies as an Engineering Opinion.

2. [REDACTED]

150. Rogers [REDACTED] This efficiency contemplates [REDACTED]

[REDACTED]¹¹³ The Brattle Report indicates that [REDACTED]
[REDACTED]
[REDACTED]¹¹⁴

151. Mr. Prevost discusses this efficiency as well, stating:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹¹³ [REDACTED]

¹¹⁴ [REDACTED]

[REDACTED]

152. The savings figures utilized by the Brattle Report are hard coded in its [REDACTED]

The cited source of the figures is the [REDACTED]

[REDACTED]

[REDACTED] ⁷

153. Based upon my review of this presentation, I conclude that these efficiencies are calculated based on Engineering Inputs.

154. The Brattle Report offers no independent analysis of the efficiency related to [REDACTED] [REDACTED] and appears instead to accept the assertions of management. The Brattle Report has offered no analysis indicating that the claimed cost reductions will occur with no reduction in quantity or quality of output. The Brattle Report thus has no reliable basis for its opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this Claimed Efficiency as Not Substantiated.

155. I classify the calculated efficiencies as an Engineering Opinion.

3. [REDACTED]

156. The Brattle Report discusses other [REDACTED] which are, on net, a negative efficiency. The Brattle Report states:

[REDACTED]

¹¹⁶ Brattle Report, Schedule 2.7.2.

[REDACTED]

In addition to the savings set out above, Rogers is required to undertake various integration initiatives as set out in [REDACTED]. Certain of the initiatives will result in some cost savings but, on balance, the [REDACTED]

157. The Brattle Report's figures are all hard-coded, and the Brattle Report schedules reference the [REDACTED]

[REDACTED]¹¹⁹

158. The Brattle Report offers no independent analysis of the [REDACTED] and appears instead to accept the assertions of management. The Brattle Report has offered no analysis that the claimed [REDACTED] will produce the needed outcomes for the claimed cost. The Brattle Report thus has no reliable basis for its opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this negative Claimed Efficiency as Not Substantiated.

159. I classify the calculated negative efficiencies as Engineering Opinions.

H. [REDACTED]

160. The [REDACTED]

¹¹⁸ Brattle Report, ¶165

[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]¹²⁰

161. The Brattle Report treats all [REDACTED]
[REDACTED]¹²¹

1. [REDACTED]

162. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

163. The total claimed costs savings related to [REDACTED]
[REDACTED]
[REDACTED]¹²³ The source for the [REDACTED]
[REDACTED]
[REDACTED]¹²⁵

164. The Brattle Report does not include any [REDACTED]
[REDACTED]

¹²⁰ Prevost Witness Statement, ¶120.

¹²¹ See Brattle Report Schedules 2.8-2.8.5.

¹²² Brattle Report, Schedule 2.8.1, rows [1] – [3].

¹²³ Brattle Report, Schedule 2.8.1.

¹²⁴ Prevost Witness Statement, ¶123.

¹²⁵ Brattle Report, Schedule 2.8.5.

[REDACTED] This would likely, on average, increase consumer wait times and, by extension, reduce the quality of the merged firm's product. The value of any such reduction in quality (i.e., the value of consumers' time) should be an offset to the cost savings. I do not attempt to quantify this offset.

165. I classify the Claimed Efficiencies for the [REDACTED]
[REDACTED] as Substantiated.

2. [REDACTED]

166. The Brattle also calculates claimed efficiencies for the [REDACTED]

[REDACTED] The Brattle Report shows the calculation of these Claimed Efficiencies in its

[REDACTED] The Brattle Report states:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

168. The Prevost Witness Statement states that, given the Rogers Transaction, Rogers will

[REDACTED] This is not surprising, as [REDACTED]

[REDACTED] The Prevost Witness Statement does not indicate that [REDACTED]

169. Note that, if [REDACTED]

[REDACTED] I have not seen any such documentation cited as support for this Claimed Efficiency.

170. In the absence of evidence that [REDACTED]

[REDACTED] I classify this efficiency as Not Substantiated.

I. [REDACTED]

171. The Brattle Report calculates [REDACTED] based on two categories of savings: [REDACTED]

172. As a factual matter, the Shaw [REDACTED] in the Rogers Transaction. The savings from [REDACTED]

173. The Brattle Report contemplates that [REDACTED] The [REDACTED] is an estimate for which the Brattle Report has provided no evidence, but I agree that there would be savings. I conservatively classify the [REDACTED] as Substantiated.

J. [REDACTED]

174. The Brattle Report describes four categories of claimed IT savings:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

175. The Brattle Report summarizes the Claimed Efficiencies in its [REDACTED]

1. [REDACTED]

176. The Brattle Report's figures for the [REDACTED] are hard-coded, and the Brattle Report schedules reference the [REDACTED]

[REDACTED]¹²⁹ The Brattle Report cites [REDACTED]

¹²⁸ [REDACTED]

¹²⁹ The relevant figures appear to be from, ROG00841432, Tab [IT]. Data centre rationalization appears in rows 6-7, application portfolio rationalization appears in row 11, and managed services optimization appears in row 9.

