



# DEPARTMENT OF JUSTICE MINISTÈRE DE LA JUSTICE

## Final Argument of the Commissioner of Competition

*Commissioner of Competition v. Rogers Communications Inc. and  
Shaw Communications Inc., et al*

December 13-14, 2022





# Outline

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1. Legal Framework, Evidence Issues
2. Prevention and Lessening of Competition
3. “Substantial” Effects – Quantitative and Qualitative Effects
4. Shaw’s Financial Position
5. The Proposed Divestiture to Videotron Doesn’t Remove the “S”
6. The Efficiencies Trade-off



## Overview – Legal Framework – Section 92

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- The “proposed merger” in section 92 is defined by the application.
- Here it is Rogers’ proposed acquisition of Shaw (March 13, 2021 Arrangement Agreement: see application, prayer for relief; para. 14)
- If the Tribunal finds that ***the proposed merger*** is likely to result in an SLPC, the orders available to the Tribunal (without consent) are ***not to proceed with the proposed merger, in whole or in part.***
- The Respondents have the burden to prove that any remedy proposed - a partial block and divestiture to Videotron here - is available and effective in eliminating the “S” in the SLPC (*Southam SCC* and *FCA*; and *Canadian Waste Services* - he who asserts must prove)
- The Commissioner submits that the Respondents have not discharged their burden.



# Respondents' "Single Transaction" Argument is Without Merit

- **The Statute and the Pleadings:**
  - The Application defines the “proposed merger” and that is the March 13, 2021 AA (*Competition Act*, s.92(1); Application, prayer for relief, para 14);
  - Section 96(1) also assesses efficiencies from the “merger or proposed merger *in respect of which the application is made*”. (emphasis added)
  - Videotron Divestiture Agreement separate, notifiable (filed Oct. 17, 2022) under Part IX and statutory waiting period not yet passed
- **Based on the Facts:**
  - The proposed divestiture agreement is the third proposed; the AA is separate and *remains in effect*.
  - Challenging the AA is not “artificial” – ISED’s disapproval of the spectrum transfer does not block Rogers from acquiring assets used run the Freedom wireless business and an SLPC could still occur.



## Respondents' "Single Transaction" Argument is Without Merit

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- **It Would Reverse the Legal Burden:**
  - the Respondents, who assert that the divestiture will alleviate the substantial effects, must prove it (*Southam, SCC*);
  - to hold otherwise would be unfair to the Commissioner, who only received the proposed Divestiture Agreement on August 13, 2022, after the Scheduling Order had been issued, parties' documents exchanged and 10 days before the discoveries were to commence in this matter. The Respondents and Videotron control the timing and are aware of the facts surrounding that divestiture, so are in a position to do so.
- **Estoppel:** The Registered Consent Agreement enjoins closing "until either the Tribunal's disposition of the Application or with agreement of the Commissioner". As noted above, the Application request an order *in respect of the AA*.



## Section 69 of the *Competition Act*

- Dawson J. in *Sears*:
  - “Sears' documents tendered in evidence are properly before the Tribunal and are *prima facie* proof that Sears said, did and agreed to the matters set out in the documents.” (1)
- Section 69 does not require documents be put to a witness for the three presumptions to be established (“...shall be admitted in evidence *without further proof* thereof and is *prima facie* proof...” ) (emphasis added).
- Respondents have not challenged the section. They cite no authority to support the application of *Browne v Dunn* to such a statutory provision; in any case, as a matter of fairness:
  - They have had the Commissioner’s section 69 list since (Sept 23; narrowed Nov 21, 2022); and
  - They filed lengthy responding affidavits on the meaning of various documents.





## Section 69 of the *Competition Act*

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- In any case, even if it were applicable, the application of the rule is *Browne* “lies within the sound discretion of the trial judge and depends on the circumstances of each case”.(1)
- Section 69 is augmented by the Witness Statement of Jessica Fiset (Exhibit CA-A-0025), establishing metadata (custodian, date of creation, attachments, etc.) all of which bolsters proof and reliability.
- This is supplemented by discovery read-ins and cross-examination with respect to many documents.
- Finally, it would be impractical to cross-examine on every section 69 document, and of little value – e.g. Rogers called *no witnesses* who work in the wireless sector, or on its Executive Leadership Team, for example.

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(1) *R v Quansah*, 2015 ONCA 237 at para 80, Book of Authorities, Tab 5.





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## 2. Prevention and Lessening of Competition

(Section C of Final Written Argument)

- A. Both a Prevention and a Lessening Alleged and Proven
- B. “But for” Test;
- C. Freedom-Rogers Rivalry
- D. Shaw Mobile-Rogers Rivalry – Preface to a Merger
- E. Shaw Expansion Plans, Growth as of March 13, 2021
- F. Shaw Post-Merger Decline – “Middle Lane” Strategy
- G. Shaw’s Plans for Shaw Mobile
- H. Lessening of Competition for Network Quality and Reliability





## A. *Both* a Prevention and Lessening of Competition in Wireless Services

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- Commissioner's Final Written Argument, paras 19, 20:

19. The evidence has disclosed a likely substantial *prevention* of competition: but for the Proposed Merger, Shaw was likely to have continued to expand and to innovate, as evidenced by facts including its: (a) track record as a maverick disrupter and innovator; (b) growth trajectory until the merger announcement; (c) plans to purchase 3500 MHz spectrum and entry into 5G; (d) network expansion plans; and (e) poised entry into other markets, such as business services.

20. The merger is also likely to *lessen* competition substantially by eliminating the close competition between Shaw and Rogers and removing Shaw as a disrupter of price coordination. The evidence shows that Rogers' acquisition of Shaw was designed to staunch its competitive bleeding; Shaw was acquired on the eve of its planned 5G entry and was shifted away from disruption to a "middle lane" strategy. Shaw's competitive decline since then is properly attributed to the Proposed Merger, given that it halted Shaw's competitive trajectory.

- Notice of Application re Prevention: paras 71-73 ("Future Wireless Services Competition will be Prevented...": refers e.g. to network improvements, 5G network announcement, further "expansion and network improvements planned ... both within and outside Shaw's current geographic markets." See also paras 91-93 ("Prevention of Competition in Business Services.")
  - Fresh as Amended Replies both refer to the Videotron Divestiture not alleviating the "substantial lessening and prevention of competition": *Fresh as Amended Reply* (to Rogers), paras 2, 12, 15; adopted in para 1 of the *Fresh as Amended Reply* (to Shaw).
  - See also Commissioner's Written Opening Statement, para 69, pp 23-24.
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## B. “But For” Test Point of Departure: Date of the Merger

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- *Tervita* (SCC): “[a] merger review, by its nature, requires examining a counterfactual scenario: ‘... whether the merger will give the merged entity the ability to prevent or lessen competition substantially compared to the **pre-merger benchmark** or ‘but for’ world.’ ” (para. 51)
- Before the Tribunal, “... the commencement of the timeframe for considering the ‘but for’ market condition, ***i.e. a market condition where the merger did not occur***, was the end of July 2010 (para. 131). This was the point in time a letter of intent between Tervita and the Vendors was signed.” (para. 11)
- Note: the closing date was later (January, 2011) than the “pre-merger benchmark” – the “point of departure” for the but for analysis was July, 2010.
- The “but for” test is forward-looking, but the *point of departure* for examining what would likely have occurred is the date of the merger.



## “But For” Test Looks to Shaw as of March 13, 2021

- Here, the “pre-merger benchmark” was set on March 13, 2021 by the AA. The Tribunal should consider the competitive trajectory that Freedom and Shaw Mobile were on at that time, “but for” the AA, when Shaw was:
  - leading the industry in wireless growth, which was expected to continue via Shaw Mobile;
  - on the cusp of launching 5G and acquiring 3500 MHz spectrum;
  - planning to expand into new geographic markets;
  - poised to enter the wireless business market.
- Diminishment of the target firm *caused by the merger* is part of its anti-competitive effect and an element of the “but for” assessment.
- To hold otherwise would incentivize acquisitions orchestrated to wear down or diminish competitors before adjudication is possible – the law would become a facilitator of anti-competitive behaviour.



## C. Freedom - Rogers Rivalry

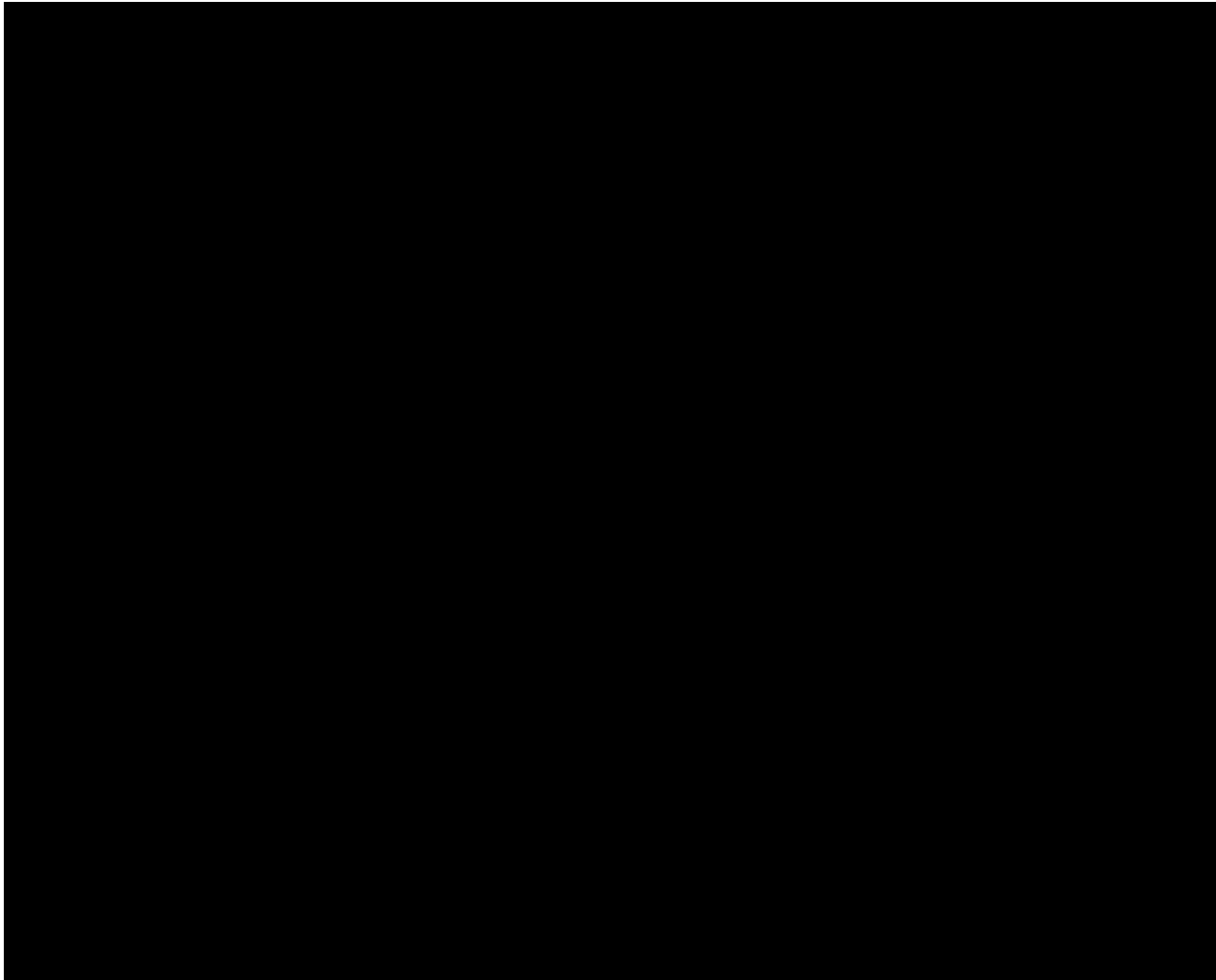
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- Shaw’s maverick and “disruptive” approach driven by:
  - “a smaller base of established customers than the Big 3 carriers and therefore has a greater economic incentive, all else equal, to engage in an aggressive strategy focused on attracting subscribers from other carriers” (Miller, Sept 23, 2022 Report, para 81)
- Rogers was the competitor most affected by Freedom’s competitive behaviour.
- [REDACTED]
- [REDACTED]
- [REDACTED]



# Freedom-Rogers Rivalry

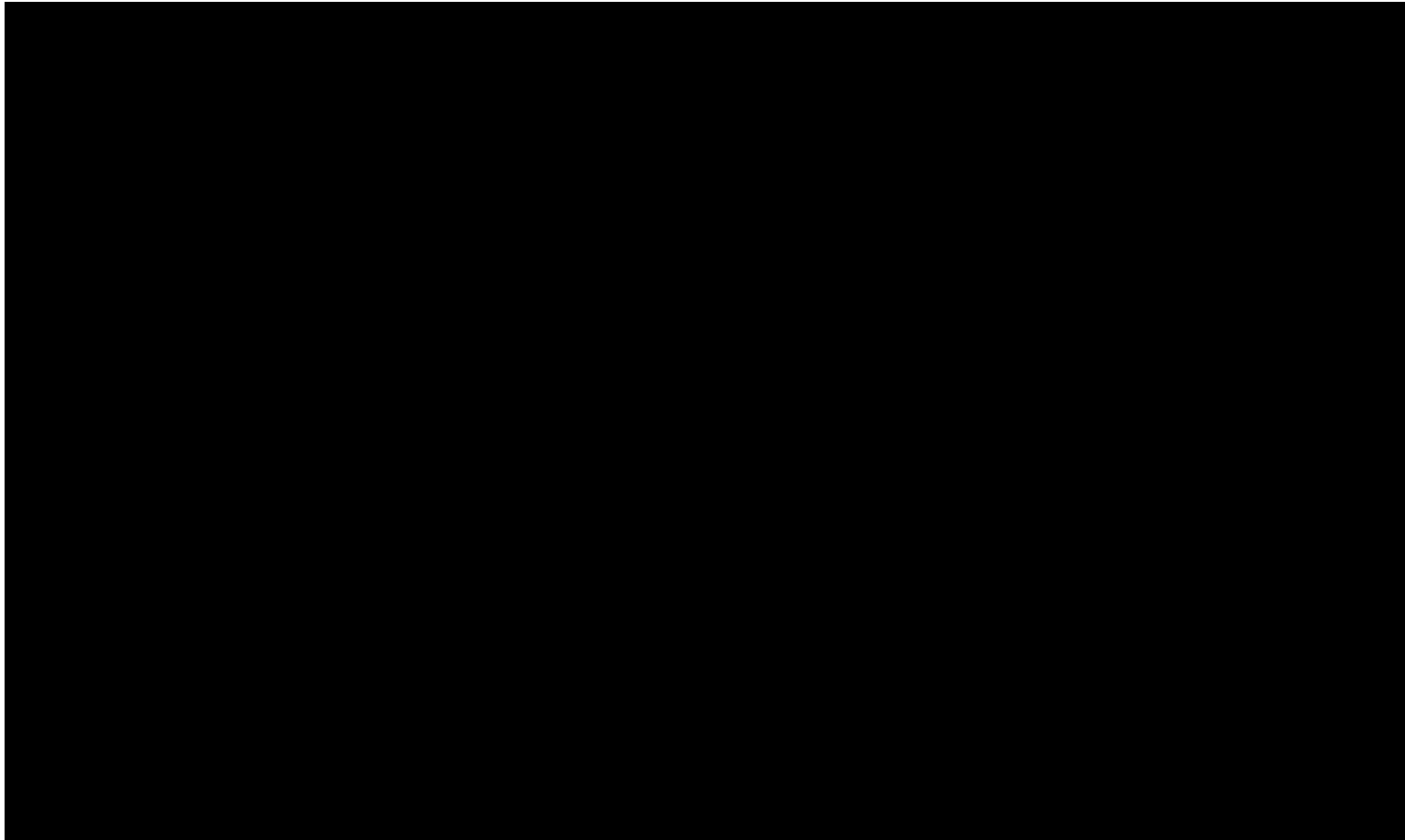
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# Freedom-Rogers Rivalry

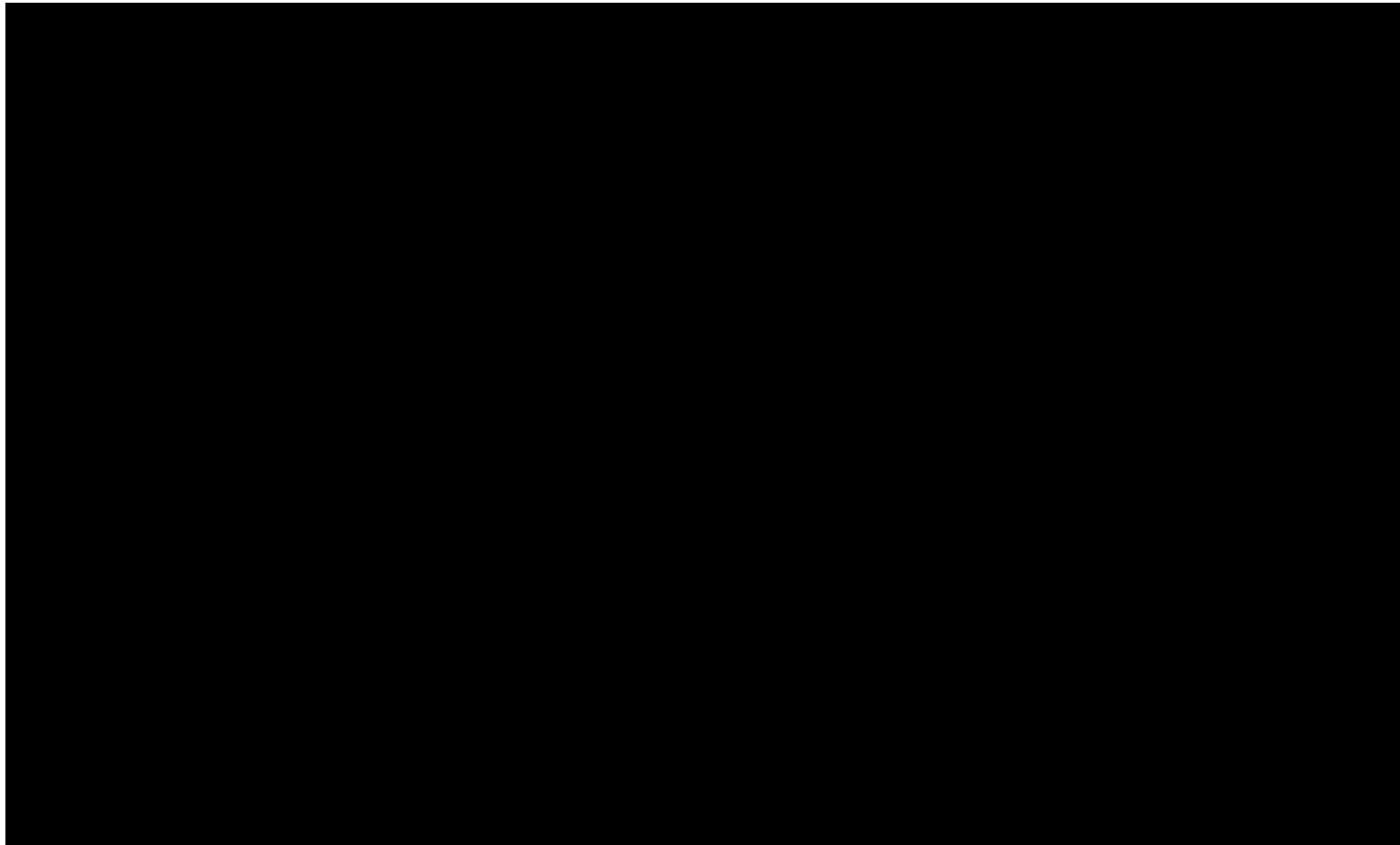
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# Freedom-Rogers Rivalry

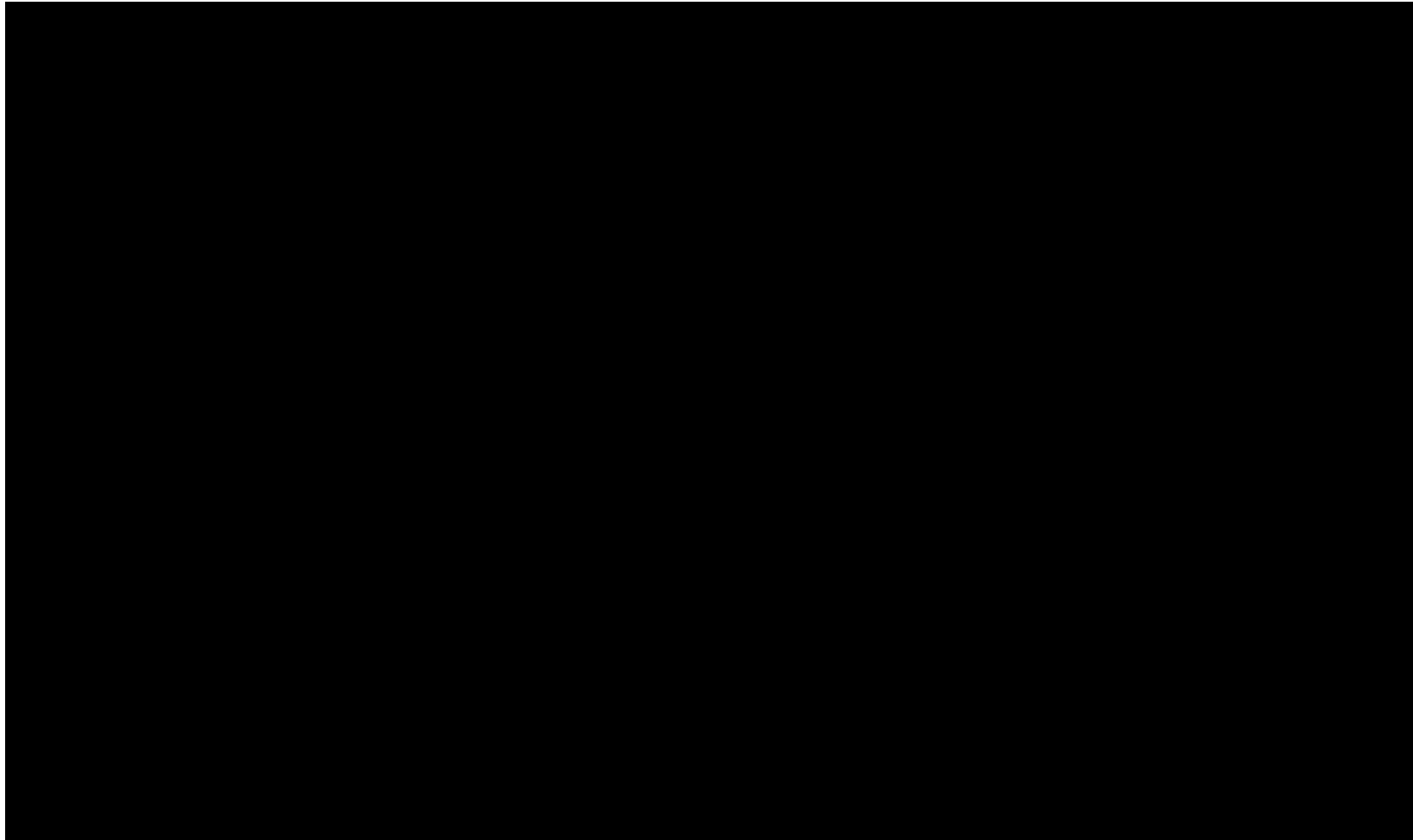
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# Freedom-Rogers Rivalry