[REDACTED] I also examined the backup file to the Fabiano Witness Statement, [REDACTED]
[REDACTED], but that document likewise did not provide any insight to
how the Claimed Efficiencies were calculated.

177. The Brattle Report offers no independent analysis of the claimed [REDACTED]
[REDACTED]
[REDACTED] and appears instead to accept the assertions of management. The Brattle
Report has offered no analysis indicating that the claimed cost reductions will occur with no
reduction in quantity or quality of output. The Brattle Report thus has no reliable basis for its
opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this
Claimed Efficiency as Not Substantiated.

178. I classify these calculated efficiencies as Engineering Opinions.

179. Even if these [REDACTED] were Substantiated in the Brattle Report, there
would need to be an adjustment for the pecuniary nature of [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Because there is no adjustment for the
pecuniary nature of [REDACTED] in the Brattle Report, the numbers, were they to be Substantiated,
would be overstated by the portion that represents pecuniary savings.

2. [REDACTED]

180. The Brattle Report explains the claimed [REDACTED] efficiency:

Rogers has estimated that it will save [REDACTED] per year from the [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

181. The Brattle Report states that it reviewed this item with Shaw management:

[REDACTED]

182. The Brattle Report lists the names of the line items that it concluded were duplicates in Brattle Report Schedule [REDACTED] and it references a document, [REDACTED] [REDACTED] in the notes to that schedule. The Brattle Report's backup Excel file links this exhibit to the tab [REDACTED]. The savings figure in that tab are all hard-coded numbers, which appear to be budgeted figures for each line item that the Brattle Report assumes to be eliminated.

183. The Brattle Report does not describe the nature of the [REDACTED] nor does it supply any data or analysis to support its conclusions that those [REDACTED]

184. The Brattle Report does not analyse the underlying calculations of the cost savings, if any, and appears instead to accept the assertions of management. The Brattle Report has offered no analysis indicating that the claimed cost reductions will occur with no reduction in quantity or quality of output. The Brattle Report thus has no reliable basis for its opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this Claimed Efficiency as Not Substantiated.

¹³⁰ Brattle Report, ¶184.

¹³¹ Brattle Report, ¶184.

185. It is likely that cost savings estimates regarding [REDACTED] require Engineering Inputs. Accordingly, I classify the claimed Project Portfolio Efficiency as an Engineering Opinion.

K. Savings relating to network separation initiative

186. In July 2022, the Rogers network experienced an outage for approximately 19 hours.¹³² In response, Rogers committed, among other things, to splitting its wireline and wireless core networks. The Brattle Report states that using the Shaw wireline core would generate cost savings in this project:

As a result of the recent Rogers network outage, Rogers has publicly committed to physically separating its wireline and wireless networks in order to ensure the availability of an alternate network. The Rogers Transaction will provide Rogers the opportunity to immediately acquire the Shaw wireline core and, as a result, separate its wireline and wireless networks and achieve significant cost savings.¹³³

187. The Brattle Report indicates that Rogers intends to spend [REDACTED]¹³⁴

The Brattle Report states that Rogers can save [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹³⁵

¹³² RBCH00045_000000003.

¹³³ Brattle Report, ¶186.

¹³⁴ Brattle Report, ¶187.

¹³⁵ [REDACTED]

188. The figures utilized by the Brattle Report are hard-coded, round numbers.¹³⁶ The support offered by the Brattle Report for the total [REDACTED] figure is a PowerPoint slide, that includes a watermark titled “Draft”, listing the three numbers hard-coded in the exhibit.¹³⁷

189. The Brattle Report offers no independent analysis related to the separation of the Rogers network and appears instead to accept the assertions of management. The Brattle Report has offered no analysis indicating that the claimed cost reductions will occur with no reduction in quantity or quality of output. The Brattle Report thus has no reliable basis for its opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this Claimed Efficiency as Not Substantiated.

190. I classify this Claimed Efficiency as an Engineering Opinion.

L. Other costs to achieve the Rogers Transaction

191. The Brattle Report reports certain transition costs of integrating the Shaw business into Rogers, stating:

Following the close of the Rogers Transaction, [REDACTED]
[REDACTED]
[REDACTED] These projects are a necessary component of the Rogers Transaction and as such related costs count negatively towards Productive Efficiencies.¹³⁸

192. The Brattle Report lists these costs in its [REDACTED]. Most of these costs (as shown in Schedules 2.12.1-2.12.3) relate to [REDACTED]. The integration costs in the Brattle Report for these network and software/systems integration sum to

¹³⁶ [REDACTED]

¹³⁷ [REDACTED]

¹³⁸ Brattle Report, ¶191.

approximately [REDACTED] over ten years (undiscounted).¹³⁹ Rogers will need to undertake these sorts of [REDACTED]

[REDACTED] However, I believe that these costs are calculated using Engineering Inputs, and I classify these (negative) efficiencies as Engineering Opinions. It is appropriate to deduct the cost of the [REDACTED] when calculating the net efficiencies, but I classify the figures in the Brattle Report as Not Substantiated.

193. The last category of integration expenses relates to [REDACTED] as seen in the Brattle Report [REDACTED] totaling an undiscounted [REDACTED]. The backup to the Brattle Report shows these costs as hard-coded numbers, which the Brattle Report does not analyse. There is no doubt that Rogers would need to make significant expenditures to [REDACTED] [REDACTED] but there is no evidence that the claimed amount is sufficient to successfully [REDACTED]. I classify this negative efficiency as Not Substantiated.

M. Substantiated Efficiencies and Illustrative Efficiencies Estimate for the Rogers Transaction

194. In [REDACTED] I calculate the 10-year discounted and undiscounted values of the Substantiated Efficiencies that would be lost in the event of a Blocking Order. In making these calculations, I adopt the Brattle Report's timing of the efficiencies implementation. I include:

[REDACTED]

[REDACTED]

¹³⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

195. As seen in this exhibit, this calculation yields Substantiated efficiencies with a 10-year undiscounted value of [REDACTED] and a 10-year discounted value of [REDACTED]

196. I also prepare the 10-year discounted and undiscounted values of the illustrative [REDACTED] [REDACTED] that I calculated above. Specifically, I include:

[REDACTED]

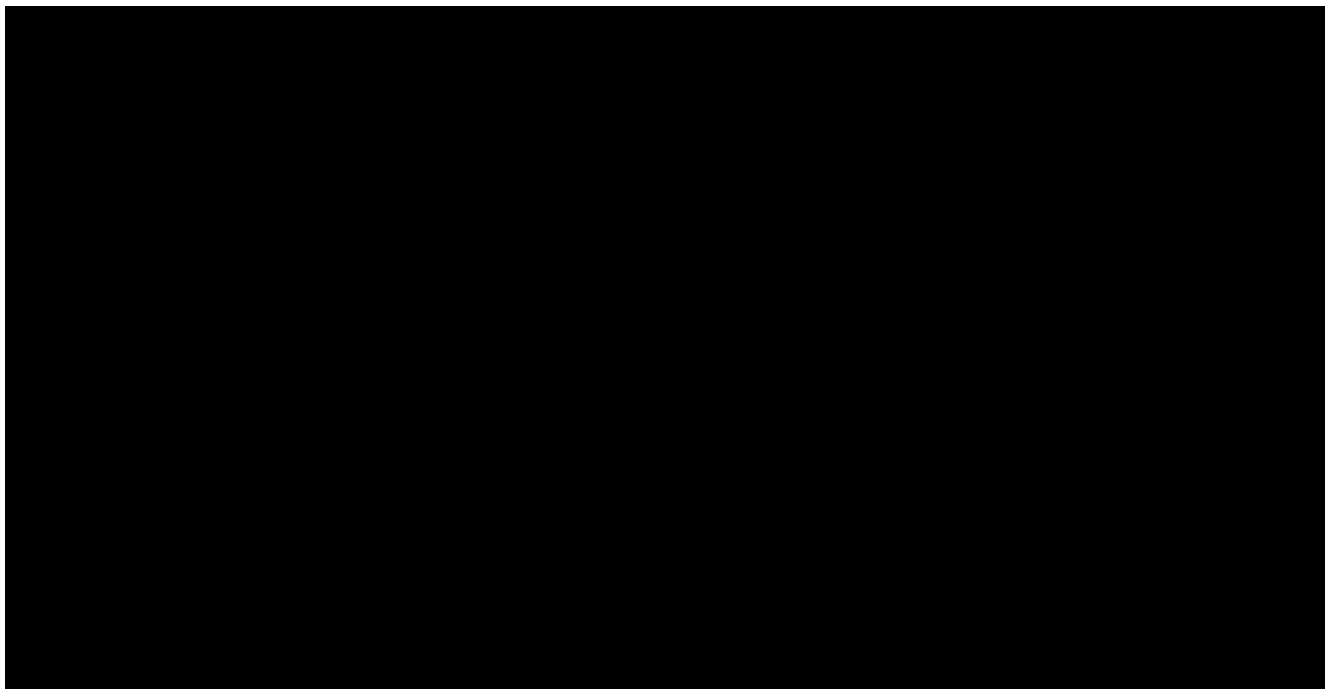
[REDACTED]

197. As seen in this exhibit, this calculation yields [REDACTED] with a 10-year undiscounted value of \$ [REDACTED] and a 10-year discounted value of [REDACTED] [REDACTED]

VII. ASSESSMENT OF THE VIDEOTRON DIVESTITURE CLAIMED EFFICIENCIES

198. The Brattle Report presents the Videotron Divestiture Claimed Efficiencies in its [REDACTED] which I reproduce below:¹⁴⁰