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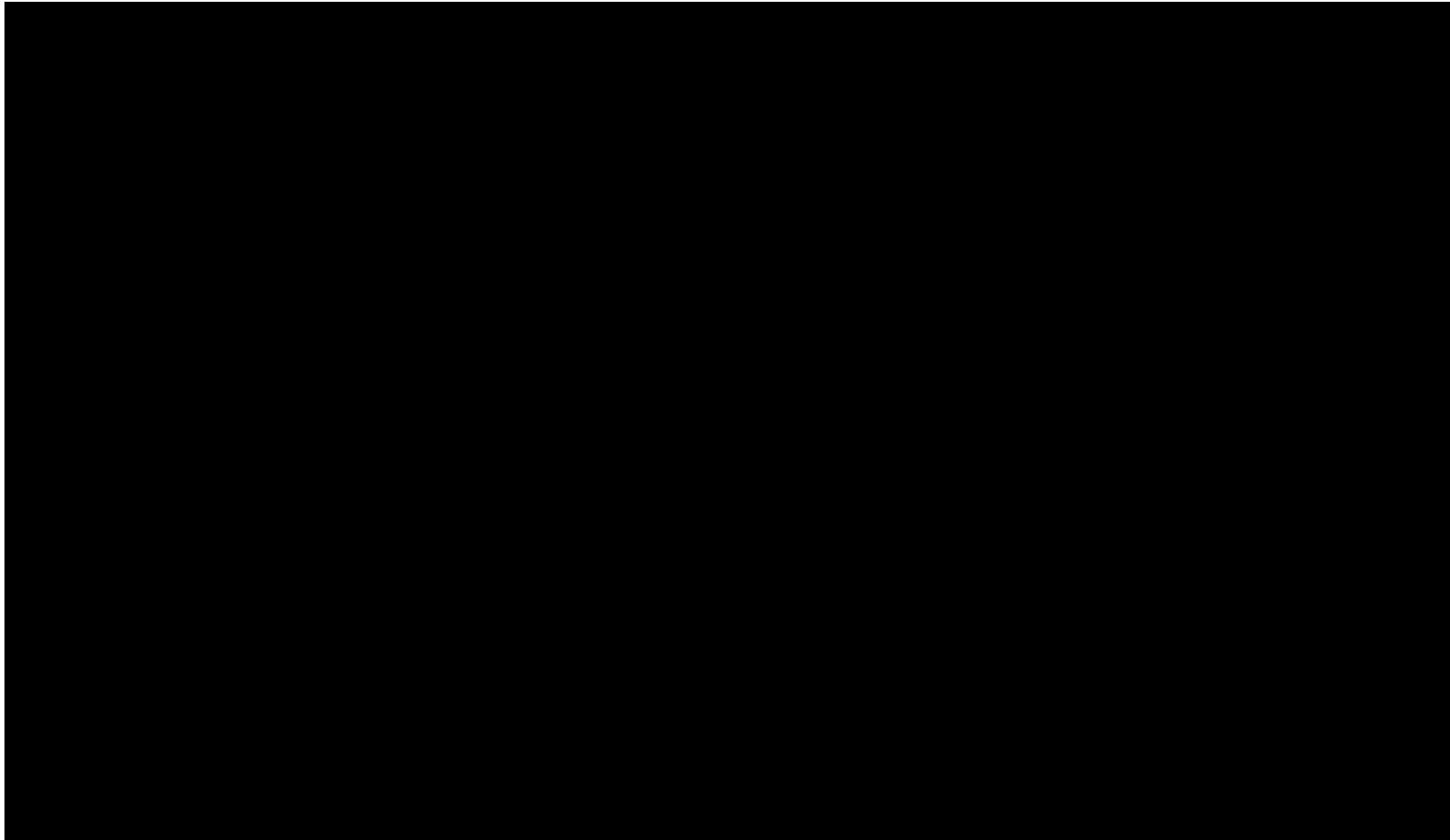






# Freedom-Rogers Rivalry

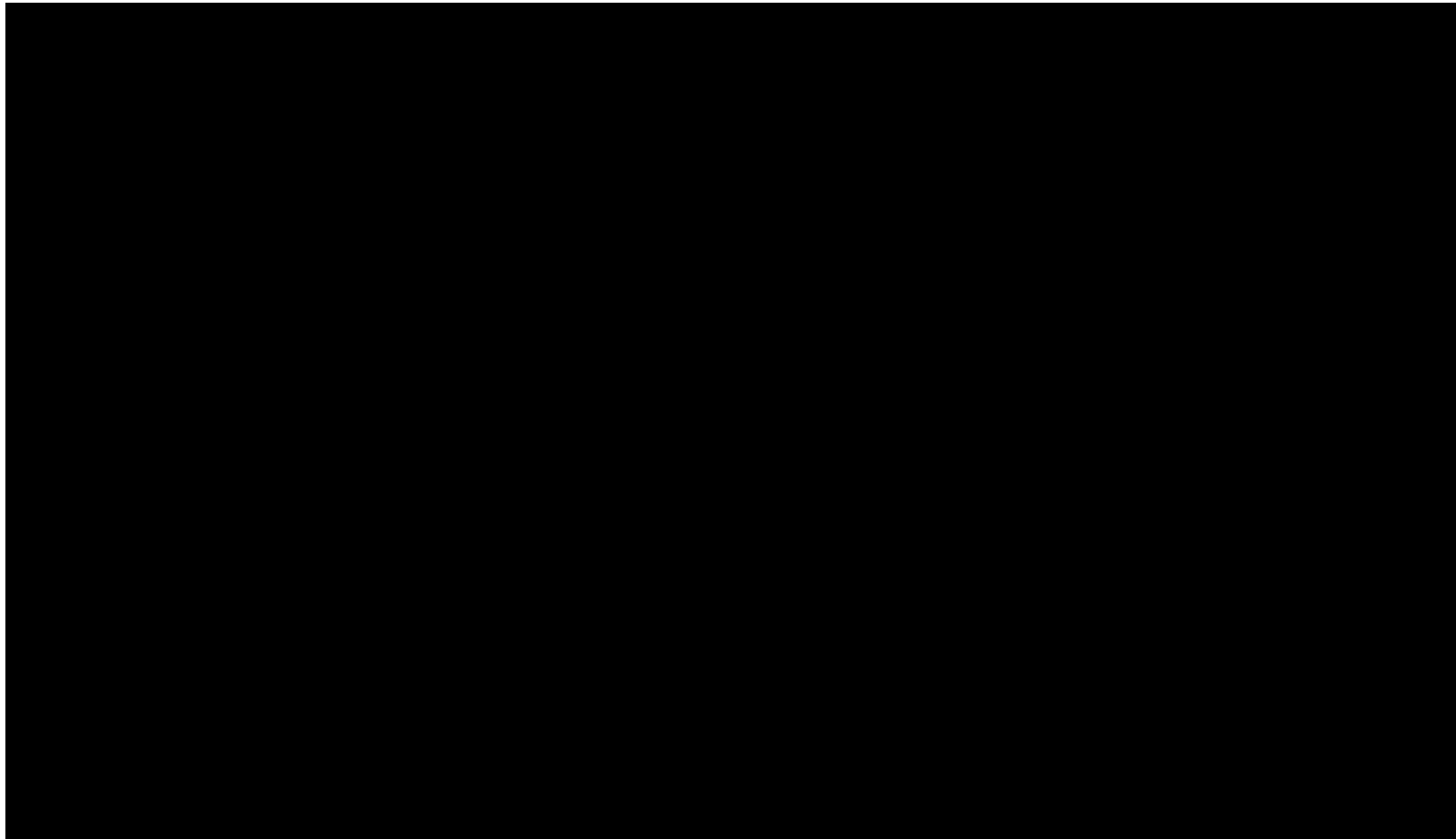
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# Freedom-Rogers Rivalry: Freedom a “Catalyst”

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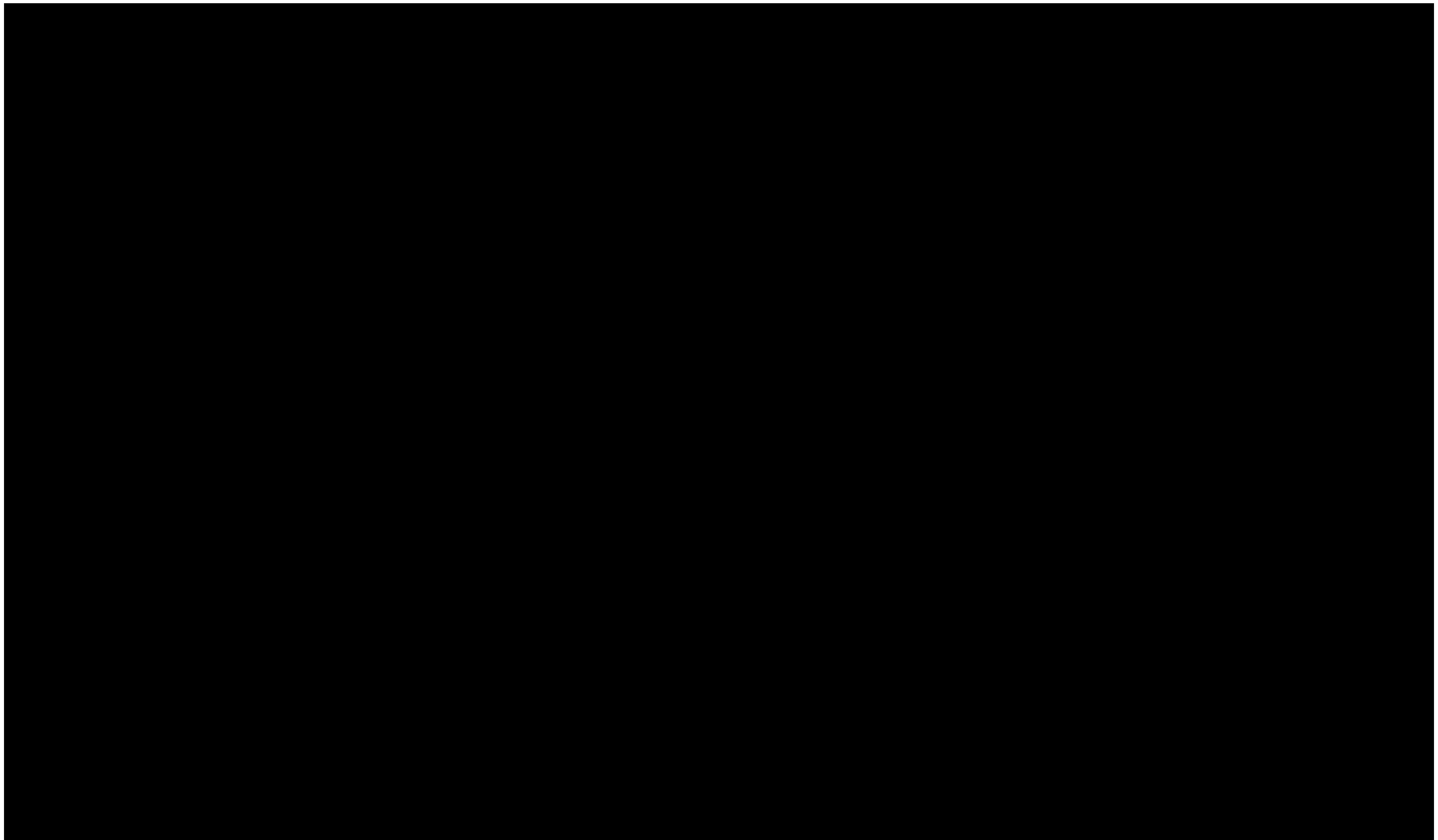
CA-A-0252, Rogers Presentation titled Consumer Wireless Health Check dated July 30, 2019, p 4;





# Acquisition on the Agenda: April 2020

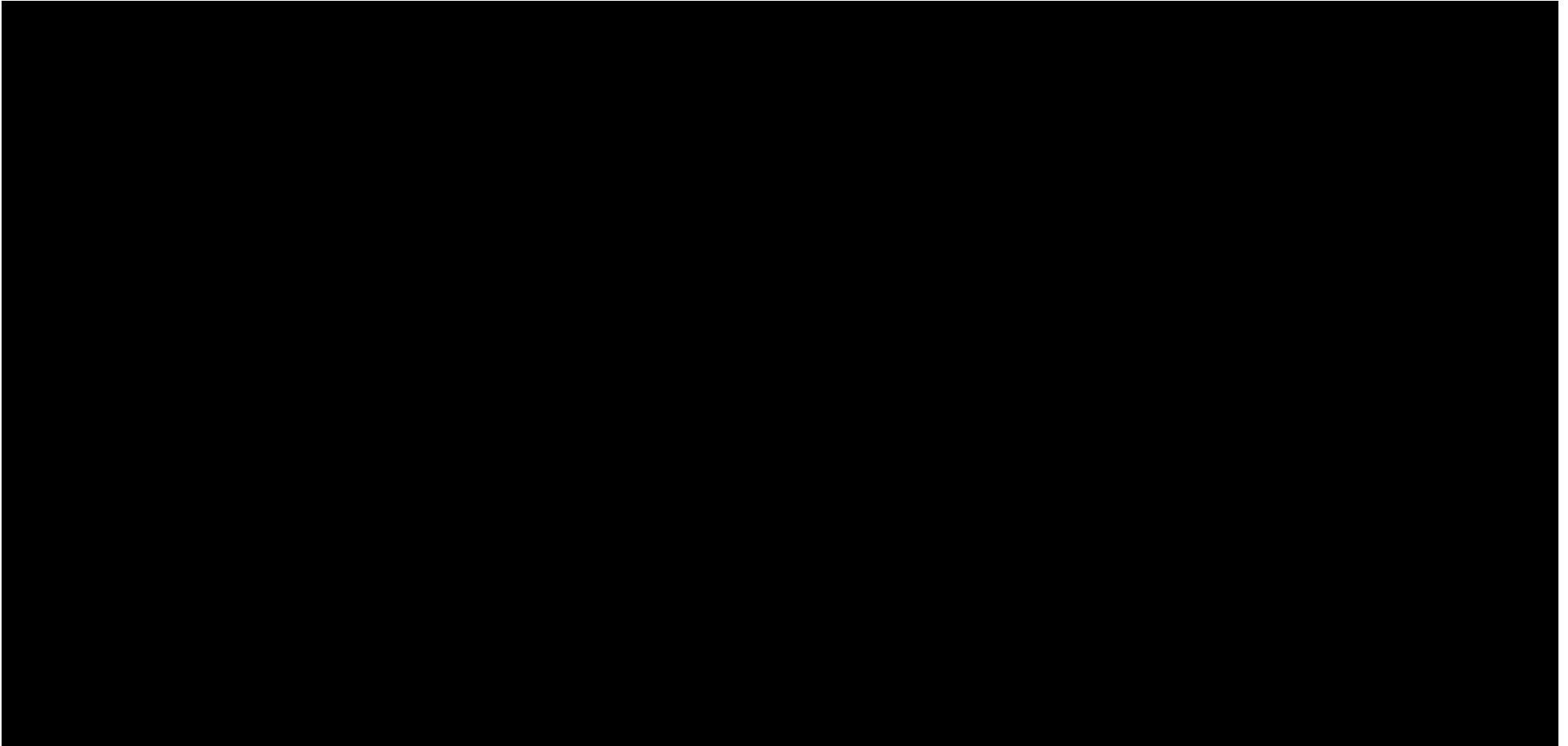
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## D. Shaw Mobile – Rogers Rivalry: Disproportionately Affected Rogers

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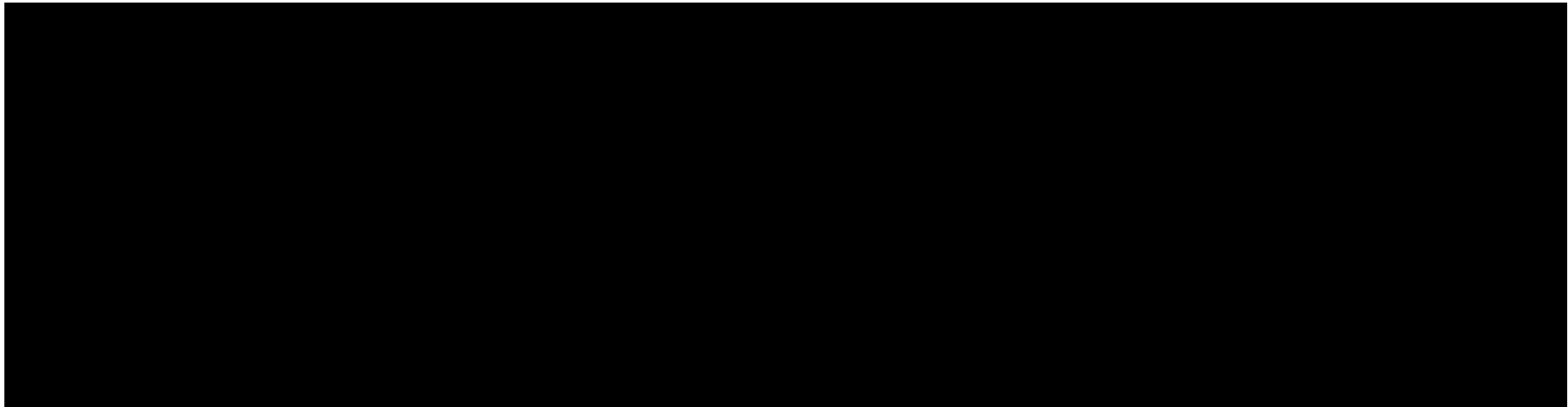
CA-R-0209, Witness Statement of Dean Prevost dated 2022-09-23, Exhibit 15, p 522; CA-A-0074, Kirby Statement, Exhibit CC, p 600; CA-A-0300, Rogers Wireless 2021 Operating Plan, Bart Nickerson, Oct 5, 2020, p 4; Testimony of D Prevost, Transcript, Vol 13, Nov 24, 2022, p 3368:3-24; CA-A-0346, Consumer Insights: Q3'2020 Rogers Postpaid Wireless Churn Report, Dec 18, 2020, p 8; CA-A-0324, Email, Jan 14, 2022 re: Fido internet upsell to Fido wireless base in footprint, p 2; CA-A-1879, Read-Ins relating to Rogers' Examination, p 760:3 - p 762:11; CA-A-0358, Email Jan 21, 2022, re Heads-up - COLOR OF THE FLAG...and ACTION PLAN, p 2; CA-A-1879, Read-Ins relating to Rogers' Examination, p 740:14 - p 742:8.



# Shaw Mobile: Preface to a Merger

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- In July, 2020 then Rogers CEO Joe Natale meets with Brad Shaw, expresses interest in a business combination.

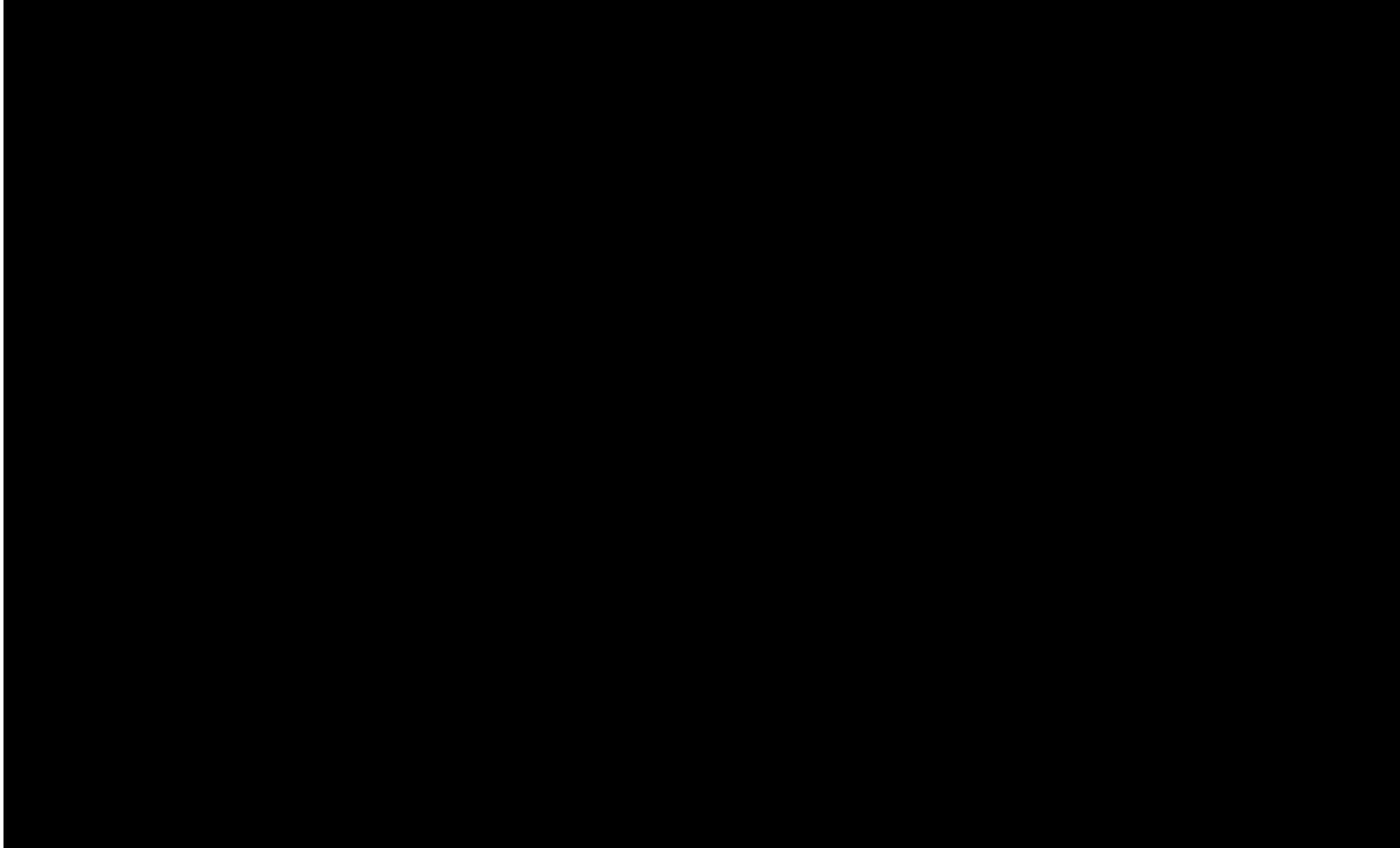


- March 13, 2021, Arrangement Agreement reached.



# Shaw Mobile-Rogers Rivalry

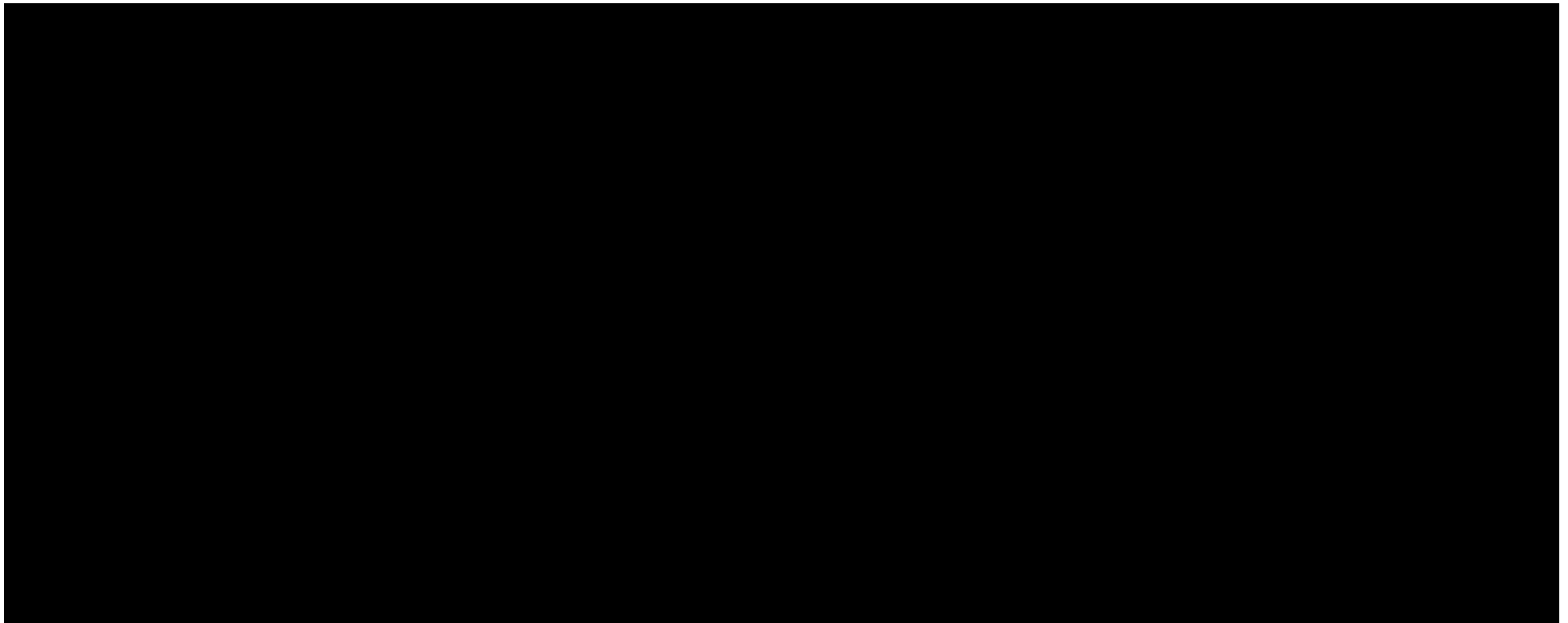
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# Shaw Mobile-Rogers Rivalry

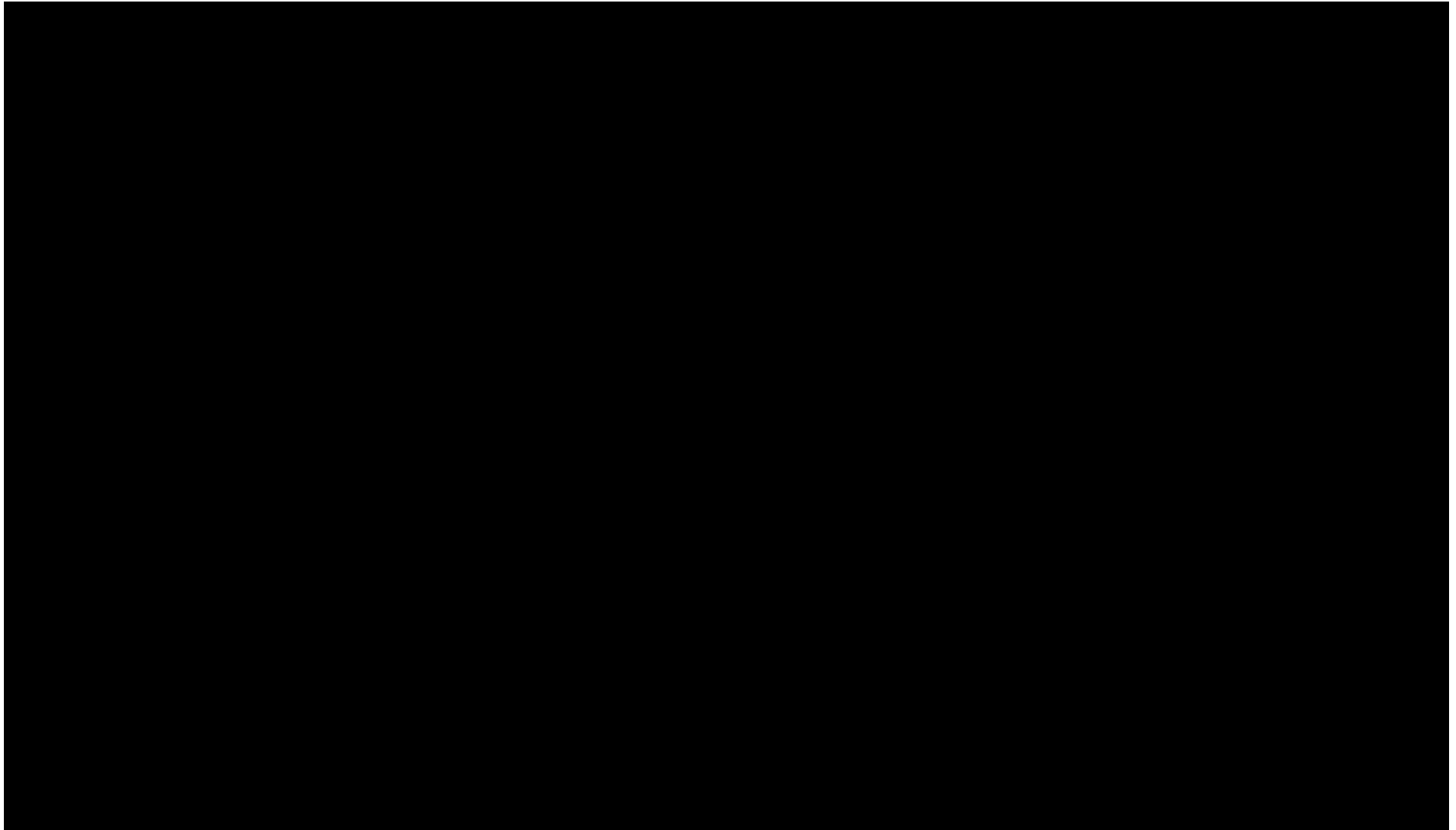
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# Shaw Mobile-Rogers Rivalry

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## E. Shaw Expansion Plan and Growth as of March, 2021

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- **5G services** [REDACTED]
- **3500 MHz Auction:** [REDACTED]
- **Market Expansion:** [REDACTED]  
[REDACTED]
- **Small Business Services:** “Shaw Mobile for Business” poised to enter.
- **Growth:** Shaw Mobile was on a growth trajectory. Subscriber and share growth projected until shortly before November, 2021 due to the price increase implemented then.
- **Profitable:** Shaw Mobile was reducing churn and increasing Shaw’s profitability



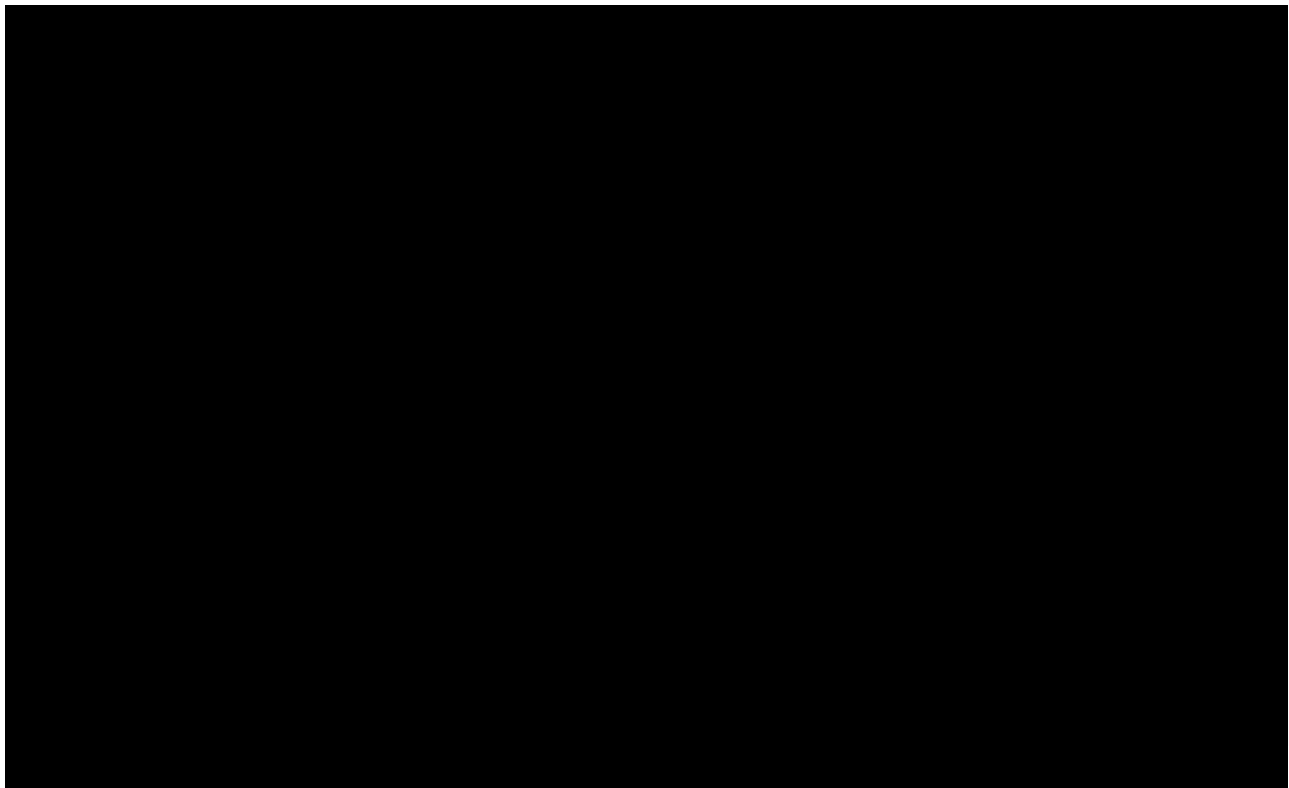
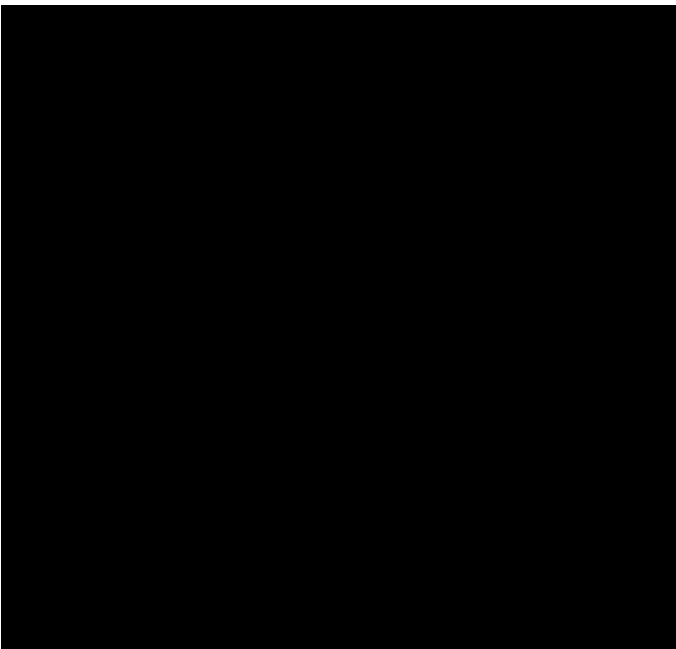
## Shaw Expansion Plans in March, 2021: 5G and 3500 MHz Auction

Date	Event
Mar 2018	Shaw announces successful completion of first 5G technical trials in Calgary.
Sep 27, 2019	[REDACTED]
Oct 30, 2020	Mr. McAleese advises analysts that Shaw 5G to be “live and in the market in early calendar ‘21”
Jan 13, 2021	Mr. McAleese reaffirmed Shaw was on track to launch 5G noting “we are confident that our 5G product is going to deliver exactly what customers are looking for and we’re still on track to start delivering that--later in this calendar quarter.”
Feb 1, 2021	[REDACTED]
Mar 2, 2021	[REDACTED]
Apr 8, 2021	Freedom dealers instructed to place the 5G signage in windows on Apr 8, 2021.
Apr 12, 2021	Shaw sends Freedom dealers a communication advising that the 5G launch was paused indefinitely and requesting that the marketing materials for the launch be returned.
Apr 15, 2021	[REDACTED]



# But for the Merger, 5G Was Ready to Go; Shaw was Poised for the 3500 Auction

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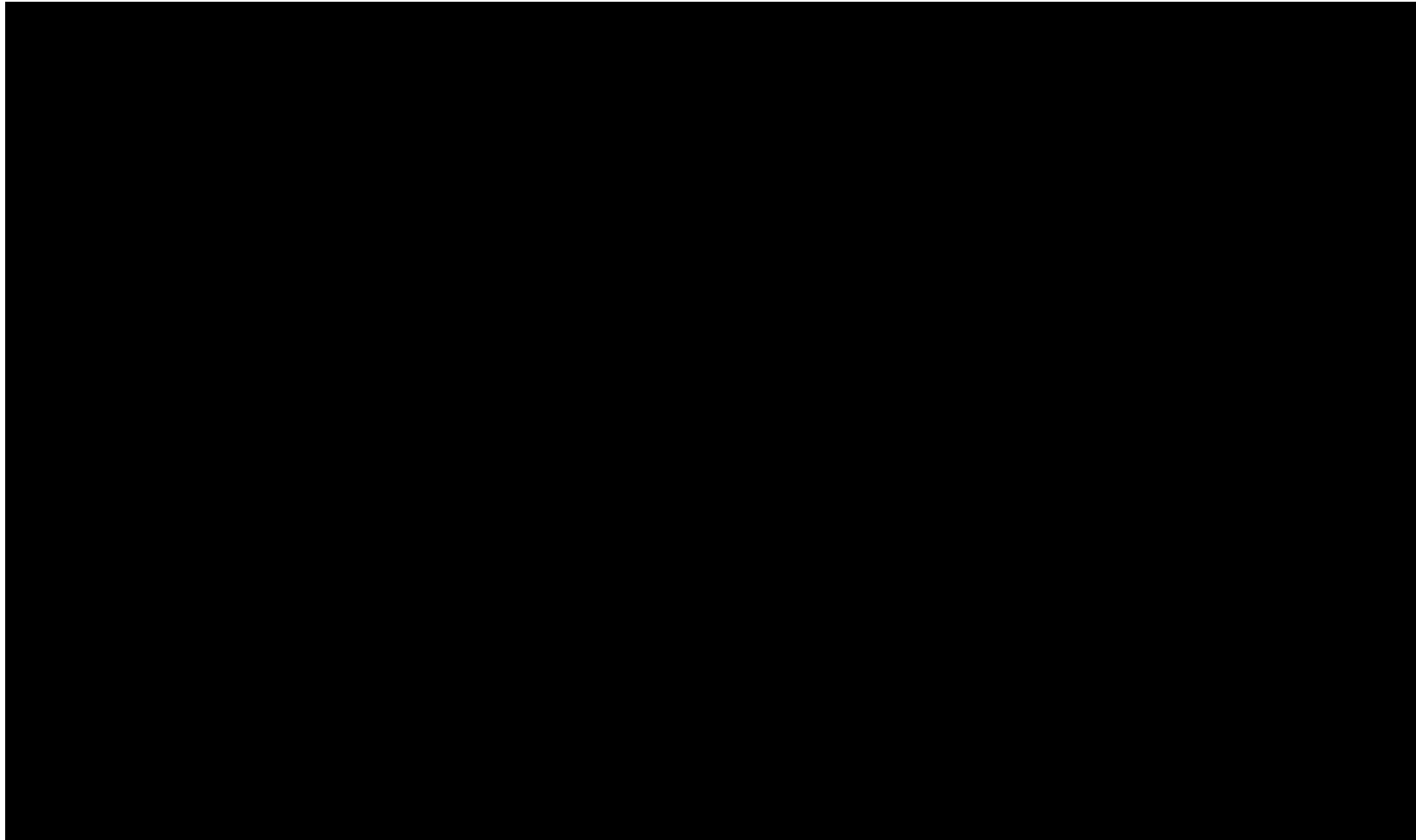
Transcript, Vol 11, Nov 22, 2022, T English, p 2758:21 - p 2759:22; Testimony of S Verma, Transcript, Vol 2, Nov 8, 2022, p 439:1 - p 440:23; CA-R-192, McAleese Statement, pp 46-48 paras 151-153 and 156-159; CA-A-0536, Shaw Presentation 5G Status March 2, 2021, p 5, presented to SLT; CA-A-1882, Commissioner's Read-Ins (Shaw), August 22, 2022, p 33:15 – p34:17; Testimony of R Davies, Transcript, Vol 11, Nov 22, 2022, p 2845:3 – p 2846:11; CA-R-0190, R Davies Statement, Ex 1, p 28; CA-A-0536, p 5.





# Shaw was Expanding

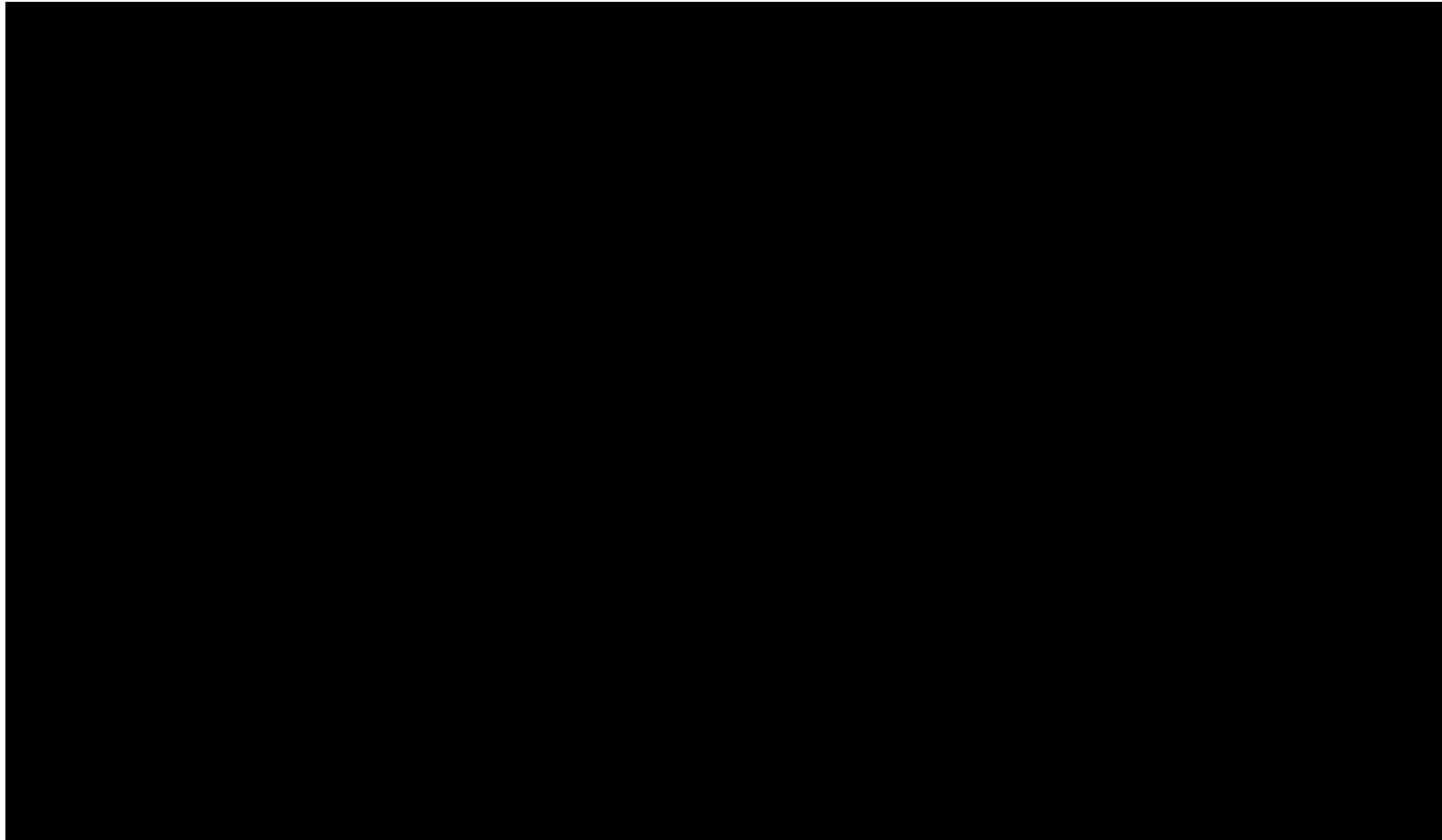
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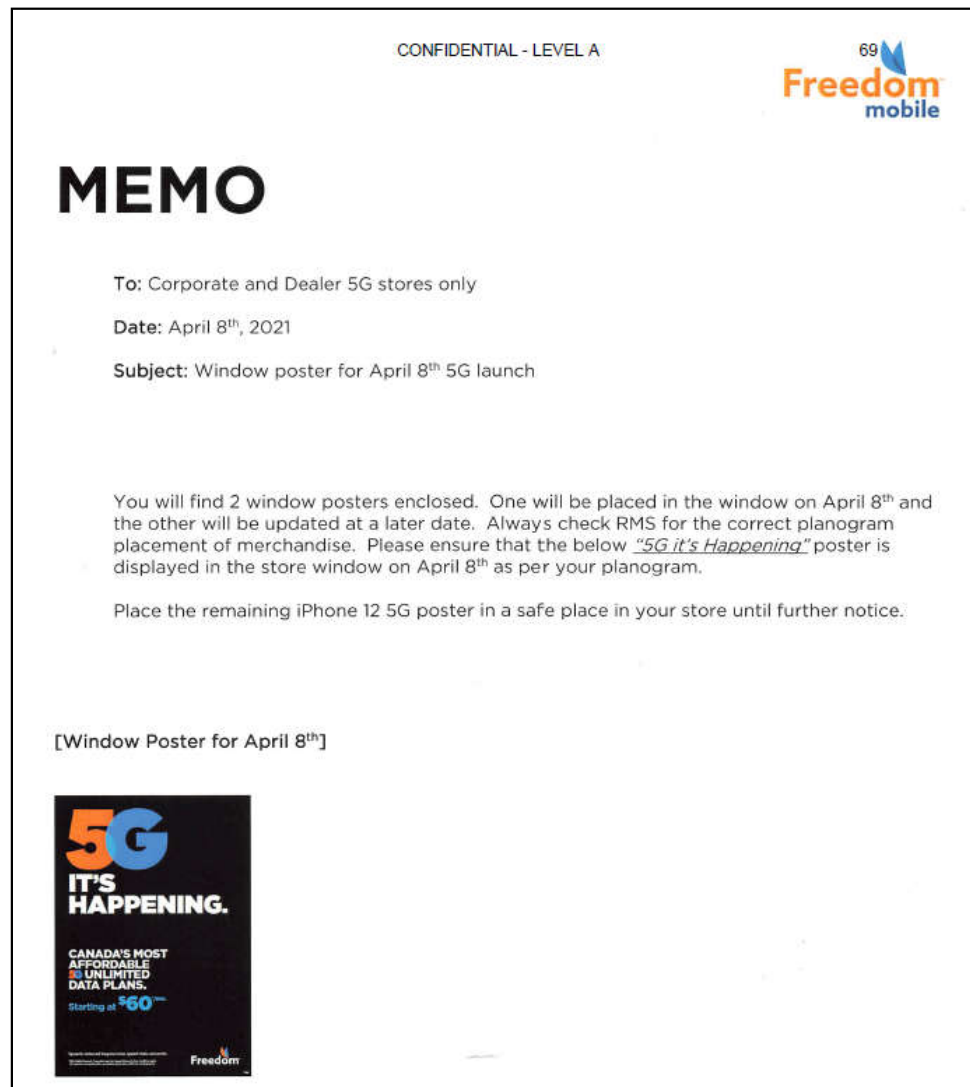
# Shaw was Expanding

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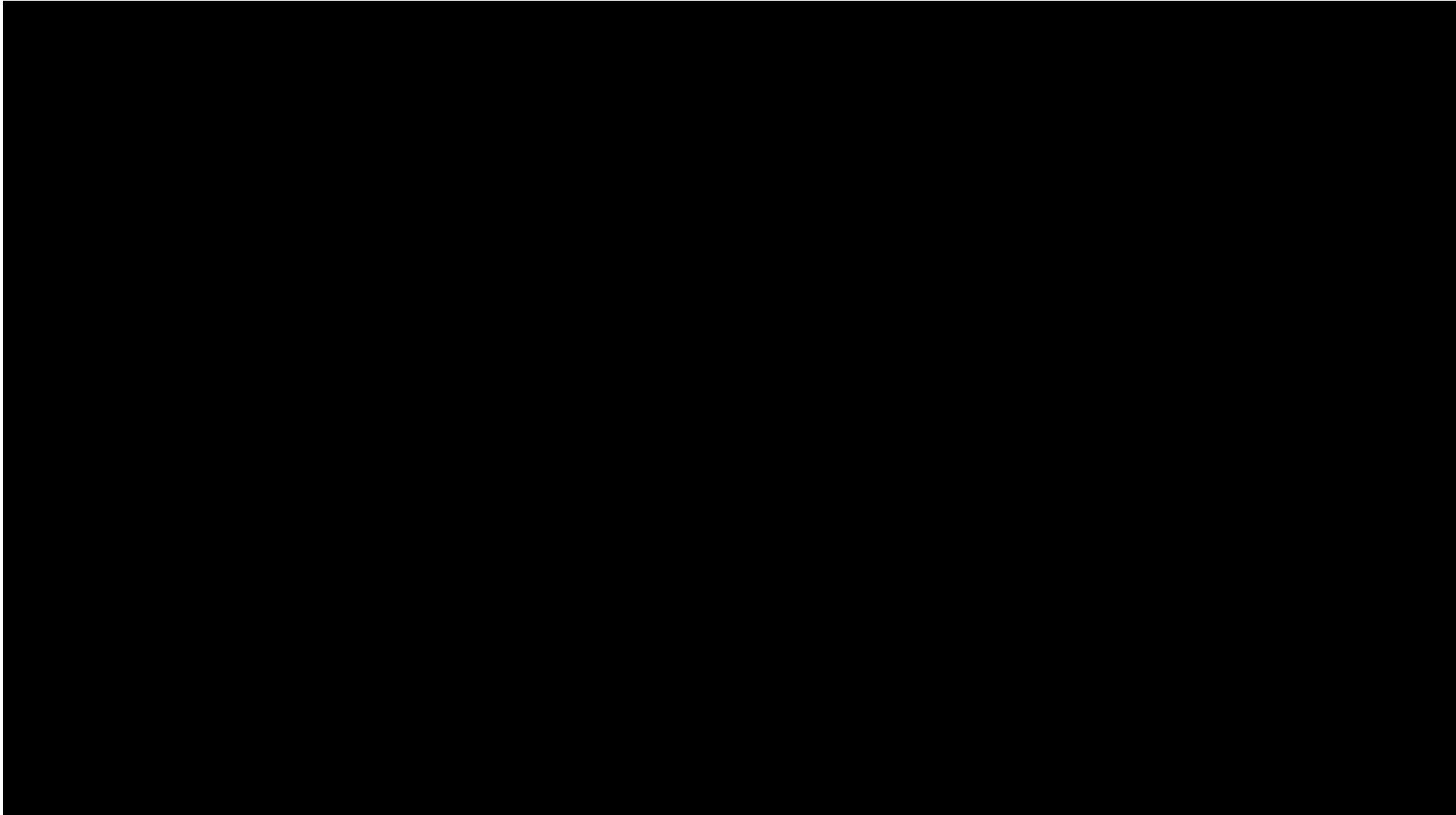