¹⁴⁰ [REDACTED]



199. As I discussed above in Section V of this report, the Brattle Report states in its summary opinion that the Videotron Divestiture Claimed Efficiencies “are likely to occur”.¹⁴¹ The reasons stated for this opinion are that “[the efficiencies] are consistent with Videotron’s integration planning documents and its intentions in this regard...” and the efficiencies “provide a significant economic incentive to Videotron management to implement the integration plans necessary to achieve those Productive Efficiencies.”¹⁴²

200. As I discussed in Section V above, however, the Brattle Report opinions that the Videotron Divestiture Claimed Efficiencies are likely to occur is not a reliable conclusion based on the stated reasons that they are consistent with integration planning documents and that management has incentives to implement the integration plan. Rather, I examine the extent to which the Brattle Report’s opinions are based on data and analyses. In this section, I discuss my

¹⁴¹ Brattle Report, ¶194.

¹⁴² Brattle Report, ¶194.

assessment of the extent to which the Videotron Divestiture Claimed Efficiencies are substantiated by data and reliable analyses.

A. Videotron [REDACTED]

201. The Brattle Report indicates that [REDACTED]

[REDACTED]³ The Brattle Report calculates its [REDACTED]

from the Videotron Divestiture based on [REDACTED] from Videotron

management, stating, “[REDACTED]

[REDACTED]¹⁴⁴

202. The Brattle Report backup file shows the overall savings calculation in its [REDACTED]

but it does not have any analysis to support these [REDACTED] beyond

management’s assertions.¹⁴⁵ The Brattle Report schedule cites a backup file titled, [REDACTED]

[REDACTED] but that file provides no analysis to support the claimed labour

reductions.

203. Videotron management can, of course, [REDACTED] but

for a cost savings to be an efficiency it must not result from, or cause, a reduction in quality or

quantity of output. The Brattle Report cites no independent substantiating evidence or analysis

to support these efficiencies. These claimed [REDACTED] are not substantiated without

data and analyses to support the claim that they can be achieved without a reduction in quantity

¹⁴³ [REDACTED]

[REDACTED]

[REDACTED]

and/or quality. The [REDACTED] from the Videotron Divestiture are Not Substantiated.

204. For illustrative purposes, I calculate the savings that would arise from the [REDACTED]
[REDACTED]
[REDACTED] I show the calculation of the efficiencies related to this headcount reduction in [REDACTED]
[REDACTED]
[REDACTED]¹⁴⁶

B. [REDACTED]

205. The Brattle Report calculates [REDACTED] as equal to the [REDACTED]
[REDACTED]
[REDACTED] The results are shown in the Brattle Report's [REDACTED] As I explained above, the Brattle Report has not supported the [REDACTED] that it uses in this calculation. Because the Brattle Report has not substantiated the underlying [REDACTED] that is an input into this calculation, the [REDACTED] are Not Substantiated.

206. For illustrative purposes, in [REDACTED]
[REDACTED]
[REDACTED]

¹⁴⁶ Brattle Report, Schedule 3.1.

[REDACTED]

C. [REDACTED]

207. The Brattle Report discusses the Claimed Efficiencies related to [REDACTED] in

[REDACTED] The Brattle Report states that the claimed recurring savings from [REDACTED]

[REDACTED] 148

208. Videotron's Mr. Lescadres states:

[REDACTED]

[REDACTED]

¹⁴⁷ Brattle Report, Schedule 3.2.

¹⁴⁸ Brattle Report, ¶213.

¹⁴⁹ Lescadres Witness Statement, ¶203.

¹⁵⁰ Brattle Report, Schedule 3.3.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

215. The Brattle Report offers no independent analysis of the basis of the Videotron post-Transaction budget and appears instead to accept the assertions of management. The Brattle Report has offered no analysis indicating that the claimed cost reductions will occur with no

156 [REDACTED]

157 [REDACTED]

158 [REDACTED]

¹⁵⁹ Brattle Report, Schedule 3.3.

reduction in quantity or quality of output. The Brattle Report thus has no reliable basis for its opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this Claimed Efficiency as Not Substantiated.

216. I classify this Claimed Efficiency as an Engineering Opinion.

D. [REDACTED]

217. The Brattle Report calculates claimed efficiencies related to [REDACTED]

[REDACTED] Videotron's Mr. Lescadres states:

[REDACTED]

218. [REDACTED]

[REDACTED]

[REDACTED]

1. [REDACTED]

219. This efficiency is calculated by Videotron based on a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

220. Mr. Lescadres states, [REDACTED]

[REDACTED]

[REDACTED]¹⁶² The [REDACTED] while maintaining the quality and quantity of output of the merged Videotron/Freedom firm is an Engineering Input.

221. The Brattle Report offers no independent analysis of the Videotron management's Engineering Input that [REDACTED] and appears instead to accept the assertions of management. The Brattle Report has offered no analysis indicating that the claimed cost reductions will occur with no reduction in quantity or quality of output. The Brattle Report thus has no reliable basis for its opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this Claimed Efficiency as Not Substantiated.