# 5G Marketing Material was in Place



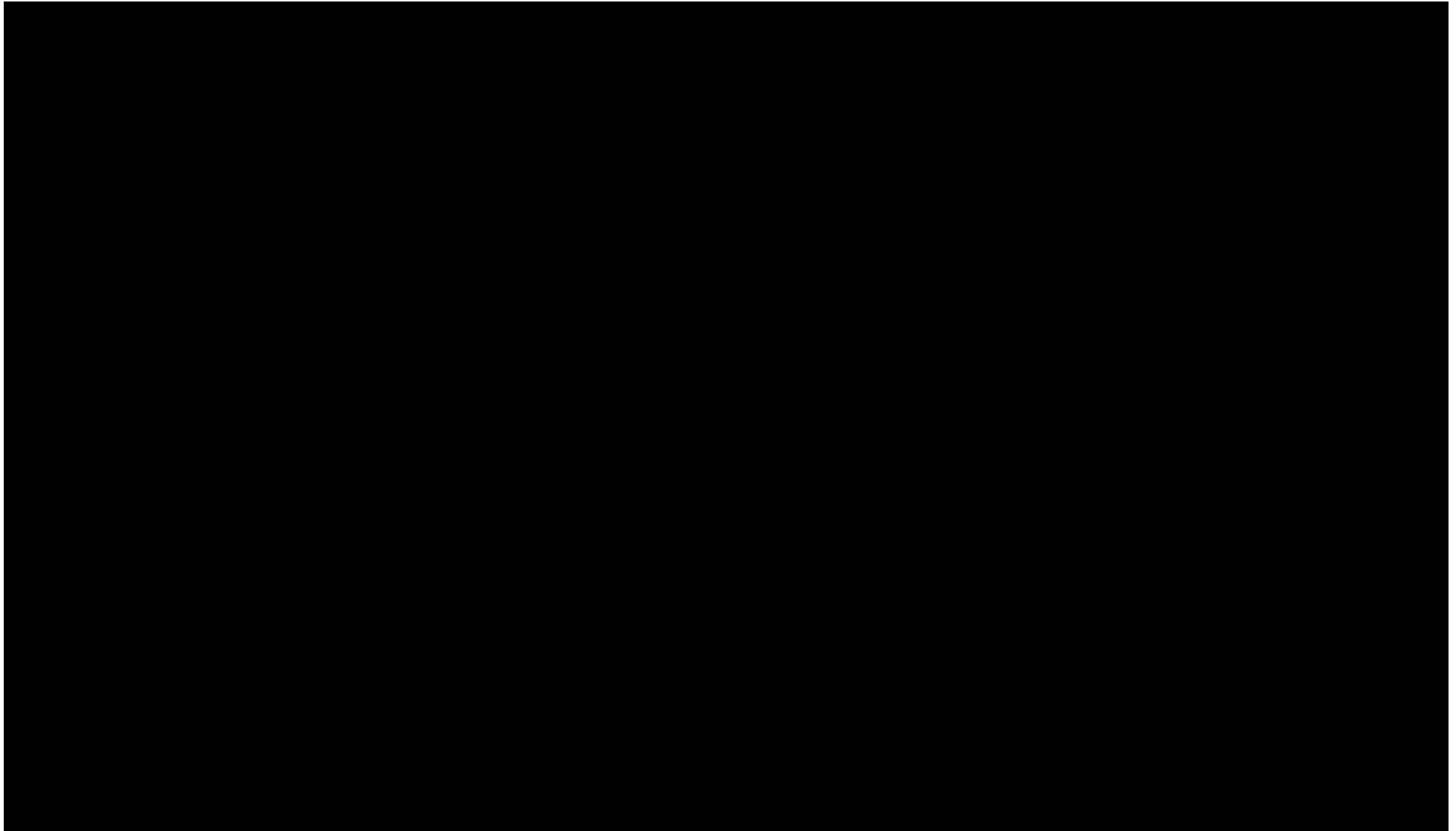


# Shaw was Expanding – 3500 MHz





# Shaw was Expanding



CA-A-0432, Shaw Presentation titled AW3 licenses expansion summary dated March 3, 2021, p 1.

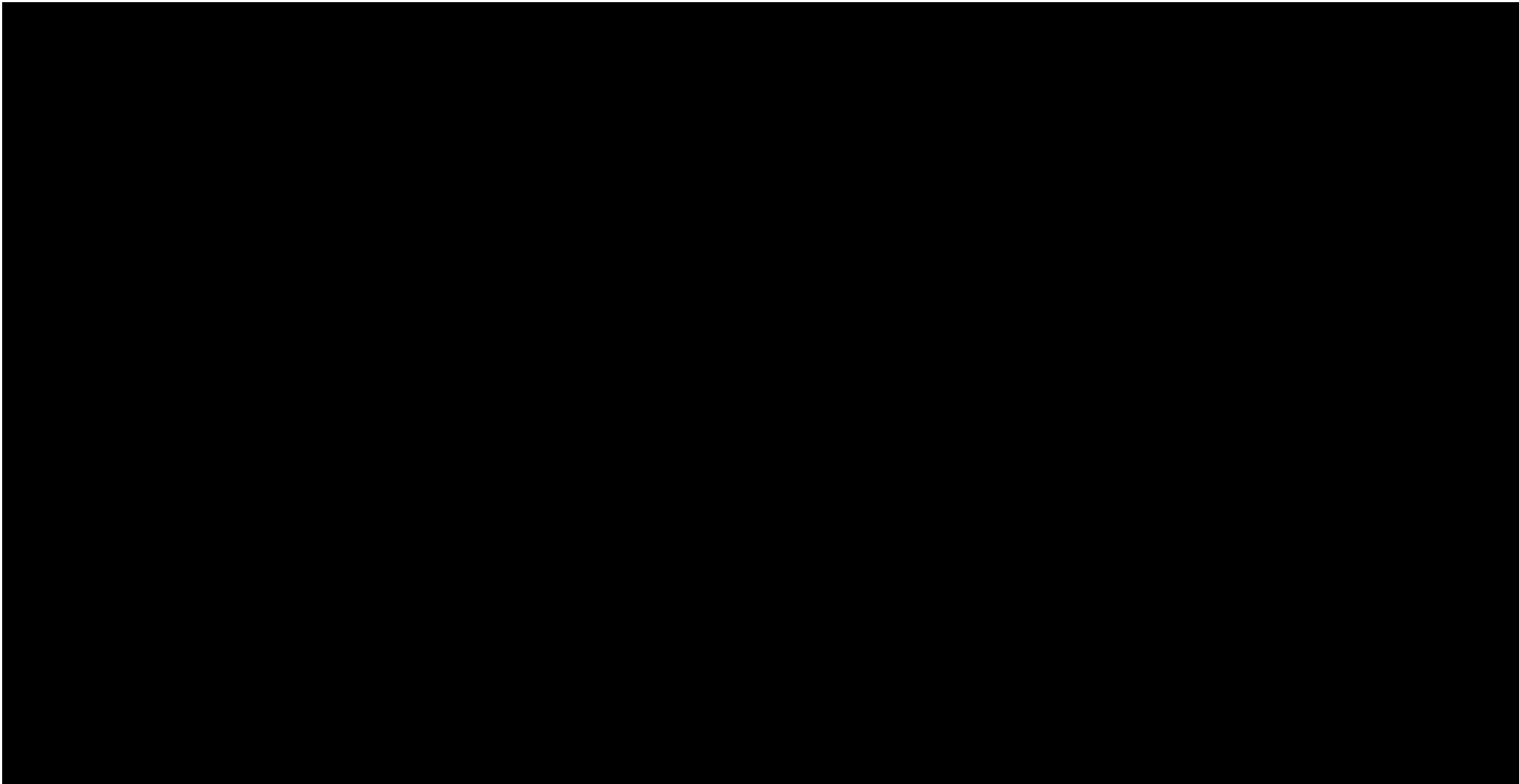






# Shaw Mobile was on a Growth Trajectory

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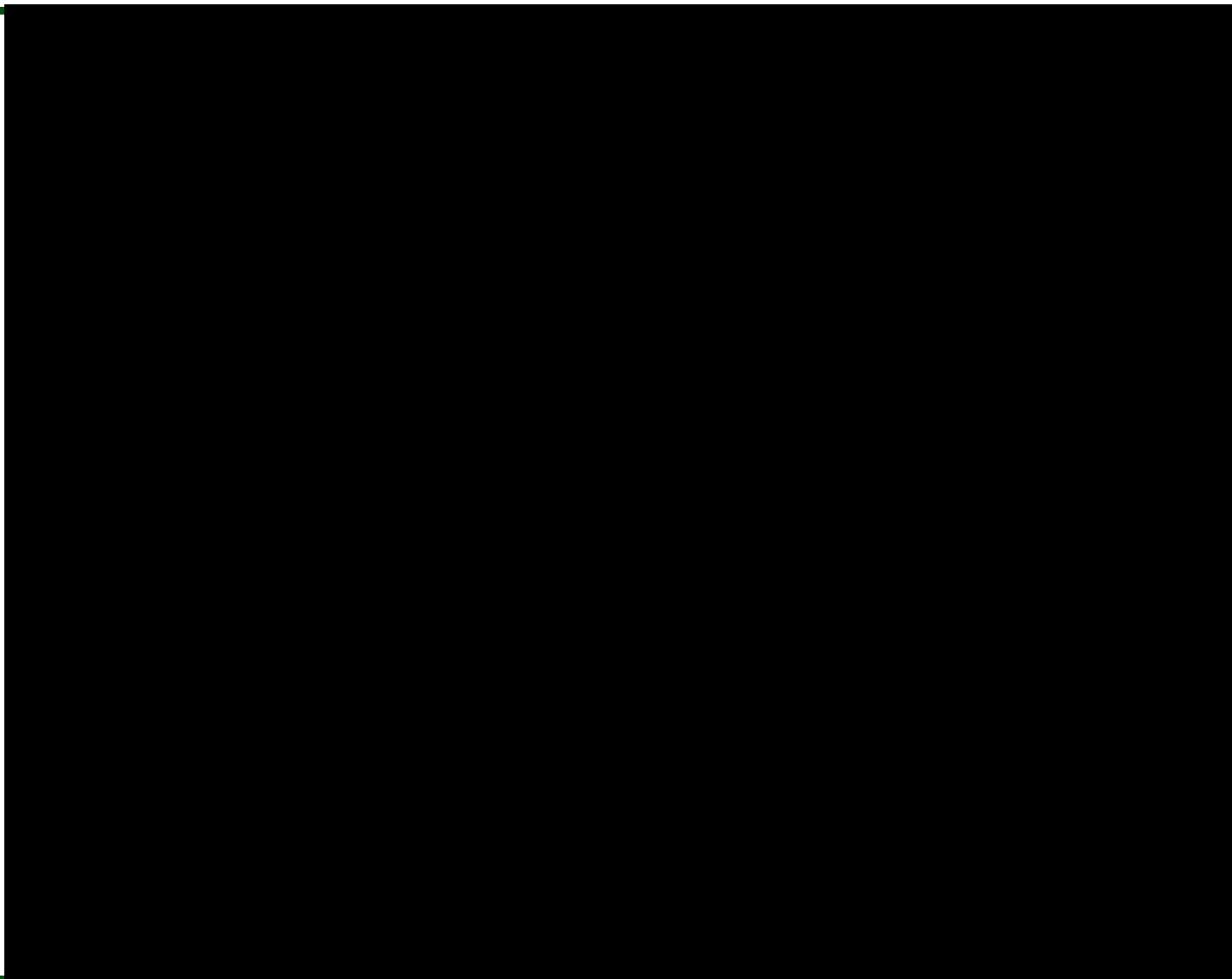


CA-A-0680, Shaw Wireless F20 & 5Y Plan Overview Preliminary Discussion Material, Oct 16, 2019, p 14; CA-A-0518, Shaw Virtual SLT Retreat Pre-Read Materials, Nov 4, 2020, p 19; Testimony of P McAleese, Transcript, Vol 12, Nov 23, 2022, p 2980:9 – p 2981:14; CA-A-0504, Shaw Presentation titled SFG F20 and Q1F21 update, Jan 15, 2021, p 9; Testimony of P McAleese, Transcript, Vol 12, Nov 23, 2022, p 2947:15 – p 2949:19; CA-A-0538, Shaw Spreadsheet Wireless Stats F2019-F2023; Testimony of P McAleese, Transcript, Vol 12, Nov 23, 2022, p 2984:16 – p 2987:24.





# Shaw Mobile Growth Continued into Fall, 2021

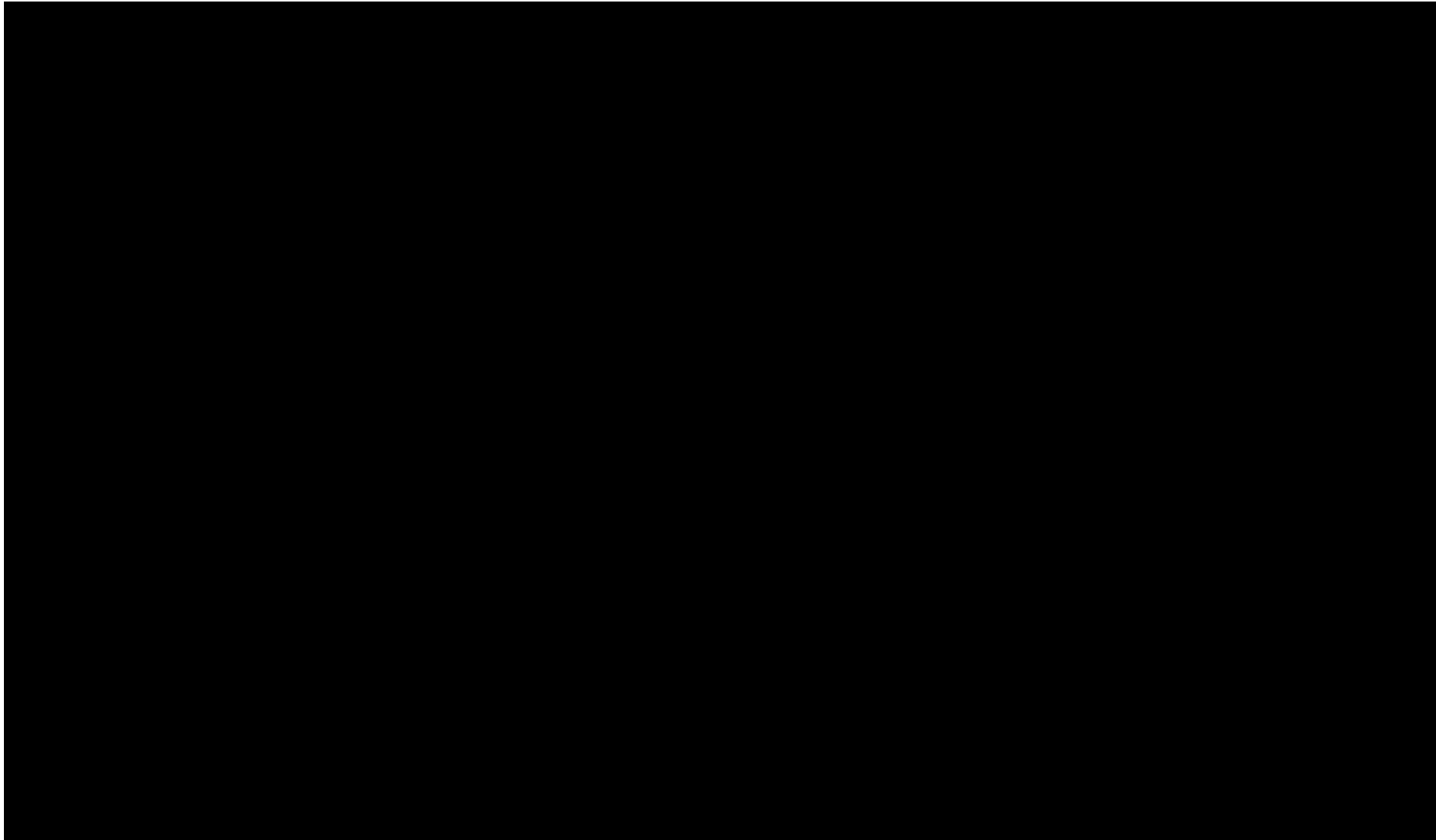


CA-R-0190, Amended Witness Statement of Rod Davies, Exhibit 1, p 48.



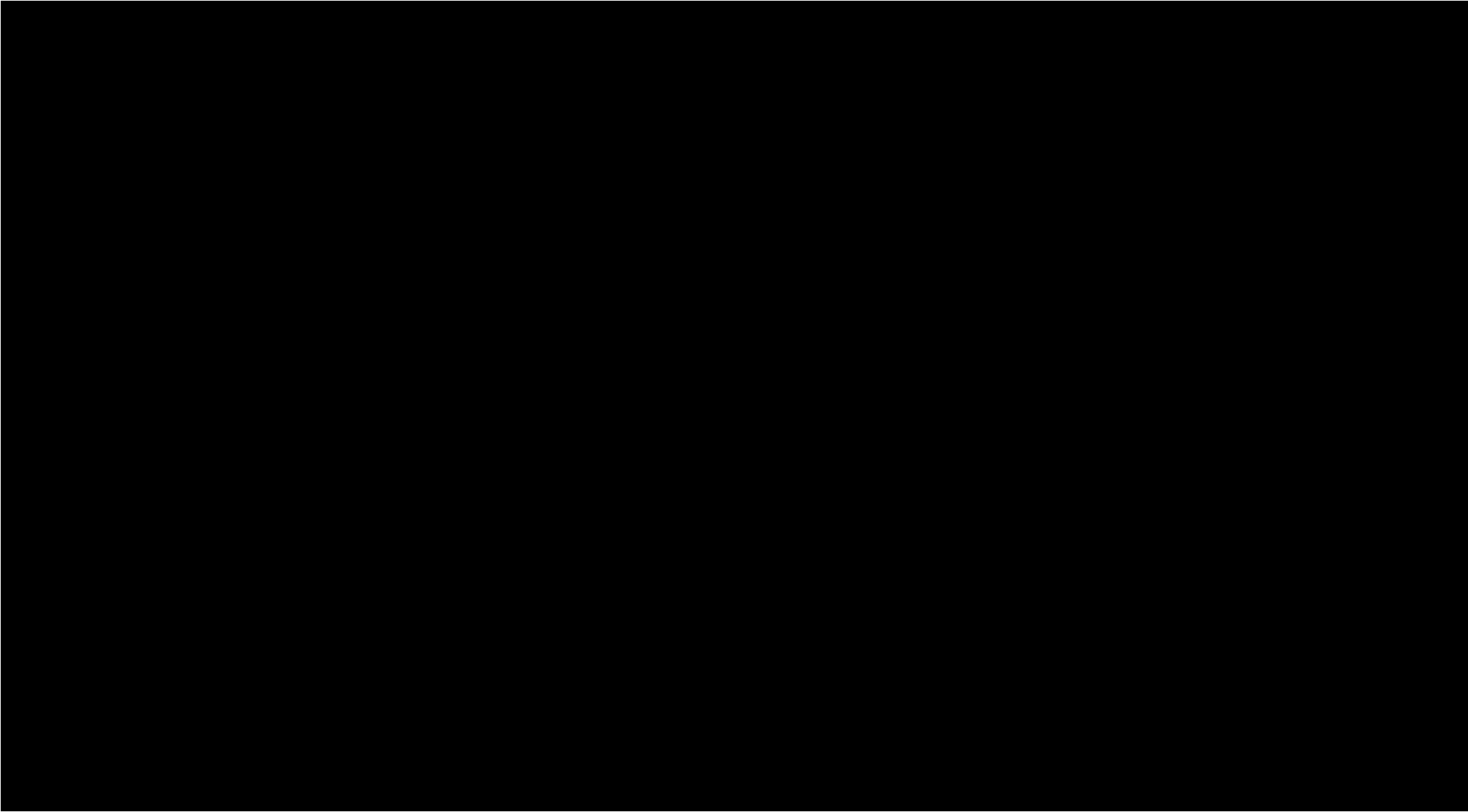


# Shaw Mobile Growth Continued into Fall 2021





# Shaw Mobile was Driving Profitability





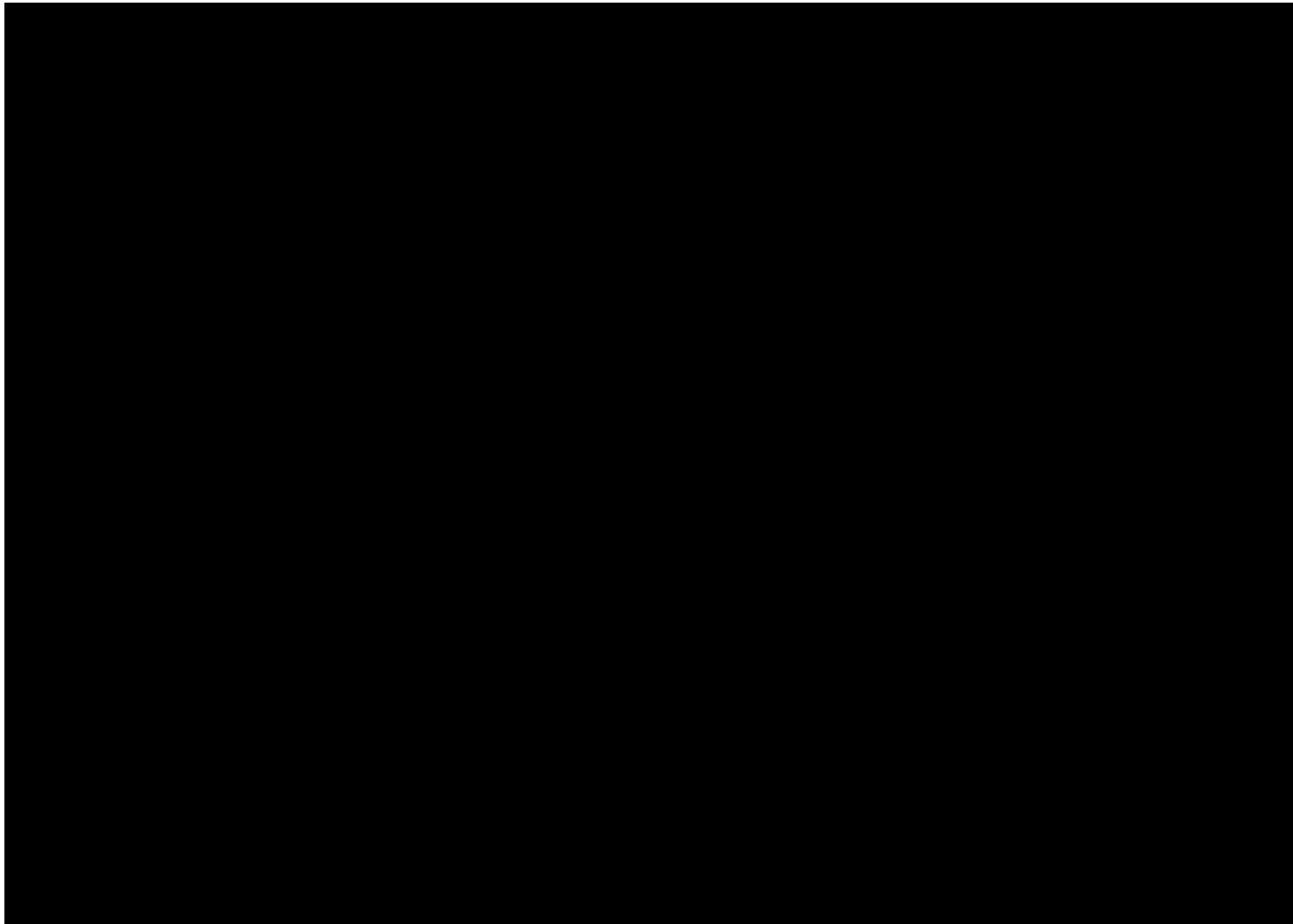
## F. Post-Merger: Moving into the “Middle Lane”

Date	Event
June 30, 2021	Q3 F21 presentation to Shaw’ Board of Directors: focus on [REDACTED] instead of growth.
Sept 15, 2021	Shaw’s SVP of Enterprise Business Solutions: [REDACTED]
Sept 22, 2021	[REDACTED]
Oct 27, 2021	Board Presentation describes Shaw [REDACTED]
Oct 28, 2021	Q4 F21 Performance Summary and F22 Budget presentation to Shaw’s Board: plans to materially [REDACTED]
Nov 16, 2021	Shaw Mobile implements price increase (“12 box pricing”)
Nov 25, 2021	Budget presentation outlines Shaw’s first F22 priority is [REDACTED]
Jan 12, 2022	Q1 F22 business update to the Board: [REDACTED]
Mar 7, 2022	Paul McAleese: Shaw Mobile results are not as favorable due, in part, to Shaw’s [REDACTED]
May 2, 2022	Rogers’ market report: [REDACTED]



# Shaw Shifts to “Middle Lane”

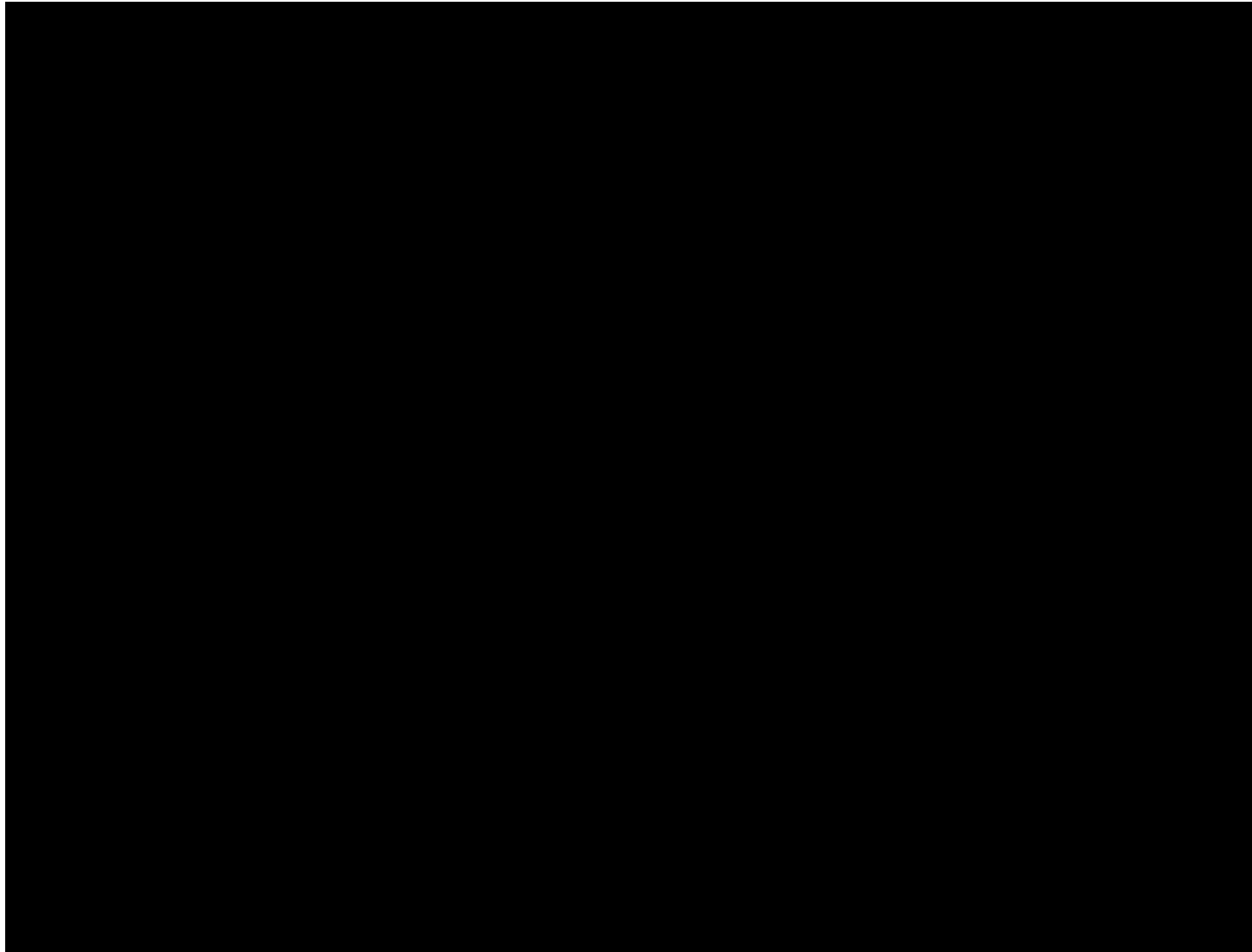
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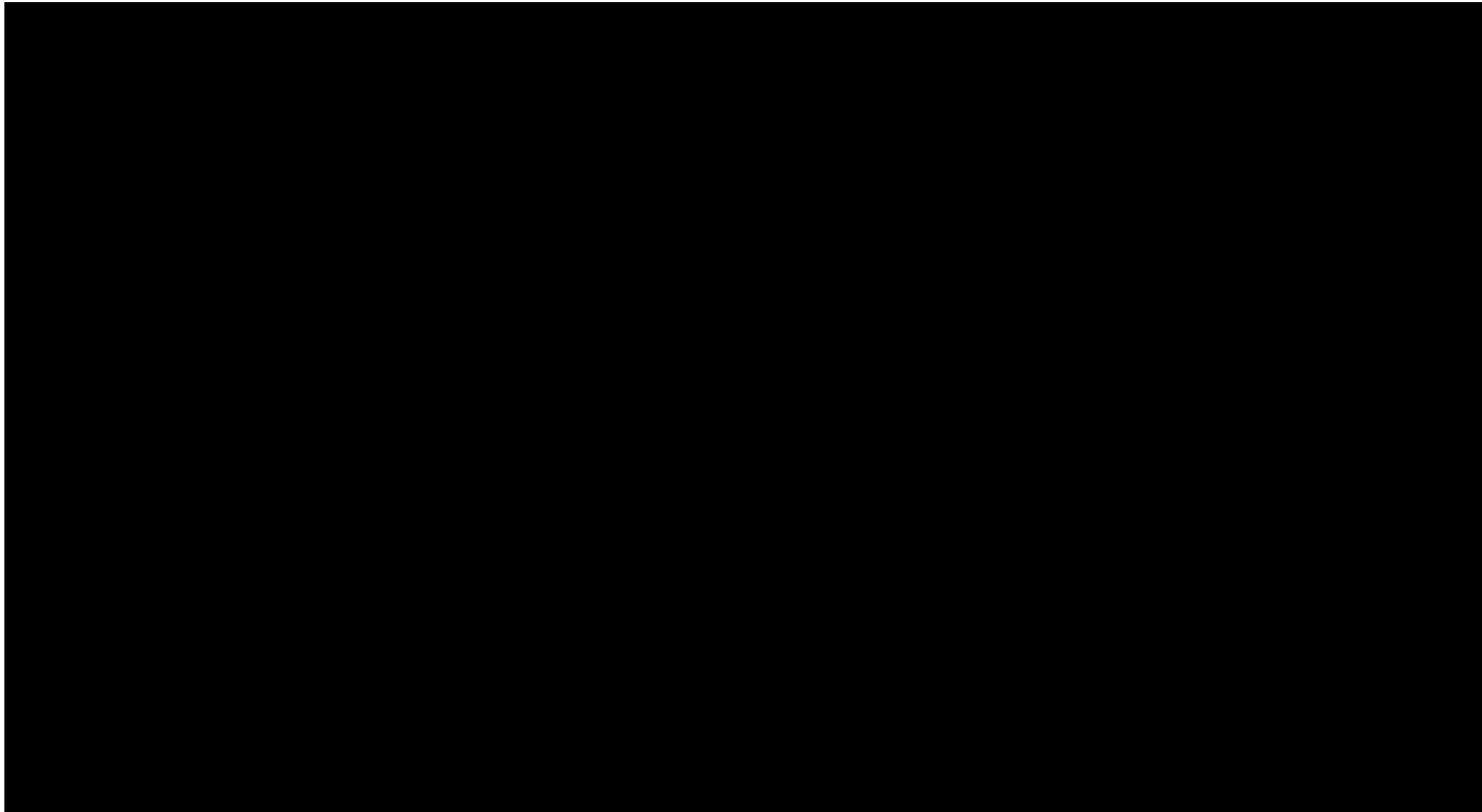
# Shaw Shifts to “Middle Lane”

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# Shaw Hits the Brakes and Shifts to the “Middle Lane”



CA-A-1402, Shaw Presentation titled Board of Directors Q4/F21 Performance Summary and F22 Budget dated October 28, 2021, p 15; Testimony of P McAleese, Transcript, Vol 12, Nov 23, 2022, p 2991:14 – p 2994:21; CA-A-1320, Shaw Presentation titled Calendar 2022 Plan with Normalized Growth Rate dated November 2021, p 5; Testimony of P McAleese, Transcript, Vol 12, Nov 23, 2022, p 3073:23 – p 3076:21; CA-A-0668, Shaw Email dated February 8, 2022 from Paul McAleese to Katherine Emberly; Subject: ELT Update - 6+6 Forecast, p 1; Testimony of P McAleese, Transcript, Vol 12, Nov 23, 2022, p 2994:22 – p2996:19; CA-A-1306, Shaw Email Feb 2, 2022 re: Input Request-ELT Update-6+6 Forecast, p 1-2; CA-A-0668, p1.







# Shaw Prioritized Closing the Transaction





# Shaw Mobile: Shelving Discounting for a Price Increase

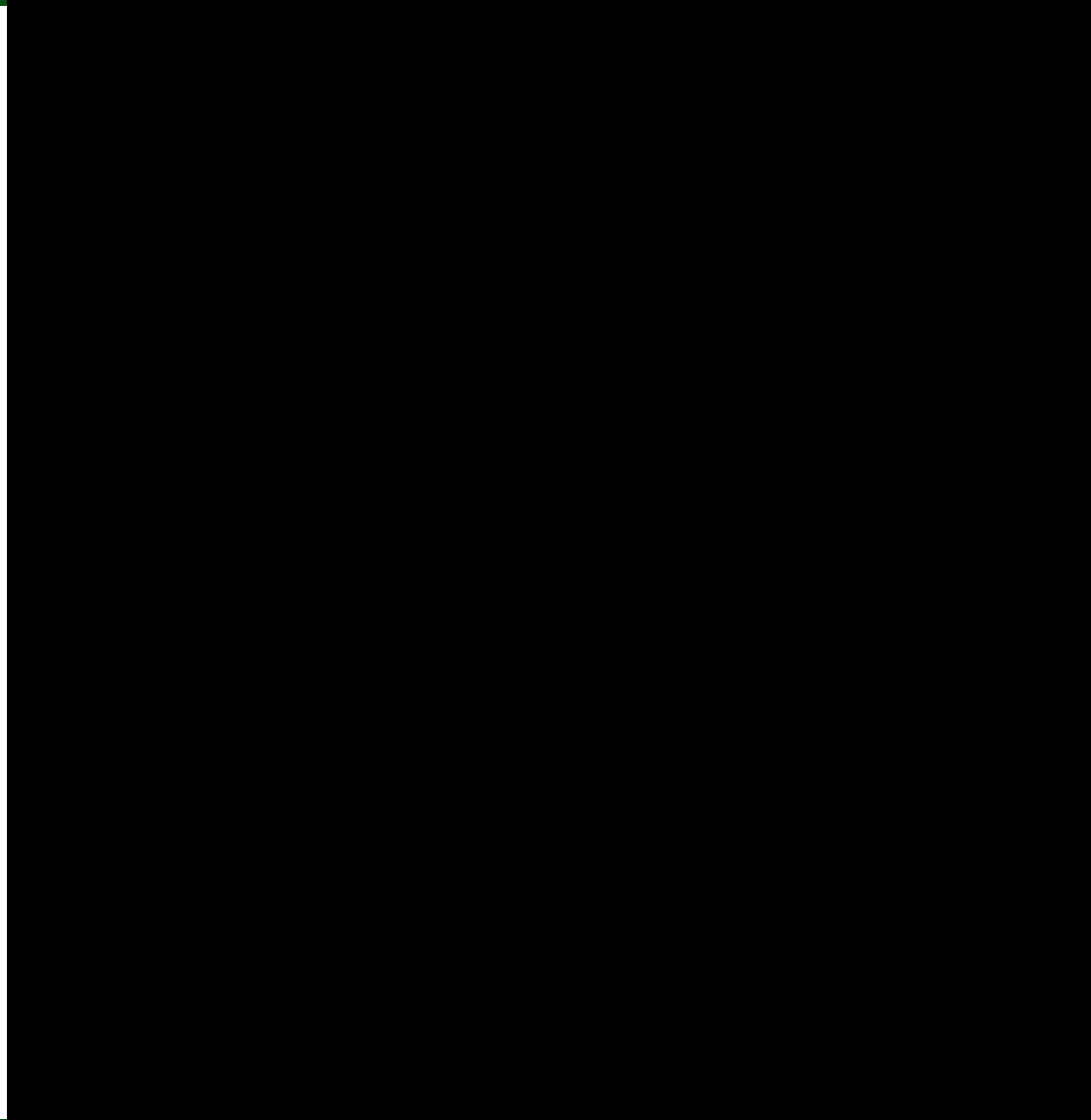
- Prior to the merger announcement and as late as February 2021, Shaw planned to build on existing offers to [REDACTED] of Shaw Mobile

- [REDACTED]  
[REDACTED]

[REDACTED]



# Rogers Plans Freely Shared with Shaw VPs, Sept 2021





# Shared Plans for Shaw Mobile; Attrition 2021-22

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]



## G. Shaw Mobile Will be Transformed Under Rogers

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- Rogers' acquisition of Shaw Mobile will reduce competition in the wireless marketplace and is likely to lead to price increases in the market for wireless services.

- [REDACTED]

- [REDACTED]

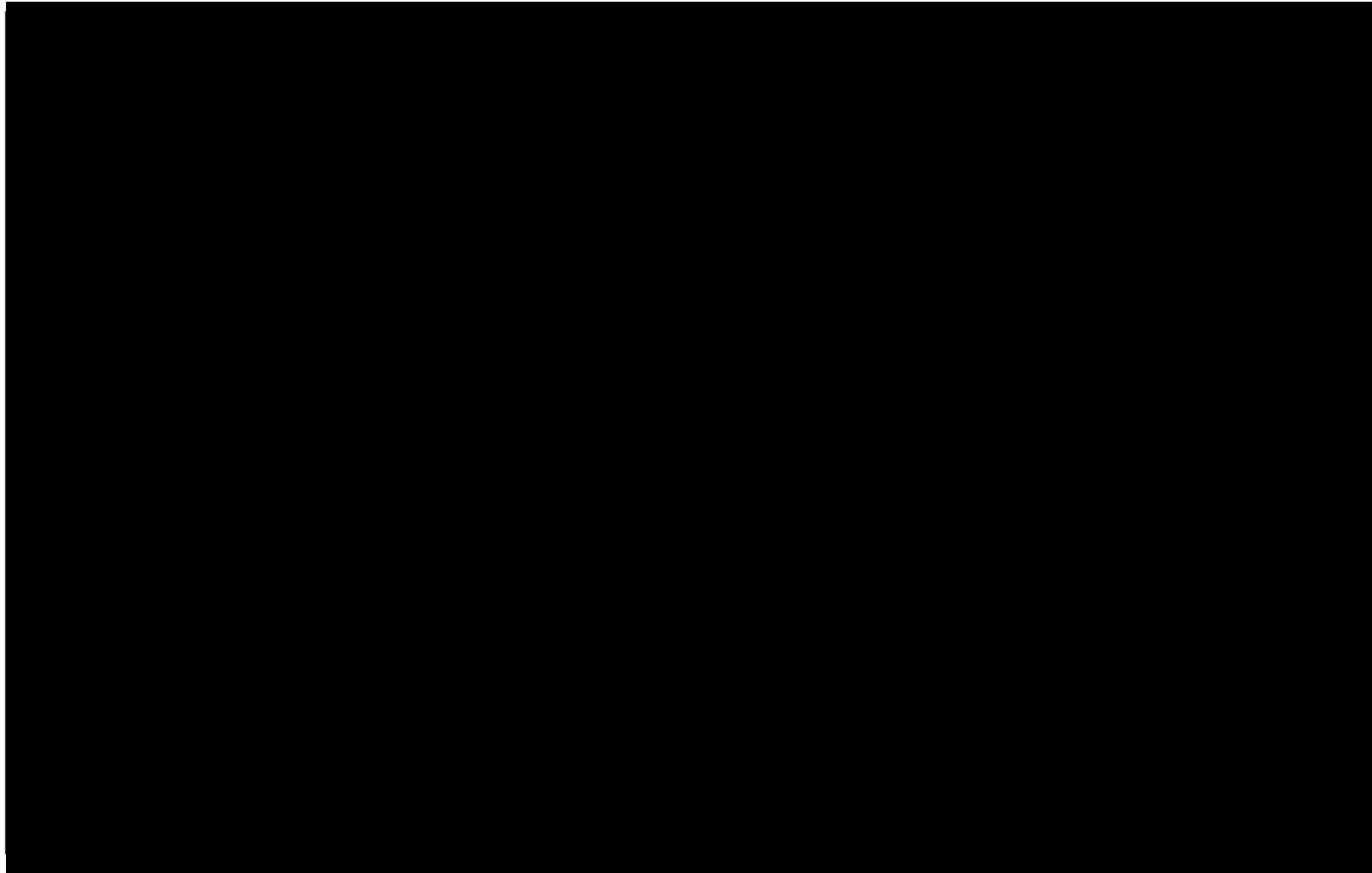
Testimony of D Prevost, Transcript, Vol 13, Nov 24, 2022, p 3384:23 – p 3386:20, CA-R-0209, Witness Statement of Dean Prevost dated 2022-09-23, Exhibit 19, p 580-583, Prepared July 8, 2021 ; CA-A-0336, Nov 11, 2020 re Bundling at Rogers; CA-A-0298, Feb 18, 2021 re Soundbites on Converged, p 1; Testimony of D Prevost, Transcript, Vol 13, Nov 24, 2022, p 3379:13 – p 3384:22; CA-R-0209, Witness Statement of Dean Prevost dated 2022-09-23, Exhibit 20, p 592. Dated March 8, 2022; CA-R-0212, Responding Witness Statement Dean Prevost, Exhibit 38, p 661. Prepared in September 2021; Testimony of D Prevost, Transcript, Vol 12, Nov 23, 2022, p 3238:5 – p 3240:1.





# Rogers Plans to “Stop Sell” Shaw Mobile and Aim for “Parity” with Telus

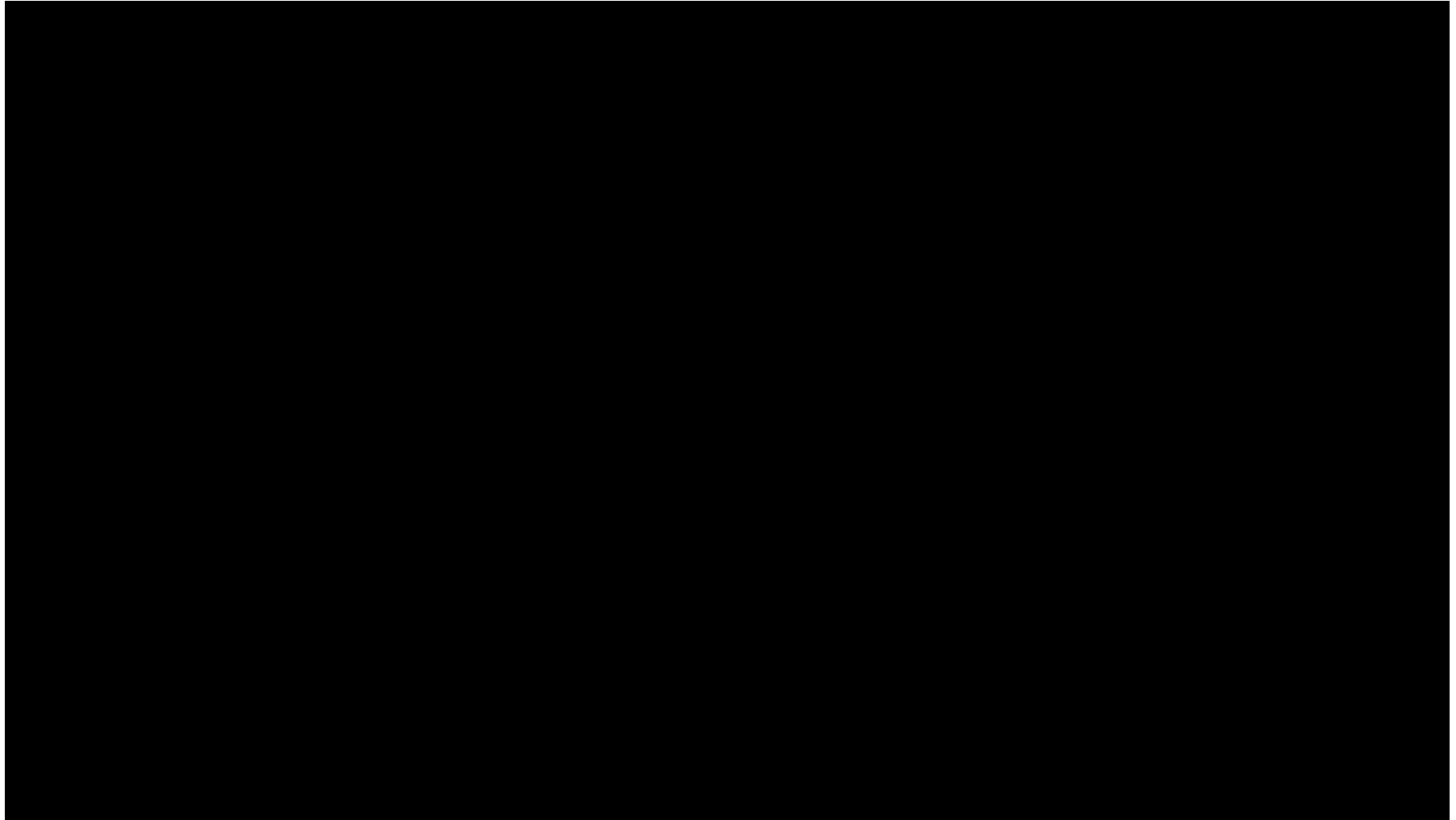
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# Rogers Plans to “Stop Sell” Shaw Mobile and Aim for “Parity” with Telus

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## H. The Merger is Likely to Lessen Competition for Network Quality and Reliability

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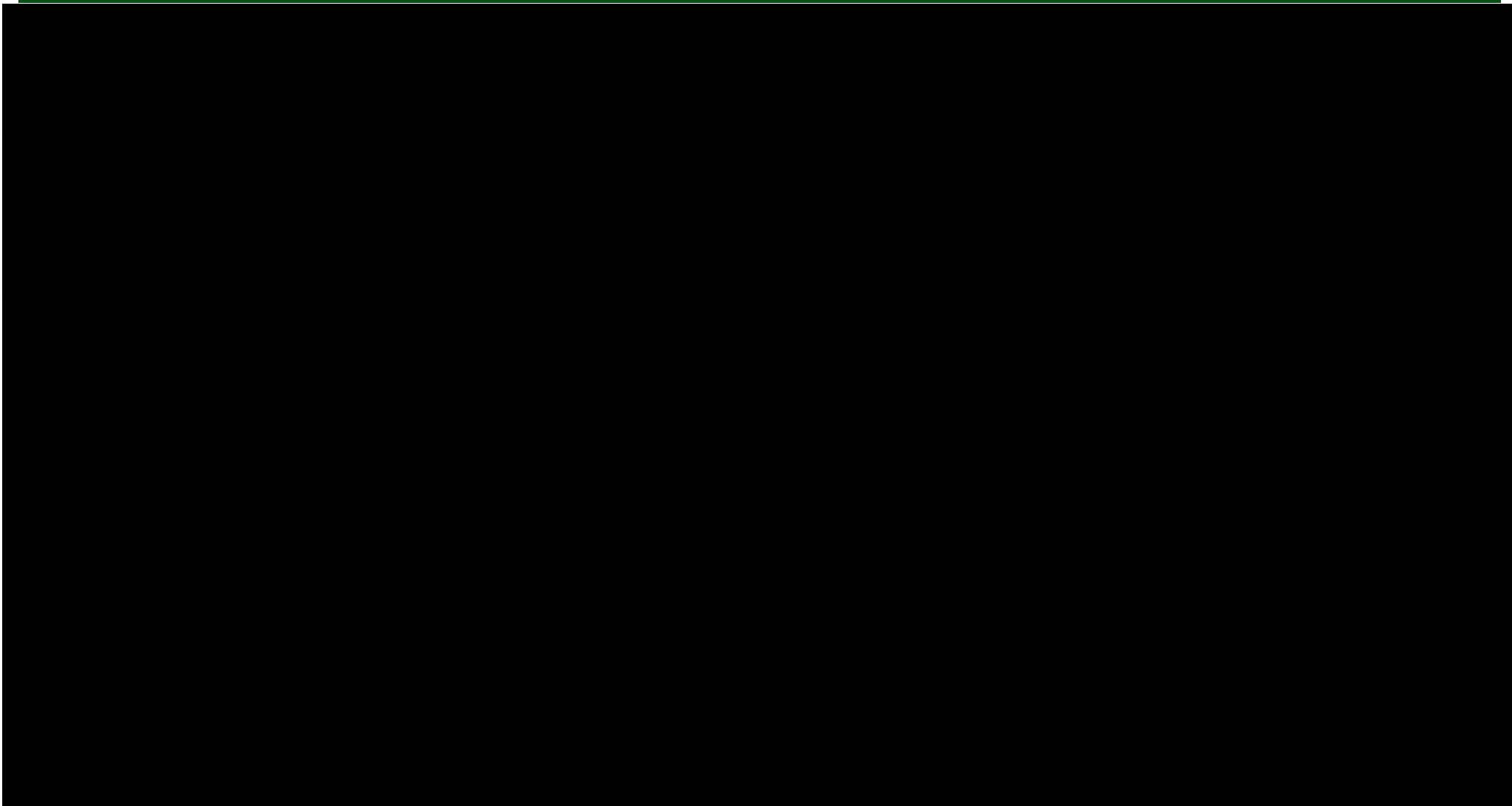
- Consumers value quality and reliability of wireless networks.
- The evidence has shown how the carriers compete through investment, innovation, planning etc in this area.
- Carriers monitor performance indicators and adopt marketing strategies based on reliability and performance claims.
- If the merger and divestiture to Videotron were consummated, Freedom's wireless network, and Freedom's subscribers, would rely upon the combined Shaw-Rogers wireline network for backhaul, transport and other assets.