222. I classify this Claimed Efficiency as an Engineering Opinion.

2. [REDACTED]

223. The Brattle Report also includes claimed recurring operating savings for the Ottawa region RAN. The Brattle Report states that, [REDACTED]

161 [REDACTED]

162 [REDACTED]

[REDACTED]

224. The Brattle Report cites the Lescadres Witness Statement, which states the same figures:

[REDACTED]

225. Mr. Lescadres states, “[REDACTED]

[REDACTED]

[REDACTED] while maintaining the quality and quantity of output of the merged Videotron/Freedom firm is an Engineering Input.

226. The Brattle Report offers no independent analysis of Videotron management’s Engineering Input that [REDACTED] and appears instead to accept the assertions of management. The Brattle Report has offered no analysis indicating that the claimed cost reductions will occur with no reduction in quantity or quality of output. The Brattle Report thus has no reliable basis for its opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this Claimed Efficiency as Not Substantiated.

227. I classify this Claimed Efficiency as an Engineering Opinion.

163 [REDACTED]

164 [REDACTED]

165 [REDACTED]

E. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

229. I have reviewed the [REDACTED]¹⁶⁷ and confirmed that they are near to Freedom stores.¹⁶⁸ The specific source of the savings for [REDACTED]
[REDACTED]¹⁶⁹ The Brattle Report includes no additional labour at the remaining store, so it is possible that there will be a reduction in quality of service from this Claimed Efficiency.

230. Despite the potential reduction in quality of service, I conservatively classify this Claimed Efficiency as Substantiated.

F. [REDACTED]

231. The Brattle Report lists Claimed Efficiencies related to [REDACTED]
The Lescadres Witness Statement discusses this Claimed Efficiency:

¹⁶⁶ [REDACTED]

¹⁶⁷ RBCH00045_000000002.

¹⁶⁸ RBCH00045_000000001.

¹⁶⁹ [REDACTED]

[REDACTED]

232. [REDACTED]

[REDACTED] I classify this Claimed Efficiency as Substantiated.

G. [REDACTED]

233. The Brattle Report discusses this claimed efficiency:

[REDACTED]

234. Mr. Lescadres also discusses this claimed efficiency:

[REDACTED]

235. The Lescadres Witness Statement does not cite any exhibit in support of this statement.

170 [REDACTED]

171 [REDACTED]

172 [REDACTED]

173 [REDACTED]

236. As seen in its [REDACTED] the Brattle Report uses the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

237. As seen in the quotes above, the Lescadres Witness Statement indicates that its knowledge related to this Claimed Efficiency is based on information from the Videotron engineering department. This efficiency is thus dependent on Engineering Inputs.

238. The Brattle Report offers no independent analysis of Videotron management’s claimed savings of a total of [REDACTED] and appears instead to accept the assertions of management. The Brattle Report has offered no analysis indicating that the claimed cost reductions will occur with no reduction in quantity or quality of output. The Brattle Report thus has no reliable basis for its opinion that this Claimed Efficiency is likely to occur in the magnitude claimed. I classify this Claimed Efficiency as Not Substantiated.

239. I classify this Claimed Efficiency as an Engineering Opinion.

H. [REDACTED]

240. The Brattle Report notes that, just as there was a “[REDACTED]
[REDACTED]

[REDACTED]”¹⁷⁵ The Brattle Report includes
a [REDACTED]¹⁷⁶

241. There is no specific backup for the [REDACTED] figure, but I agree that there will be an

[REDACTED] This [REDACTED]

[REDACTED] Nevertheless, there is no
backup for this figure, and I conservatively classify this Videotron Divestiture [REDACTED] negative
efficiency as Not Substantiated.

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁷⁵ [REDACTED]

¹⁷⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VIII. CONCLUSION

246. I have reviewed and analysed the evidence provided by Respondents related to the Claimed Efficiencies set forth in the Brattle Report.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mark E. Zmijewski (Zme – yev’ -ski) Bio

Professor Zmijewski specializes in the areas of accounting, economics, and finance as they relate to valuation, financial analysis, and security analysis, or more generally, financial economics. He is Professor Emeritus at The University of Chicago Booth School of Business, and previously held the Charles T. Horngren Professorship and the Leon Carroll Marshall Professorship in his 30-year career at the Booth. In addition to his research and teaching activities, Professor Zmijewski also held the positions of Deputy Dean, Associate Dean for PhD Studies, and the Faculty Director of the Center for Research in Security Prices (CRSP), all at the Booth School of Business. Professor Zmijewski is a Senior Consultant to Charles River Associates, a consulting firm that provides economic, financial, and management consulting services. He is also a Senior Advisor to, and a member of, the Investment Committee at Patron Capital Partners (Funds IV and V), a private equity investment company with a focus on real estate related investments. Professor Zmijewski was a Founding Partner of Chicago Partners, LLC, which was acquired by Navigant Consulting. He is the former Managing Director of Navigant Economics (a subsidiary of Navigant Consulting) and a former member of the Corporate Executive Committee of Navigant Consulting.