- [REDACTED]





# Network Reliability





# Competition for Network Quality and Reliability

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Email dated October 28, 2020 Tony Staffieri to Edward Rogers, (attachment re “what I would do differently if I were CEO”), at pages 12-13; see also CA-A-1098; Rogers Examinations Read-Ins, CA-A-1879, page 1538, U/T Response #1:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



# Competition for Network Quality and Reliability

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Email dated October 28, 2020 Tony Staffieri to Edward Rogers, (attachment re “what I would do differently if I were CEO”), at page 13, CA-A-1098; Rogers Examinations Read-Ins, CA-A-1879, page 1538, U/T Response #1:

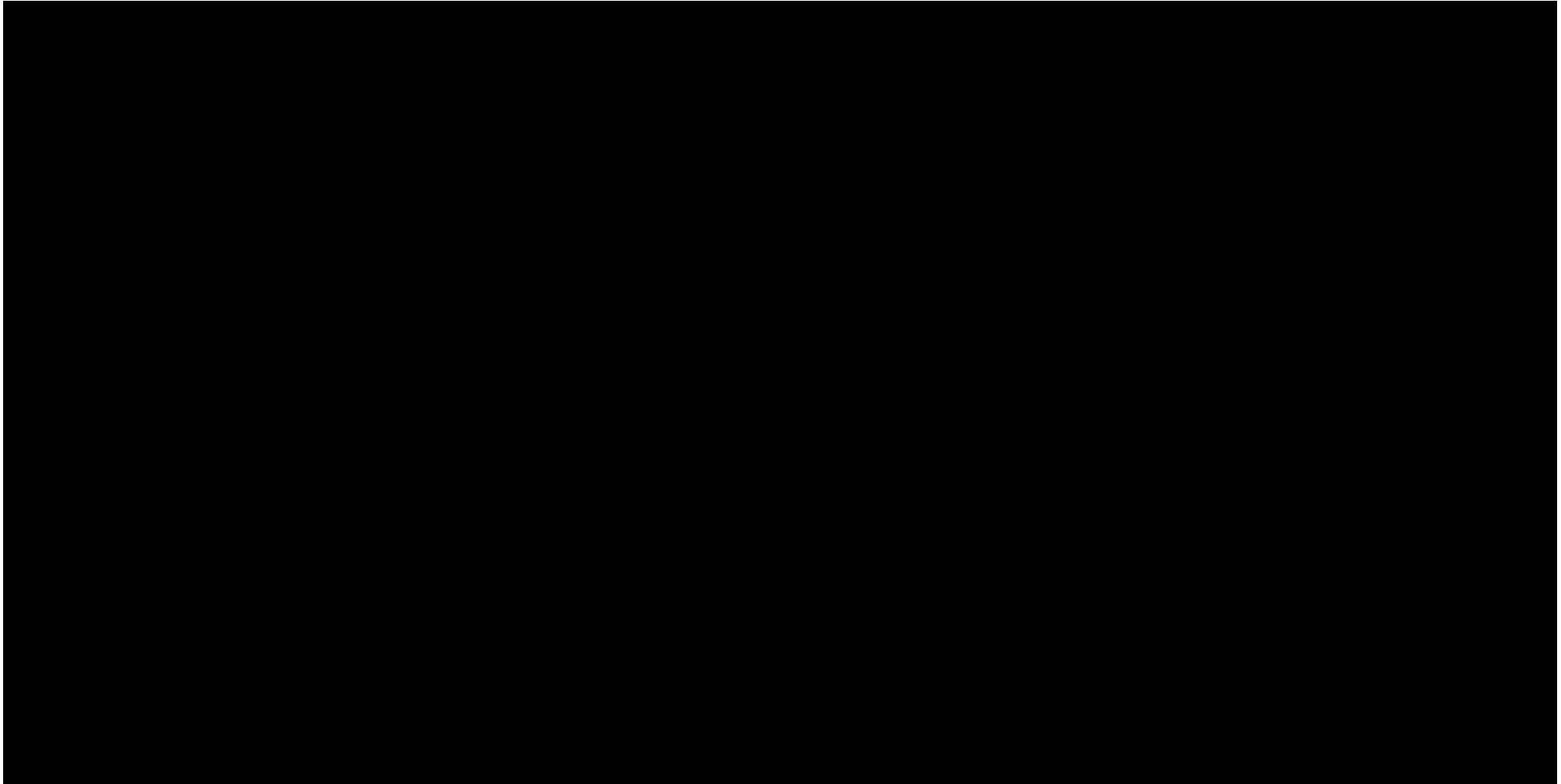
[REDACTED]

[REDACTED]



# Network Reliability

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# 3. “Substantial” Effects: Quantitative and Qualitative

Section C 5, E of Final Written Argument

- A. SLPC from the Proposed Merger: ss. 92, 93 Factors
- B. Dr. Miller’s Merger Simulation Yields Reliable Results
- C. Remedy Does not Remove the “S” – Model Results
- D. “Substantial”
  - (i) Magnitude, Scope, Duration
  - (ii) Impact of Pre-Existing Market Power
  - (iii) Unquantified Qualitative Effects



## A. Substantial Prevention and Lessening of Competition from the Proposed Merger in Wireless Services: ss. 92, 93

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- **Concentrated markets:** CR3 more than 85% and CR4 more than 95% in all three of BC, Alberta and Ontario (on a subscriber basis).
- **High Entry Barriers:** Included scale; retail distribution; branding and customer perception; access to devices/phones; securing spectrum; and building or acquiring a network.
- **High Post-Merger Market Share:** On a subscriber basis, Alberta [REDACTED]; BC [REDACTED]; Ontario [REDACTED]; on a gross adds basis, [REDACTED], [REDACTED] and [REDACTED] respectively.
- **Removal of a Vigorous and Effective Competitor:** Removes Shaw, a disruptive maverick player.
- **Unilateral Impact on Market Power:** Miller Report price increases.
- **Coordination:** Shaw disrupted the market's tendency to coordination.
- **Other:** Reduction in competition among networks re reliability, resiliency.
- **Lack of Remaining Competition:** Given the concentrated and coordinated nature of the market



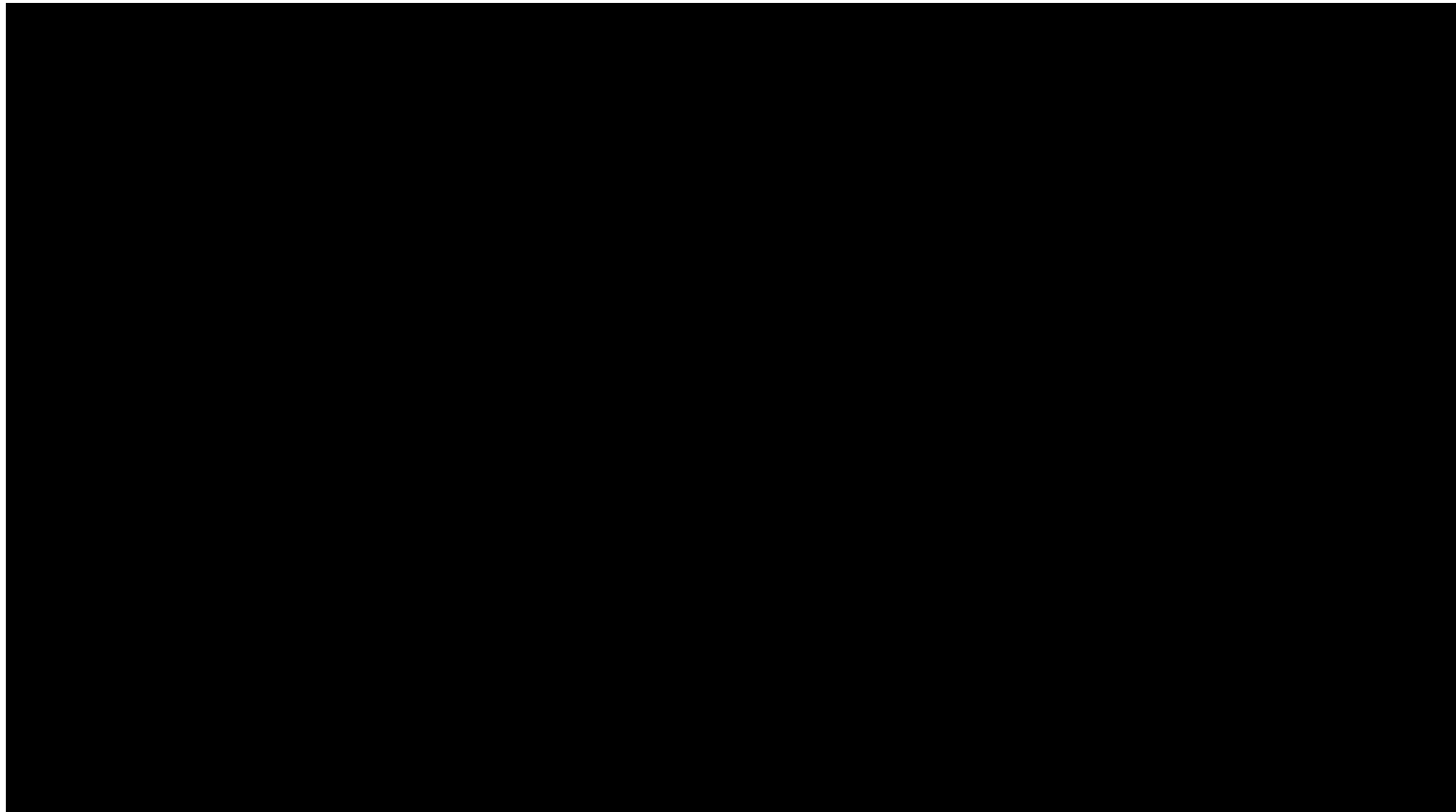
## B. Dr. Miller's Merger Simulation Yields Reliable Results

- **Share of Gross Adds (SOGA) is the Available Measure**
  - Consistent with the *MEGs*, Dr. Miller explained that SOGA is the closest measure available of market share (and thus of diversion), particularly for an emerging competitor, because share of subscribers (SoS) includes their large installed base of customers. Large SOGA reflects the “competitive vigor and future competitive significance” better than SoS. It is also used in ordinary course (e.g. Rogers) documents to indicate market share.
  - Dr. Israel criticized his use of SOGA, but acknowledged different measures have advantages and disadvantages depending on the context.
  - In fact, Dr. Israel's Compass Lexecon colleague on the *AT&T-Sprint* (2011) merger, Dr. Carlton, noted that “market share has embedded customers who don't care to switch. So, it is not telling you about the marginal customers.” Dr. Carlton thus used share of gross adds as one of the measures in the model employed there.
  - Dr. Israel criticized the fact that SOGA does not properly measure active shoppers, but sought no data from Rogers on that topic.
  - Dr. Miller, on the other hand, verified the reliability of SOGA with porting data.



# Dr. Miller Measures Diversions During a Stable Period

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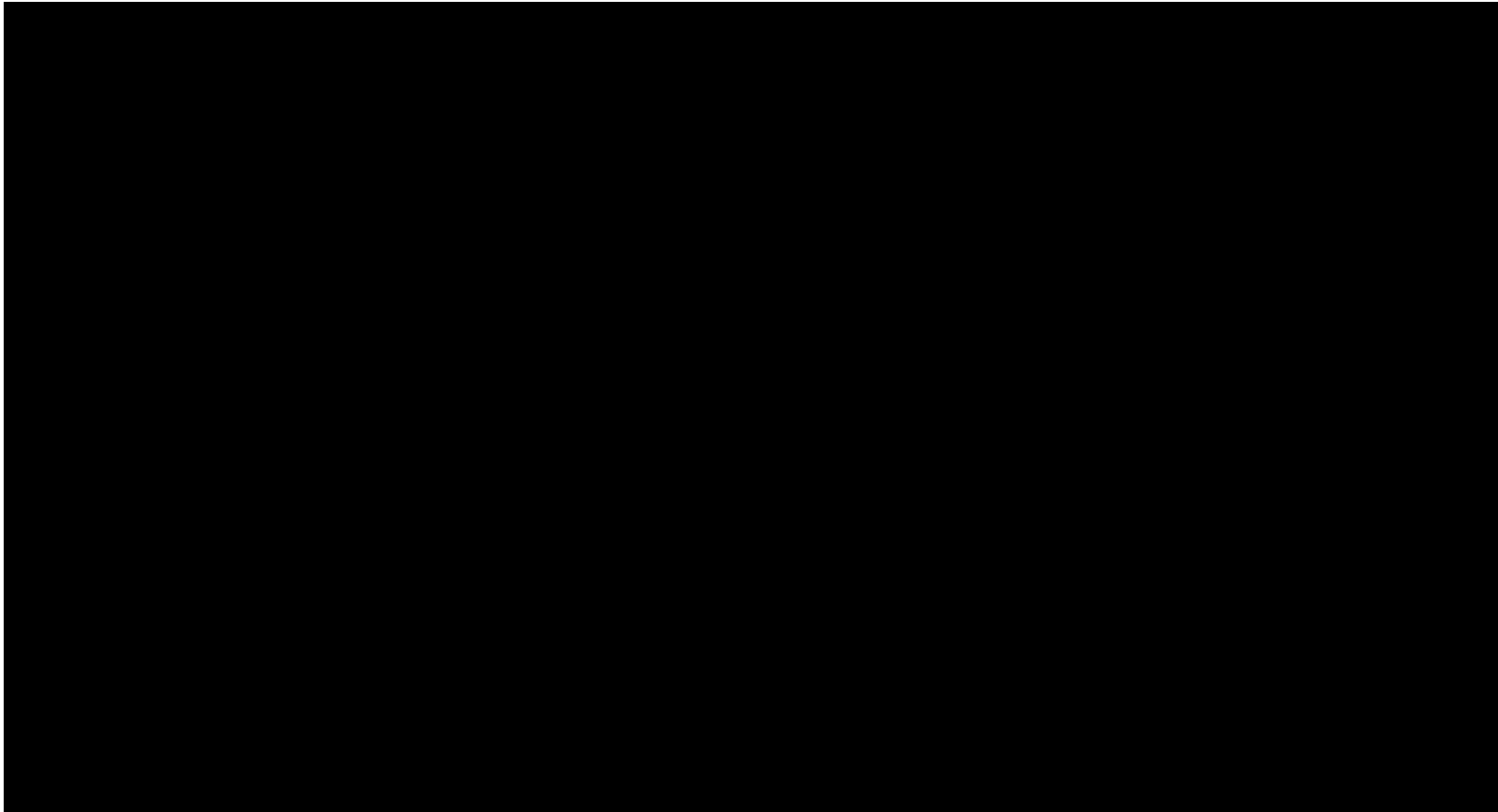






# Dr. Miller Measures Diversions During a Stable Period

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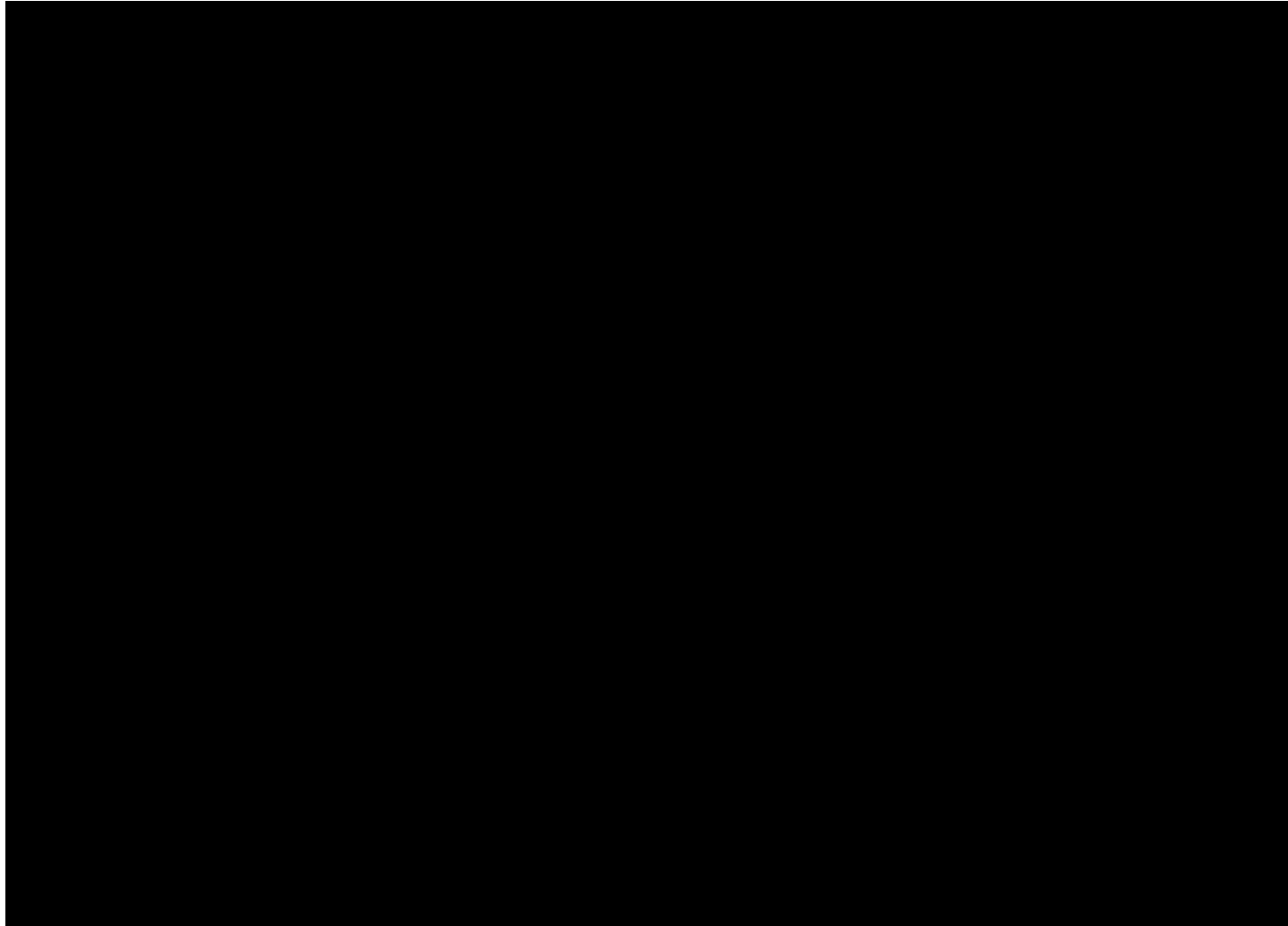
## Dr. Miller's Merger Simulation Yields Reliable Results

- **Dr. Israel's Other Critiques of Dr. Miller's model are Invalid**
  - Dr. Israel incorrectly assumed that Rogers was only acquiring subscribers from Shaw in the divestiture scenario, when in fact they are acquiring the Shaw brand, retail stores, the wifi infrastructure, wireline assets used to deliver and expand the wireless business, etc.
  - [REDACTED]
  - Suggested marginal cost reductions are based upon unverified data from Videotron, which yield unreliable future data consumption figures.
  - In any case, the marginal cost savings projected are small.
  - Dr. Israel's "bundle nests" were "only an illustration" and he admitted that he had performed no analysis of the extent to which bundles were close competitors of each other. The available evidence of the close rivalry between Rogers (which offered no bundle) and Shaw contradicts that they are.
  - Dr. Miller demonstrated that the results of the Israel model in fact fit the porting data much more poorly than do the results of Dr. Miller's model.
  - Dr. Israel wrongly assumed that Videotron will introduce a new bundle offer and that it will be many times more popular than Freedom's existing bundle or Videotron's projection.



# Dr. Israel's Bundled Nests Fit the Porting Data Poorly

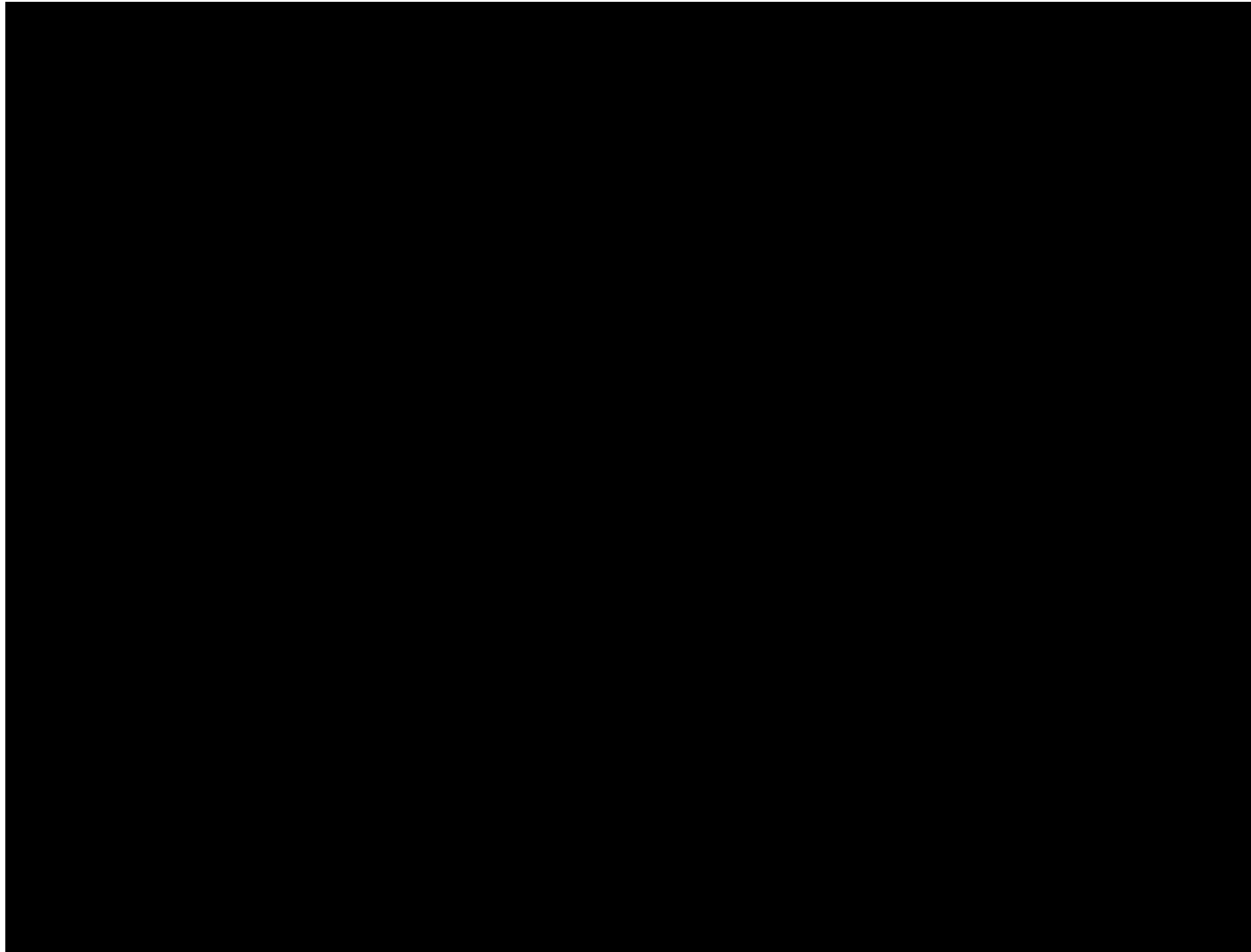
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## C. The Proposed Remedy Leaves Significant Anti-Competitive Effects Unaddressed

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## C. “Substantial” Prevention and Lessening of Competition: (i) Magnitude, Scope, Duration

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- Respondents argue that the “lower bound” price increases found by Dr. Miller do not pass this standard.
- However, as held in *P&H*, it is “incorrect to state that the Commissioner must adduce quantitative evidence showing a 5% variation in post-merger prices in order to establish a lessening of competition that is ‘substantial.’ The required magnitude of a ‘substantial’ price increase will instead vary from case to case and will depend on the facts of each case (*Tervita SCC* at para 46; *TREB FCA* at para 88; *Hilldown* at pp 328–329). A substantial price variation can be less than 5%.” (*P&H* para 470)
  - **Magnitude:** Price increases predicted by Dr. Miller are in the [REDACTED] range for Alberta and [REDACTED] range for BC; Dr. Miller’s estimates price effects of 5.5 to [REDACTED] for Rogers and Shaw brands in BC and Alberta from the Proposed Merger and Divestiture; annual DWL amounts are significant in all markets;
  - **Scope:** The above price increases are across the entire territory of the provinces, the third and fourth most populous in the country;
  - **Duration:** Given the extremely high barriers to entry, such price increases can be expected to last well beyond the 2-year threshold often considered “substantial”.



## (ii) Pre-Existing Market Power

- Pre-existing market power is also a reason to “calibrate downward” the degree of market power required (Ibid, para 471, citing *Tervita CT* paras 376-77 per Crampton CJ).
- In April 2021, the CRTC determined that Bell, Rogers, and Telus “together exercise market power in the provision of retail mobile wireless service in all provinces except Saskatchewan, where SaskTel exercises sole market power.” (CRTC April 2021 Decision, p. 1 – see also CA-A-1022, Miller Sept. 23, 2022 Report, paras 53-57, pp.32-34.)
- This finding is consistent with the concentration, market share and high margin data (66-78% for Rogers, Fido and Freedom brands) noted by Dr. Miller (Ibid., Exhibits 2, 3, 36, pp.36, 28, 177)
- This highly concentrated market, combined with high pre-existing margins suggests that a price increase in the ranges noted above is likely to be substantial.
- [REDACTED] reinforcing the likelihood of price increases in this highly concentrated market.



### (iii) “Lower Bound”: Other Unquantified Qualitative Effects

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- Dr. Miller noted that his model assumed a “perfect transfer” of Freedom subscribers from Shaw to Videotron and thus estimates a “lower bound”
- He describes various reasons why he expects other unquantified effects:
  - New Freedom’s susceptibility to manipulation of conditions of service and supply from Rogers, its competitor;
  - Loss of control over assets previously owned by Shaw;
  - Changed incentives in terms of how aggressively to compete with Rogers given the vulnerability to the above manipulation;
  - Changed incentive surrounding Shaw Mobile given the lack of benefits from selling to internet customers using owned wireline assets;
  - Uncertainty and likely higher costs surrounding TPIA services;
  - The fact that Wind (which owned no wireline asset base) was less competitive;
  - Loss of integration of certain assets previously owned and operated by Shaw;
  - Likelihood of greater coordination as Videotron fears reprisals from price reductions in its home market in Quebec, and given its dependence on Rogers.



### (iii) Unquantified Qualitative Effects, contd

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- Given the other evidence reviewed above, unquantified effects likely in a divestiture to Videotron also include:
  - Loss of expansion Shaw was planning “but for” the merger;
  - Elimination of Shaw as a poised competitor in business services;
  - Reduction in network competition and resiliency;
  - Rogers’ record of poorer customer satisfaction and lower service quality;
  - Weakening of Freedom as a competitor in Ontario due to the above impact of the divestiture from Shaw.
- **Conclusion:**
  - These considerations will be further discussed in the Remedy section, in terms of demonstrating that the Respondent’s Proposed Divestiture does not remove the “S” from the “SLPC” from the Proposed Merger.





# Dr. Johnson's Position is at Odds with Ordinary Course Documents

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- Joe Natale (Rogers' then CEO) to Rogers' Board:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





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# 4. Shaw's Financial Position



# Shaw Was Well-Positioned to Compete

- [REDACTED]

[REDACTED]

[REDACTED]
- MR. ENGLISH: “I apologize if we ever gave evidence to suggest that our company was in financial distress because that's not the case.”

**Table 1.0:** Shaw’s financial metrics prior to announcement of Proposed Merger.

Financial Metric	Shaw Communications Inc. Position
Free Cash Flow	\$747 million (as of August 31, 2020). <sup>105</sup>
Cash and Cash Equivalents	\$571 million (as of November 30, 2020). <sup>106</sup>
Undrawn Credit Facility	[REDACTED] (as of February 29, 2020). <sup>107</sup>
Net Leverage (Net Debt/EBITDA)	Shaw: [REDACTED] Rogers: [REDACTED] BCE: [REDACTED] Telus [REDACTED] (As at the end of Q2 2020 for Shaw and December 31, 2019 for others). <sup>108</sup>
Debt-to-Total Market Capitalization	Shaw: [REDACTED] Rogers: [REDACTED] BCE: [REDACTED] TELUS: [REDACTED] Quebecor: [REDACTED] (On or about January 21, 2021) <sup>109</sup>
Net Debt-to-Total Enterprise Value	Shaw: [REDACTED] Roger: [REDACTED] BCE: [REDACTED] TELUS: [REDACTED] Quebecor: [REDACTED] (On or about January 21, 2021) <sup>110</sup>



# Shaw Was Well-Positioned to Compete

**Table 1.1:** Shaw and Quebecor prior to announcement of the Proposed Merger (\$MM CAD, % or ratio)<sup>111</sup>

Financial Metric	Shaw	Quebecor
Market Capitalization		
Enterprise Value		
Debt-to-Total Market Capitalization		
Net Debt-to-Total Enterprise Value		
Net Leverage (Net Debt/ LTM EBITDA)		
Revenue	\$5,407 <sup>112</sup>	\$4,318 <sup>113</sup>
EBITDA	\$2,391 <sup>112</sup>	\$1,953 <sup>114</sup>
Book Value of Assets	\$16,165 <sup>112</sup>	\$9,862 <sup>115</sup>



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# 5. Proposed Remedy

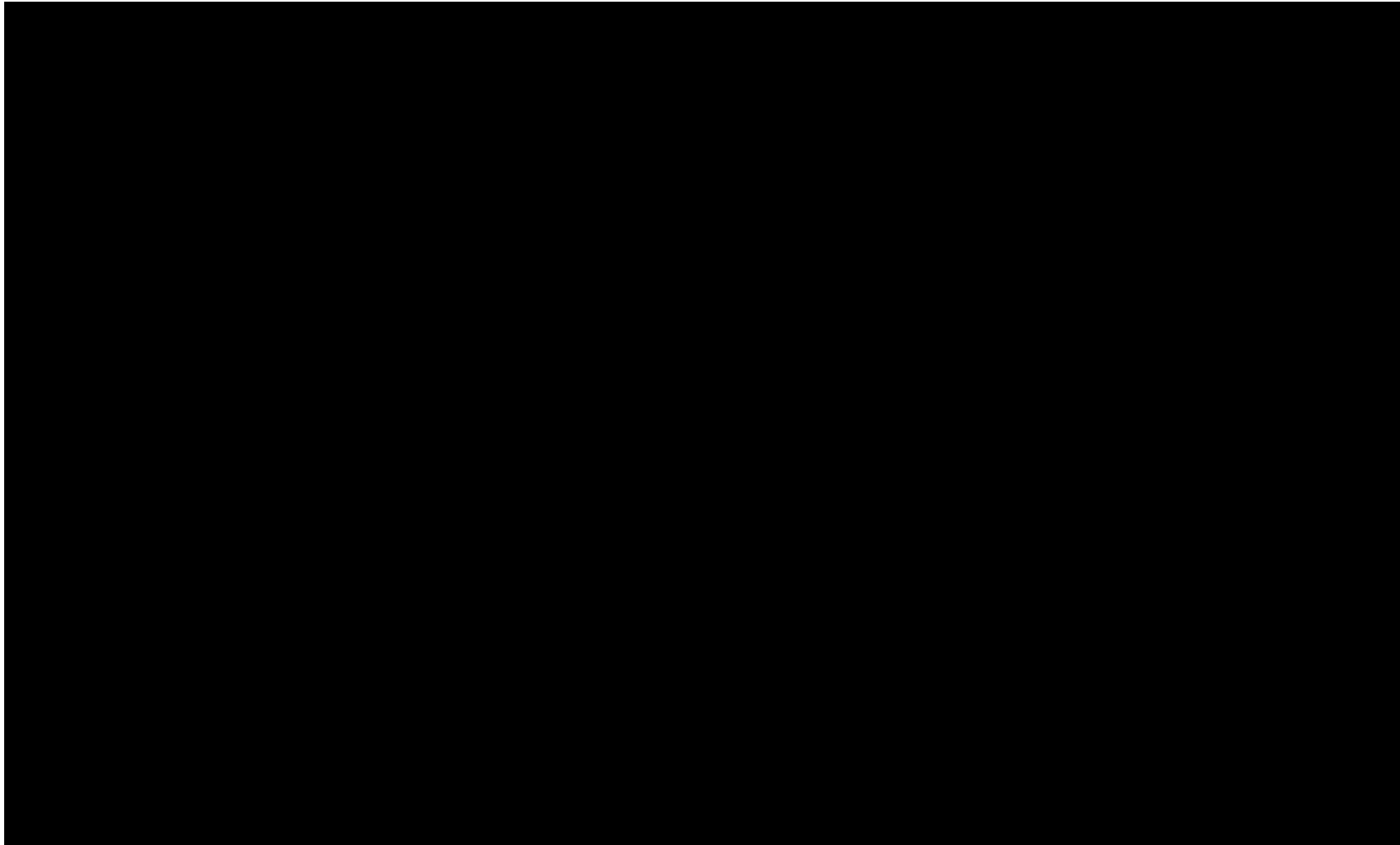
The Proposed Remedy Does Not Eliminate the “S” in  
the SLPC





# Maverick Competitor Shaw Mobile Will be Lost

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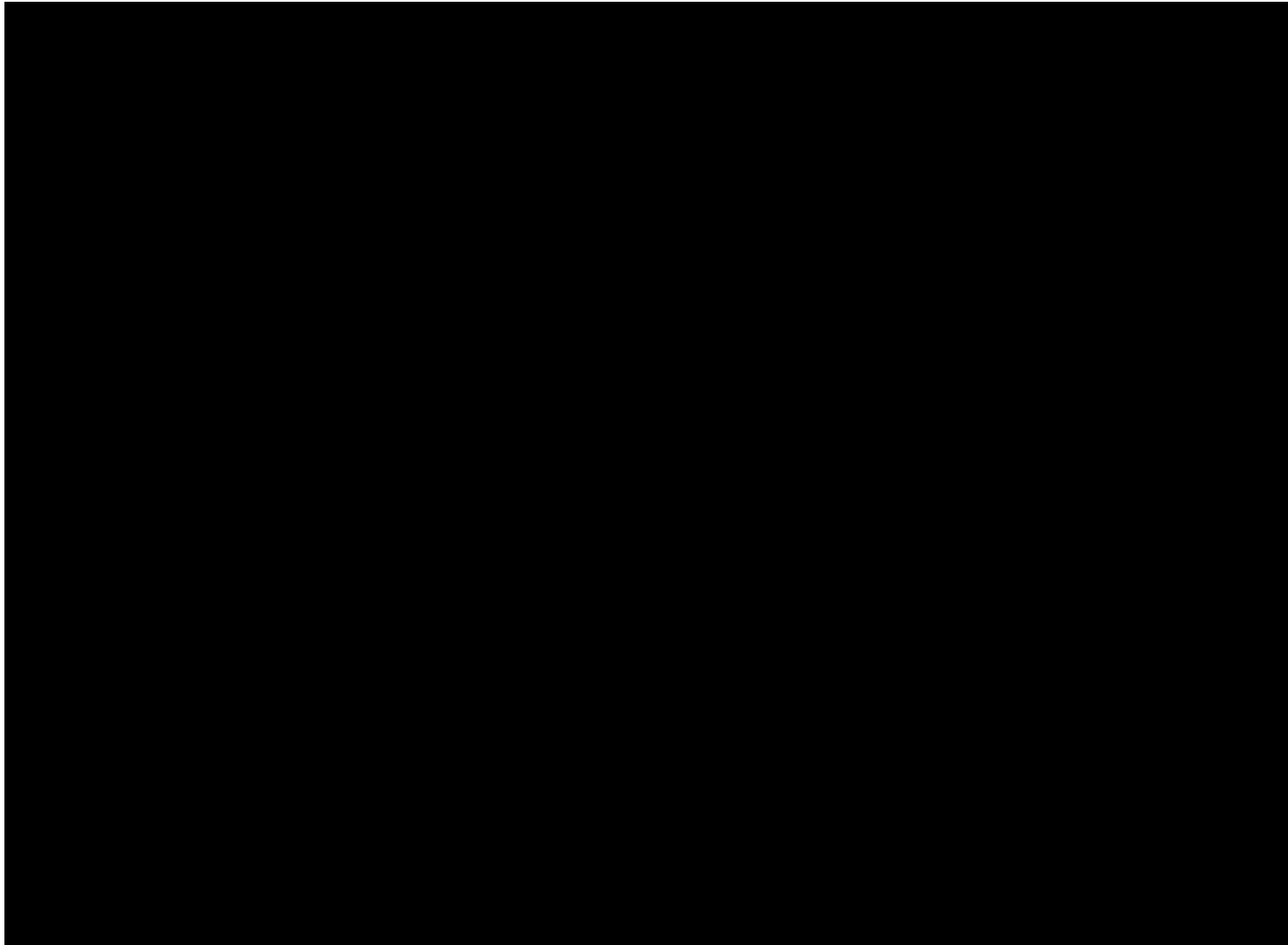
CA-R-0212, Responding Witness Statement Dean Prevost, Exhibit 38, p 661.





# Importance of Owned Wireline

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CA-A-0326, Rogers Presentation titled EBU Wireline Strategy dated January 2017, p 26.





# Importance of Owned Wireline

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37. The importance of wireline and its convergence with wireless for 5G applications cannot be overestimated. For 5G radio antennae to connect to the world, they need to link back to robust wireline backhaul. That infrastructure, like all network infrastructure, cannot be taken for granted. For companies like Shaw and Rogers, we must make significant generational investments in our fibre-based cable networks so that we can continue to compete effectively and provide world-leading connectivity services that are seamless and affordable, while also supporting the wireline backbone on which 5G will depend.
38. If Rogers and Shaw were to compete on their own effectively in this future, converged world, they would need to duplicate the investments of the other in the asset class they lack. Otherwise, they risk becoming a stand-alone niche player that cannot innovate or contend in the connectivity ecosystem that Canada needs. However, this type of duplicative investment by Rogers and Shaw won't enhance facilities-based competition or otherwise offer incremental benefits to consumers. Instead, it will drain resources away from the investments in 5G and rural broadband that a combined Rogers/Shaw could make to compete more intently with more affordable and more innovative services.

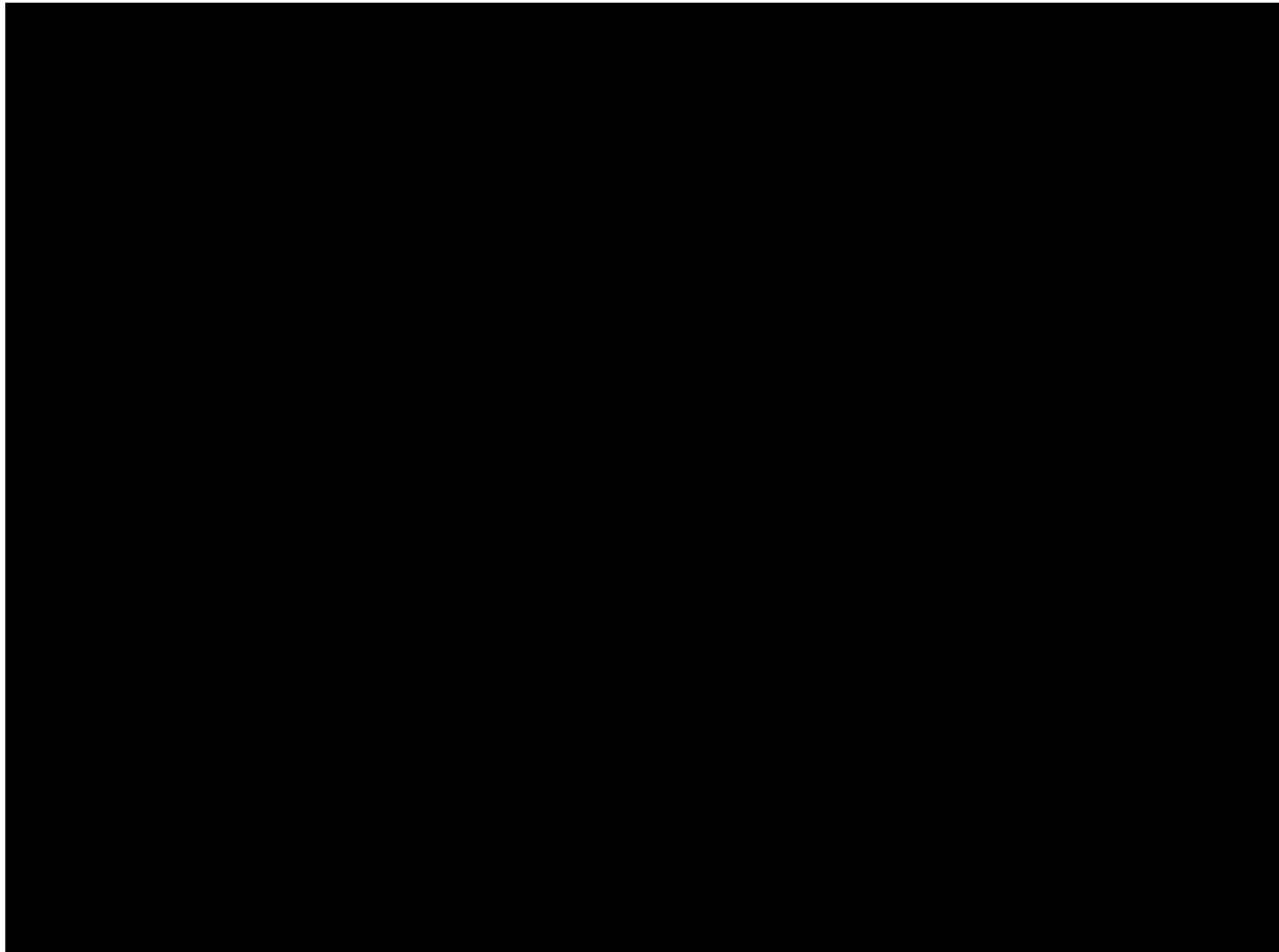






# Importance of Owned Wireline

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CA-A-0702, Rogers Shaw ARC Request, p 9, 63.





# Importance of Owned Wireline

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9024 Maintenant, peut-on sérieusement croire que Vidéotron aurait été en mesure de réaliser tous ces accomplissements et d'avoir autant d'impact dans le marché si elle ne s'était pas engagée envers la concurrence fondée sur les installations? Évidemment que non. Vidéotron a pu changer la donne au Québec parce qu'elle a le plein contrôle de ses offres commerciales ainsi que de ses infrastructures. Ce plein contrôle est la conséquence directe de la décision de l'entreprise de miser à fond sur la concurrence fondée sur les installations.

9075 Alors, je suis d'avis que nous avons été un acteur qui, parce que nous étions solidement implantés, parce que nous avons la vocation, comme câblodistributeur, d'être, donc, un *facility-based operator*, donc une entreprise installée sur notre réseau. Et c'est le même raisonnement et la même logique qui a prévalu lorsque nous nous sommes engagés dans le sans-fil, étant donné que nous étions en mesure alors, à ce moment-là, comme je l'ai dit dans mon intervention, de contrôler notre destinée, de contrôler notre déploiement et de contrôler, évidemment, nos tarifs, nos propositions et notre réseau.



# Freedom, as Acquired by Videotron, will have Reduced Economies of Scale and Scope

**Table 1.1:** Shaw and Quebecor prior to announcement of the Proposed Merger (\$MM CAD, % or ratio)<sup>111</sup>

Financial Metric	Shaw	Quebecor
Market Capitalization		
Enterprise Value		
Debt-to-Total Market Capitalization		
Net Debt-to-Total Enterprise Value		
Net Leverage (Net Debt/ LTM EBITDA)		
Revenue	\$5,407 <sup>112</sup>	\$4,318 <sup>113</sup>
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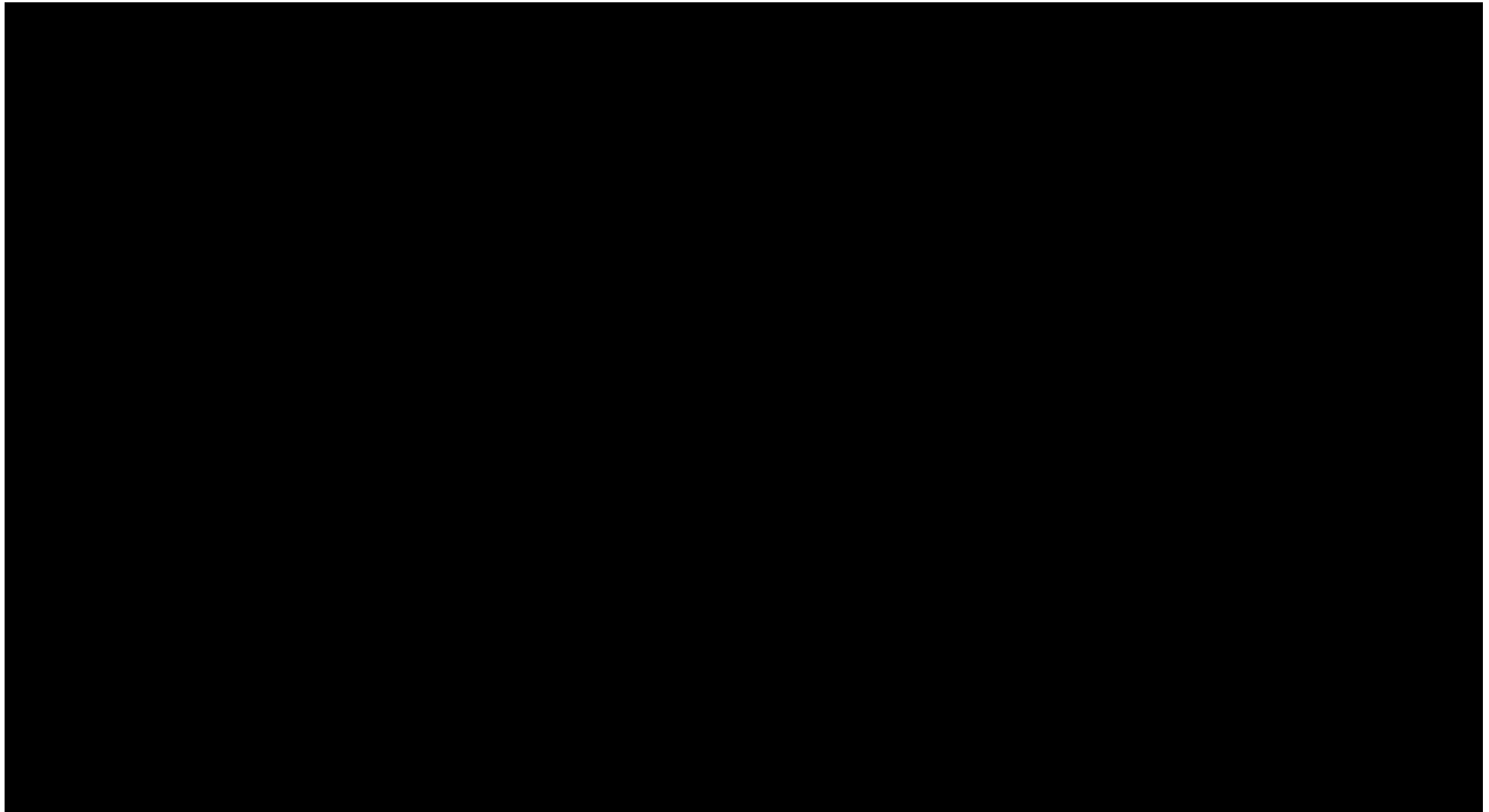
**Table 1.2:** Shaw vs Videotron Subscribers as discussed in Martin Testimony (YOY growth)<sup>116</sup>

Mobile Subs	2017	2018	2019	2020	2021*
Videotron <sup>117</sup>					
Shaw <sup>118</sup>					
Shaw - SW ON					
Shaw - AB					
Shaw - BC					



# Importance of Bundling and Cross-selling

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CB-A-1006, Rogers Presentation titled Converged Base & Opportunity, p 1.