Professor Zmijewski earned his BS in 1976, MBA in 1981, and PhD with a major in accounting and minors in economics and finance in 1983, all from the State University of New York at Buffalo. In addition to The University of Chicago, he has taught at the State University of New York at Buffalo and at York University in Toronto, Canada. He has taught various courses in accounting (financial accounting, managerial accounting, and advanced accounting/mergers and acquisitions), finance (corporate finance, financial strategy and corporate transactions, financial analysis, and valuation of companies and corporate transactions), and entrepreneurship. Professor Zmijewski’s research has focused on firm valuation and the ways in which various capital market participants use information to value securities. He has published articles in academic journals in the areas of accounting and financial economics and has co-authored a textbook (with Professor Robert Holthausen of The Wharton School of the University of Pennsylvania) on how to value companies, parts of companies, and the securities issued by companies, titled “Corporate Valuation: Theory, Evidence and Practice.” He has been an Associate Editor of *The Accounting Review*, and has been on the Editorial Boards of both the *Journal of Accounting Research* and *The Accounting Review*.

Professor Zmijewski has worked as a consultant or expert in litigation matters in US state and federal courts, in the Ontario Superior Court of Justice in Canada, in the Supreme Court of Victoria in Australia, and in US and international arbitrations. The issues on which he has consulted include: business valuation and securities valuation (valuation of corporate transactions, companies, and parts of companies, intangible assets and intellectual property, and securities); securities litigation (10b-5, section 11, section 12, ERISA, Martin Act, and insider trading); material adverse changes; mergers and acquisitions (appraisals and price disputes, analyzing merger synergies, corporate transactions, and the process of purchasing and selling companies); solvency and ability to pay (fraudulent conveyance, solvency assessment, and ability to pay government fines); antitrust litigation (analysis of merger efficiencies, failing firm defense, and financial analyses of alleged anticompetitive behavior); commercial and stockholder disputes (measurement of damages, accounting analyses, and economic assessment of transactions); accounting issues (measuring and analyzing revenue, cost structures, profitability, rates of return, interest rates, and other financial metrics and concepts); and creating and evaluating business plans.

The frameworks and tools used in his work are generally applicable to all industries, and he has applied his expertise in a broad range of sectors, including the airline, auto, chemical, computer hardware and software, credit card, energy, entertainment, financial services, for-profit education, health care, insurance, heavy and light manufacturing, pharmaceutical, retail, real estate investment fund, technology, telecommunications, and transportation industries, among others.

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PhD, Accounting
State University of New York
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MBA, Accounting
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BA, Accounting
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Academic employment

1984–Present	The University of Chicago Booth School of Business <i>Professor Emeritus</i> (2018–Present) <i>Charles T. Horngren Professor of Accounting</i> (2015–2018) <i>Leon Carroll Marshall Professor of Accounting</i> (1999–2015) <i>Deputy Dean</i> (1996–2011) <i>Professor of Accounting</i> (1992–1999) <i>Associate Dean for PhD Studies</i> (1995–1996) <i>Executive Director, Center for Research in Securities Prices (CRSP)</i> (1992–1998) <i>Associate Professor of Accounting</i> (1988–1992) <i>Assistant Professor of Accounting</i> (1984–1988)
1980–1984	<i>Assistant Professor of Accounting</i> , State University of New York at Buffalo
1979–1982	<i>Course Director</i> , York University, Toronto Canada
1977–1980	<i>Teaching Assistant</i> , State University of New York at Buffalo

Honors and awards

Business Information Professional of the Year—Education, Beta Alpha Psi, 2007.

Hillel J. Einhorn Excellence in Teaching Award, The Executive MBA Program, The University of Chicago Graduate School of Business, 1999.

Emory Williams Award for Excellence in Teaching, The University of Chicago, 1988

Competitive Manuscript Award, American Accounting Association, 1984.

Beta Alpha Psi, Honorary Accounting Society, 1981.

Beta Gamma Sigma, Honorary Business Society, 1980.

Grants

Research Grant, SEC and Financial Reporting Institute, 1985.

University Fellowship, State University of New York at Buffalo, 1979.

Graduate Fellowship, State University of New York at Buffalo, 1976–1978.

Publications

Corporate Valuation: Theory, Evidence and Practice (textbook). With Robert W. Holthausen, Cambridge Business Publishers, LLC, 1st Edition, 2014; 2nd edition, 2020.

“Valuation with Market Multiples: How to Avoid Pitfalls When Identifying and Using Comparable Companies.” With R. Holthausen. *Journal of Applied Corporate Finance*, Summer 2012.

“Pitfalls in Levering and Unlevering Beta and Cost of Capital Estimates in DCF Valuations.” With R. Holthausen. *Journal of Applied Corporate Finance*, Summer 2012.

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“Contemporaneous Announcements of Dividends and Earnings.” With R. Leftwich. *Journal of Accounting, Auditing, and Finance*, Autumn 1994.

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“An Evaluation of Alternative Proxies for the Market’s Expectation of Earnings.” With L. Brown, P. Griffin, and R.L. Hagerman. *Journal of Accounting and Economics*, 1987.

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“The Association Between the Magnitude of Quarterly Earnings Forecast Errors and Risk-Adjusted Stock Returns.” With R.L. Hagerman and P. Shah. *Journal of Accounting Research*, 1984.

“An Income Strategy Approach to the Positive Theory of Accounting Policy Setting/Choice.” With R.L. Hagerman. *Journal of Accounting and Economics*, 1981. Reprinted in *The Economics of Accounting Policy Choice*, Ray Ball and Clifford Smith, Jr., eds. McGraw-Hill, 1992.

“A Test of Accounting Bias and Market Structure: Some Additional Evidence.” With R.L. Hagerman. *Review of Business and Economic Research*, 1981.

“Some Economic Determinants of Accounting Policy Choice.” With R.L. Hagerman. *Journal of Accounting and Economics*, 1979.

Comments on “Earnings Forecasting Research: Its Implications for Capital Markets Research.” *International Journal of Forecasting*.

Dissertation committees

Sandip Madan, The University of Chicago, 1999, Member

Keith Bockus, The University of Chicago, 1998, Co-Chairperson

Beverly Walther, The University of Chicago, 1995, Member

Howard Bunsis, The University of Chicago, 1993, Co-Chairperson

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Sherri Jarrell, The University of Chicago, 1991, Member

Andrew Alford, The University of Chicago, 1990, Chairperson

Mark Lang, The University of Chicago, 1990, Member
Laureen Maines, The University of Chicago, 1990, Member
Walter Teets, The University of Chicago, 1988, Member
Siew Teoh, The University of Chicago, 1988, Member
Kirsten Ely, The University of Chicago, 1988, Member
M. Daniel Beneish, The University of Chicago, 1987, Member
Pat O'Brien, The University of Chicago, 1986, Member
W. Forbes Cavanagh, State University of New York at Buffalo, 1985, Member

University activities

Accounting Advisory Counsel, State University of New York at Buffalo, 1993–1995.
Faculty Facilitator, Leadership, Education, and Development (LEAD) Program, The University of Chicago, Graduate School of Business, 1989, 1991.
Dean's Advisory Committee on MBA Students and Curriculum, The University of Chicago, 1988.
Executive Director, Management Development Council, State University of New York at Buffalo, 1981–1984.
Advisor, Center for Management Development, State University of New York at Buffalo, 1979–1980.

Editorial service and boards

Associate Editor, *The Accounting Review*, 1993–1997.
Editorial Board, *Journal of Accounting Research*, 1988–1993.
Editorial Board, *The Accounting Review*, 1985–1987.

Ad hoc referee

Journal of Accounting, Auditing, and Finance
The Accounting Review
Contemporary Accounting Research
The Financial Review
Journal of Accounting and Economics
Journal of Accounting Research
Journal of Banking and Finance

Journal of Business

Journal of Forecasting

International Journal of Forecasting

Management Science

Professional organizations

American Accounting Association

The American Finance Association

Testimony, declarations, and other court filings and submissions in the past five years

Application of Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Co., Pinnacles Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company For a Determination of Applicants' Cost of Capital for Ratemaking Purposes. Before the Public Utilities Commission of the State of California. Opening Testimony of Mark Zmijewski on Behalf of the Applicants, filed September 1, 2022.

US Airways, Inc., for American Airlines, Inc., (as Successor and Real Party in Interest) v. Sabre Holdings Corporation; Sabre GLOB Inc.; and Sabre Travel International Limited. In the United States District Court Southern District of New York, Civil Action No. 1:11-cv-02725 (LGS). Deposition testimony August 24, 2021. Trial testimony May 10, 2022.

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Cineplex, Inc., Plaintiff, v. Cineworld Group PLC and 1232743 B.C. Ltd., Defendants. In the Ontario Superior Court of Justice (Commercial List), Case No. CV-20-00643387-00CL. Expert Report July 15, 2021. Reply Expert Report August 16, 2021. Trial testimony October 4, 2021.

In the Matter of the Amalgamation Agreement Between JMH Investments Limited and JMH Bermuda Limited and Jardine Strategic Holdings Limited and In the Matter of Section 106 of the Companies Act 1981. In the Supreme Court of Bermuda Civil Jurisdiction (Commercial Court). Affidavit filed September 21, 2021.

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In Re American Realty Capital Properties, Inc. Litigation. In the United States District Court for the Southern District of New York, C.A. No. 1:15-mc-00040-AKH. Deposition testimony July 26, 2019.

In Re Appraisal of Jarden Corporation. In the Court of Chancery of the State of Delaware, Consol. C.A. No. 12456-VCS. Deposition testimony May 2, 2018. Trial testimony June 26, 2018 and June 28, 2018. Affidavit July 26, 2019.

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Precision Castparts Corp. and PCC Germany Holdings GMBH v. Schulz Holding GMBH & Co. KG, et al. International Centre For Dispute Resolution, American Arbitration Association, Case No. 01-18-0001-0115. First witness statement November 16, 2018. Second witness statement May 17, 2019. Arbitration testimony July 1, 2019.

Reynolds American Inc. v. Third Motion Equities Master Fund Ltd, et al. State of North Carolina Forsythe County. In the General Court of Justice, Superior Court Division, Case No. 17 CVS 7086. Deposition testimony April 17, 2019. Trial testimony June 17, 2019.

In Re Appraisal of Stillwater Mining Company. In the Court of Chancery of the State of Delaware. Consol. C.A. No. 2017-0385-JTL. Deposition testimony November 27, 2018. Trial testimony December 13, 2018.

In Re Appraisal of Columbia Pipeline Group, Inc. In the Court of Chancery of the State of Delaware, Consol. C.A. No. 12736-VCL. Deposition testimony August 14, 2018. Trial testimony November 2, 2018.

Federal Trade Commission v. Tronox Limited, et al. In the United States District Court for the District of Columbia, Docket No. D09377. Deposition testimony May 15, 2018. Trial testimony May 31, 2018.

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 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 LTD.**

Intervenors

**ACKNOWLEDGEMENT OF EXPERT WITNESS
MARK E. ZMIJEWSKI**

I, Mark E. Zmijewski, 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 duty to assist the Tribunal impartially on matters relevant to his or her area of expertise.
2. This duty overrides any duty to a party to the proceeding, including to 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

Date



Mark E. Zmijewski

Exhibit D

Exhibit D

Documents Relied Upon

Court Documents

- Andrew C. Harington, “Report Assessing Productive Efficiencies Arising From The Proposed Transactions,” September 23, 2022, including exhibits, supporting work papers and appendices thereto
- Andrew C. Harington, “Initial Report Assessing Productive Efficiencies Arising from the Proposed Transaction”, November 8, 2021, including exhibits, supporting work papers and appendices thereto
- Efficiencies Timing Agreement Examination of Linda Thomas and Damian Poltz, April 19, 2022
- Efficiencies Timing Agreement Examination of Marisa Fabiano, April 19, 2022
- Witness Statement of Dean Prevost, including exhibits thereto, September 23, 2022
- Witness Statement of Jean-Francois Lescadres, including exhibits thereto, accessed October 3, 2022
- Witness Statement of Marisa Fabiano, including exhibits thereto, September 23, 2022

Production Documents

- Attachment to September 23, 2022 Harington Report, B.23 - Transport deep dive pages 20220429.pdf
- Attachment to September 23, 2022 Harington Report, B.31 - HC_10252021_CONFIDENTIAL.xlsx
- Attachment to September 23, 2022 Harington Report, B.9 - Care Side-by-Side.pdf
- Attachment to September 23, 2022 Harington Report, HR - Staffing analysis w salaries.xlsx
- RBCH00016_000000020 (Andrew C. Harington, “Initial Report Assessing Productive Efficiencies Arising from the Proposed Transaction”, November 8, 2021)
- RBCH00012_000000996 (GOODMANS-#7251975-v2-Efficiencies_RFI_Appendix_A_-TOR_DOCUMENTS-#10514243.xlsx)
- RDMM00001_000000003 (Thomas/Poltz Examination)
- RDMM00001_000000006 (Fabiano Examination)
- REAB00011_000000002 (Shaw Discovery Undertaking)
- ROG00130458
- ROG00841338 (Schedules 1 to 4 and 6.xlsx)
- ROG00841432 (VCO Master Template (Sep14 Submission).xlsx)
- SJRB-CCB00697692 (Rogers and Shaw to come together in \$26 billion transaction, creating new jobs and investment in Western Canada and accelerating Canada’s 5G rollout)
- RBCH00002_000000453 (Arrangement Agreement, Rogers Communications Inc. and Shaw Communications Inc.)
- VID00379261 (Lescadres Witness Statement Exhibit 75)
- VID00379275 (Lescadres Witness Statement Exhibit 74)
- VID00379252 (Lescadres Witness Statement Exhibit 72)

Books

- RBCH00045_000000007 - Kaye, David H. and David A. Freedman, “Reference Guide on Statistics,” in, *Reference Manual on Scientific Evidence, Third Edition*, Federal Judicial Center 2011.

Other

- RBCH00045_000000004 - Competition Bureau Canada, “Competition Bureau seeks full block of Rogers’ proposed acquisition of Shaw,” May 9, 2022. <https://www.canada.ca/en/competition-bureau/news/2022/05/competition-bureau-seeks-full-block-of-rogers-proposed-acquisition-of-shaw.html>, accessed October 13, 2022.
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