# Importance of Bundling and Cross-selling

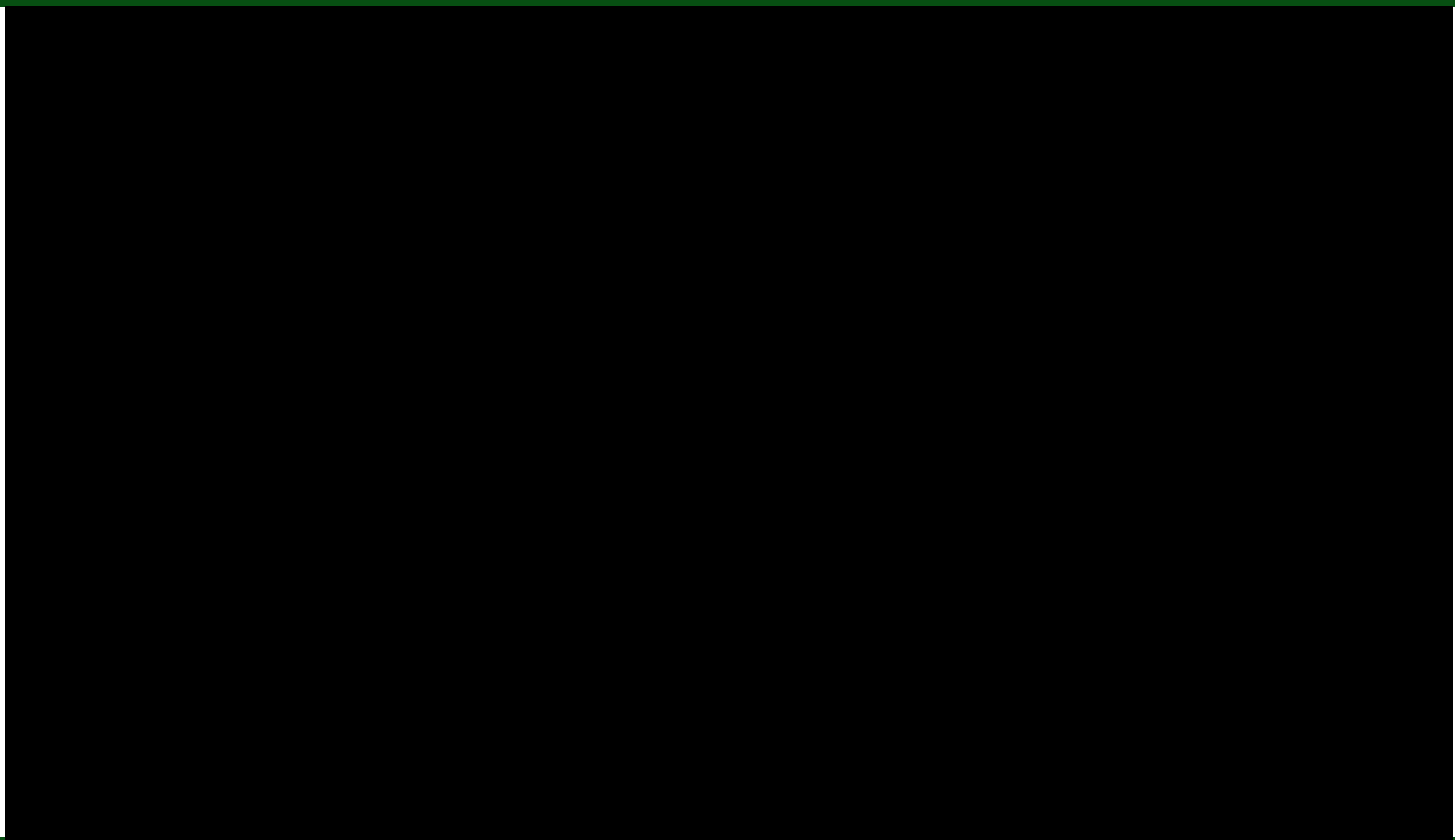


CA-A-1242, Shaw Presentation titled CBM Strategy dated July 2021, p 34.





# Importance of Bundling and Cross-selling

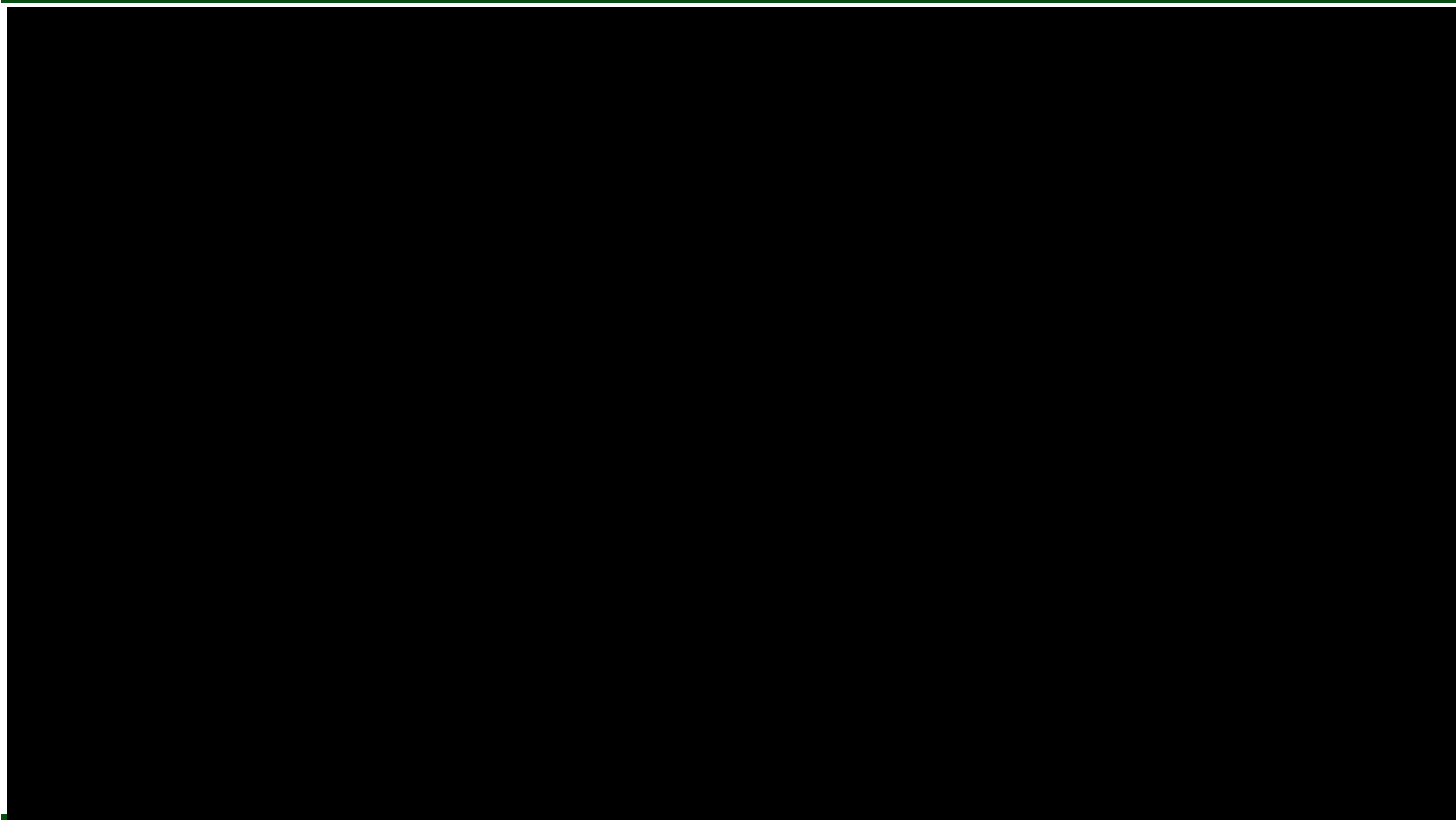


CA-A-1242, Shaw Presentation titled CBM Strategy dated July 2021, p 35.





# Importance of Bundling and Cross-selling

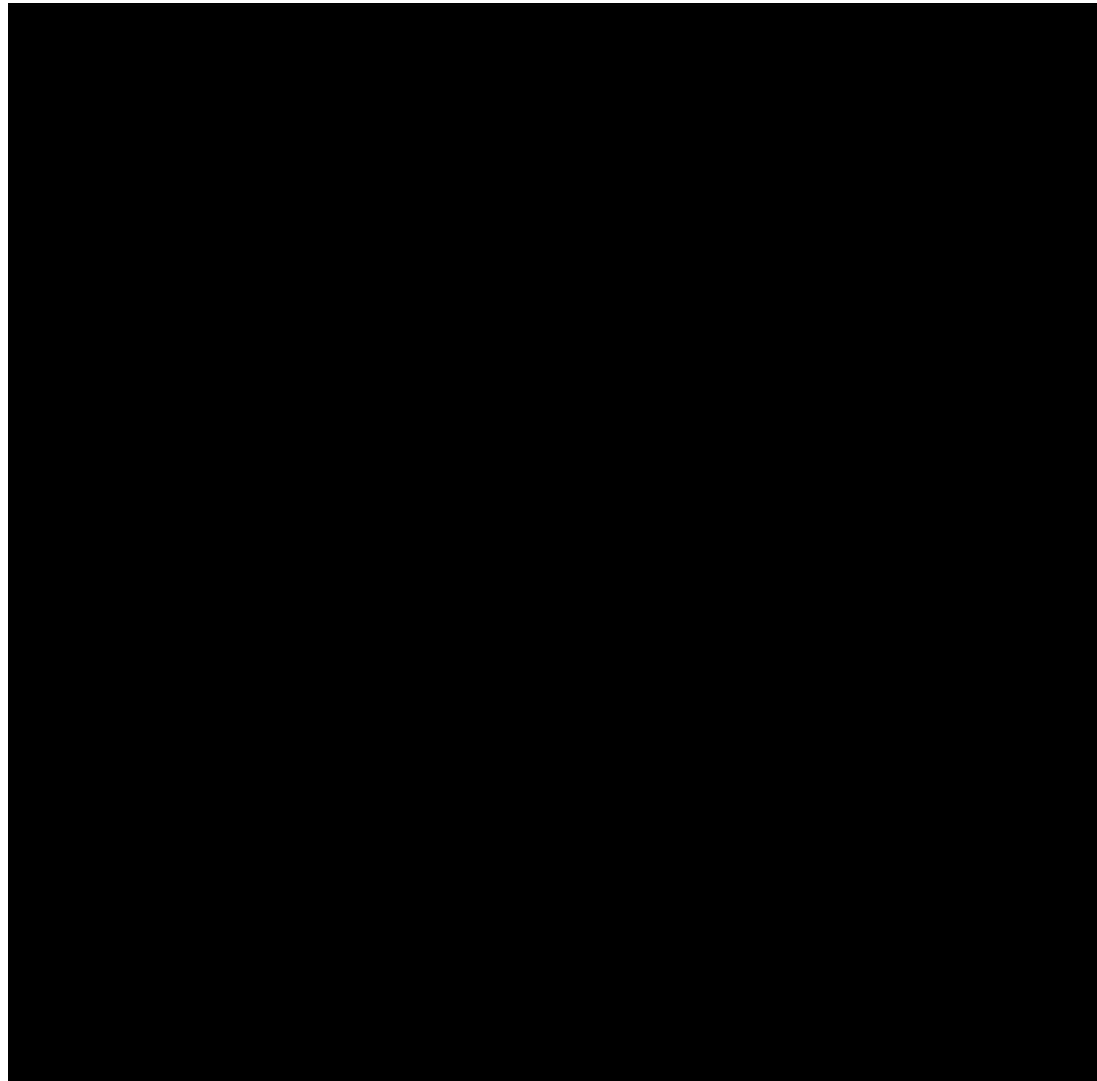


CA-A-1242, Shaw Presentation titled CBM Strategy dated July 2021, p 39.



# TPIA Cannot Replace Owned Wireline

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CA-I-0144, Witness Statement of Jean-François Lescadres, Exhibit 10, p 296.







# TPIA Cannot Replace Owned Wireline

- 1. Vous dites qu'un quatrième joueur est nécessaire pour assurer une véritable concurrence dans le domaine du sans-fil. En même temps, vous êtes prêts à tout faire pour bloquer l'expansion des joueurs indépendants qui contestent votre duopole avec Bell dans le domaine de l'accès internet filaire. N'est-ce pas hypocrite de votre part?**

Vidéotron, en tant que quatrième joueur en mobilité, est un bâtisseur. 2G\$ investis, plus les dépenses aux enchères de fréquences. Contrôle de ses installations. Véritable capacité d'innover. Véritable concurrence. La preuve : notre impact sur les prix et la qualité des services mobiles au Québec.

Les revendeurs de l'accès internet filaire n'investissent rien. Ne font que de l'arbitrage tarifaire. Aucun impact sur l'innovation. Aucun impact soutenu sur le marché.

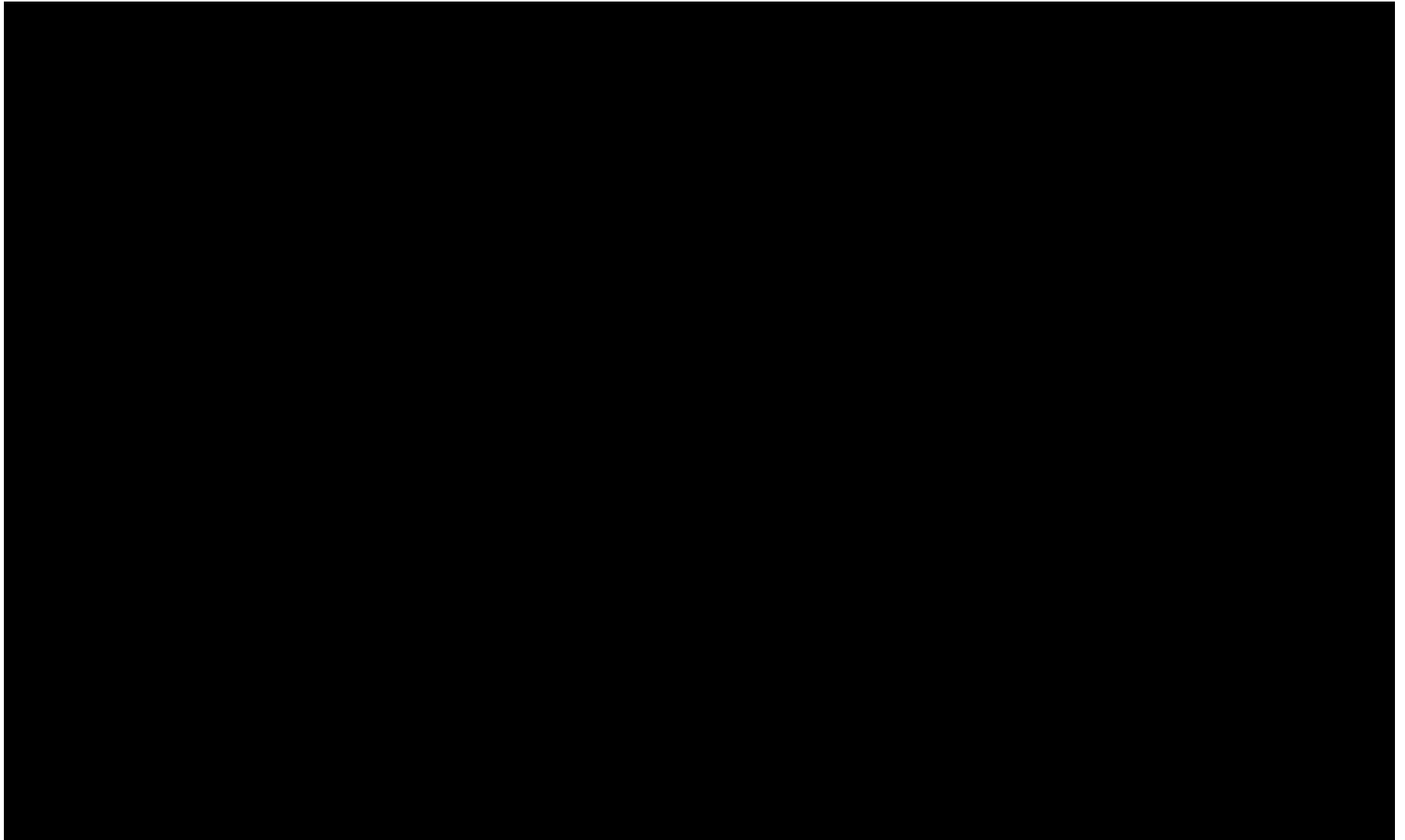
- 2. Pourtant, vous êtes un revendeur en Abitibi. Alors ce modèle est acceptable quand c'est Vidéotron le revendeur?**

La situation en Abitibi est presque unique au Canada. Une seule entreprise (Bell) détient la compagnie de téléphone locale (Télébec) et le câblodistributeur local (Cablevision). Les citoyens sont pris en otage. Il fallait faire quelque chose. Nous sommes fiers d'être ceux qui apportent enfin les forces de la concurrence en Abitibi.



# Importance of Wi-Fi Hotspots

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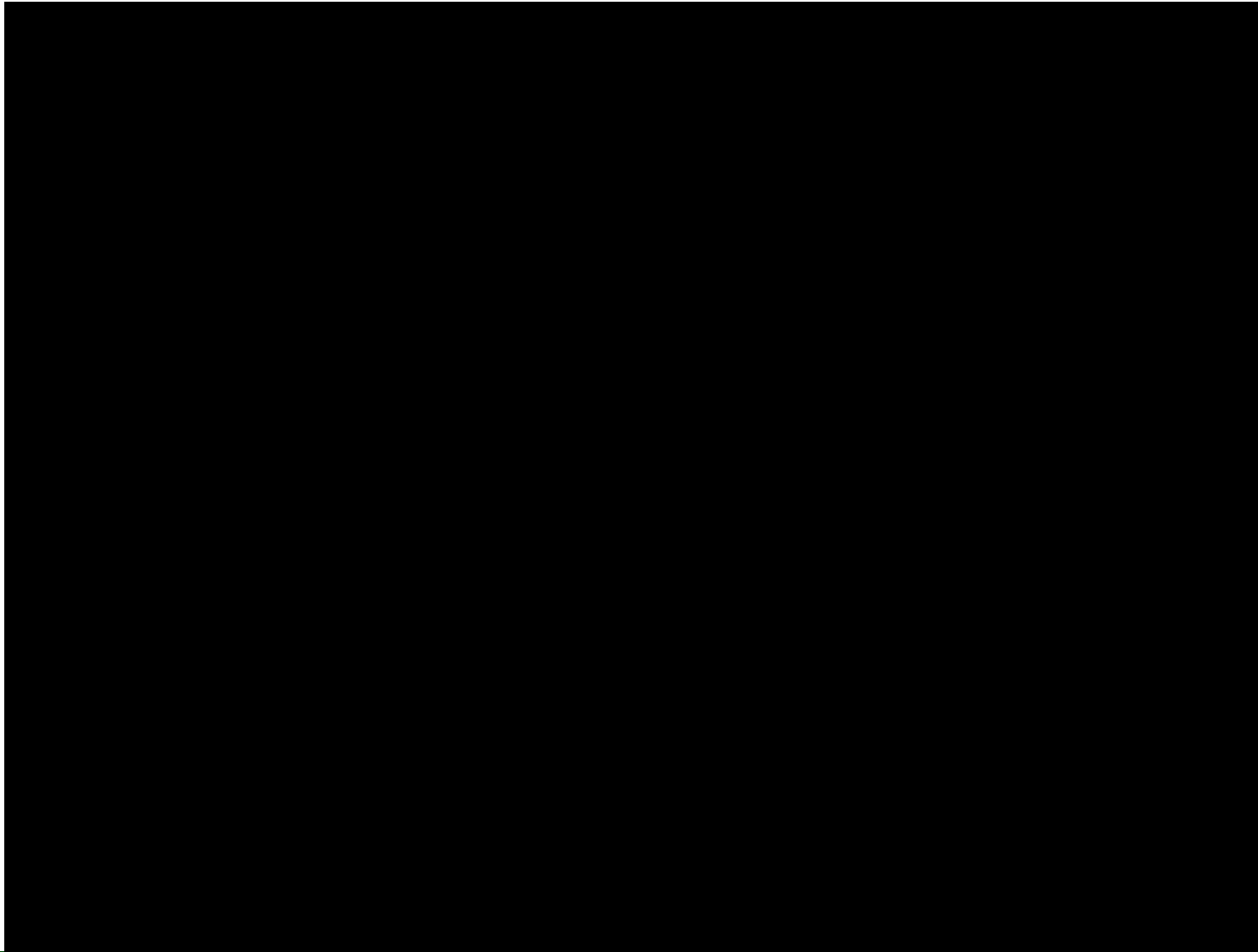
CA-A-0850, Rogers Presentation titled Wireless Offsite "Win the West" Discussion dated April 12, 2022, p 25.





# Importance of Wi-Fi Hotspots

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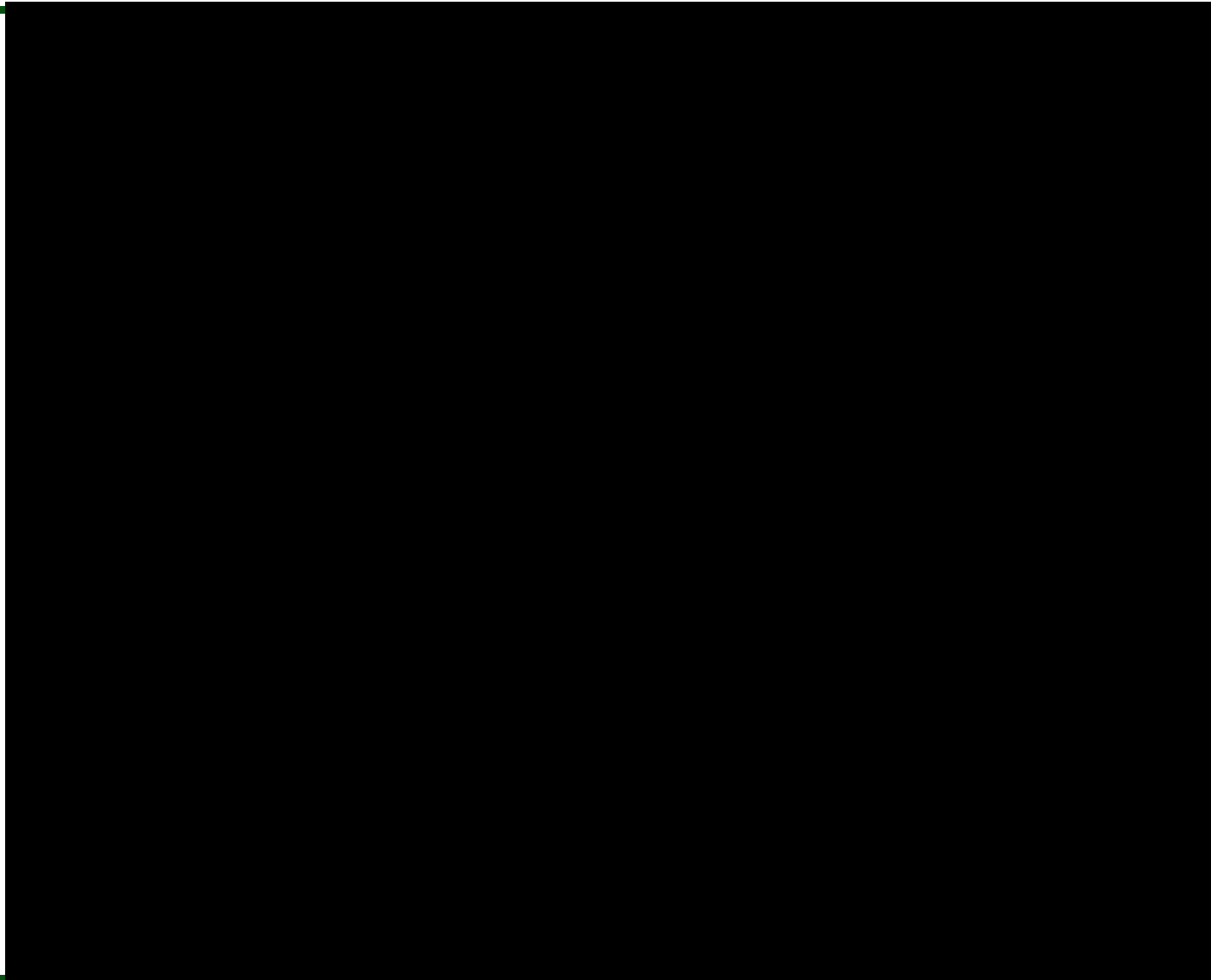


CA-A-1324, Shaw Presentation titled Q3 F21 Review & Discussion Materials Board of Directors Meeting dated June 30, 2021, p 19.





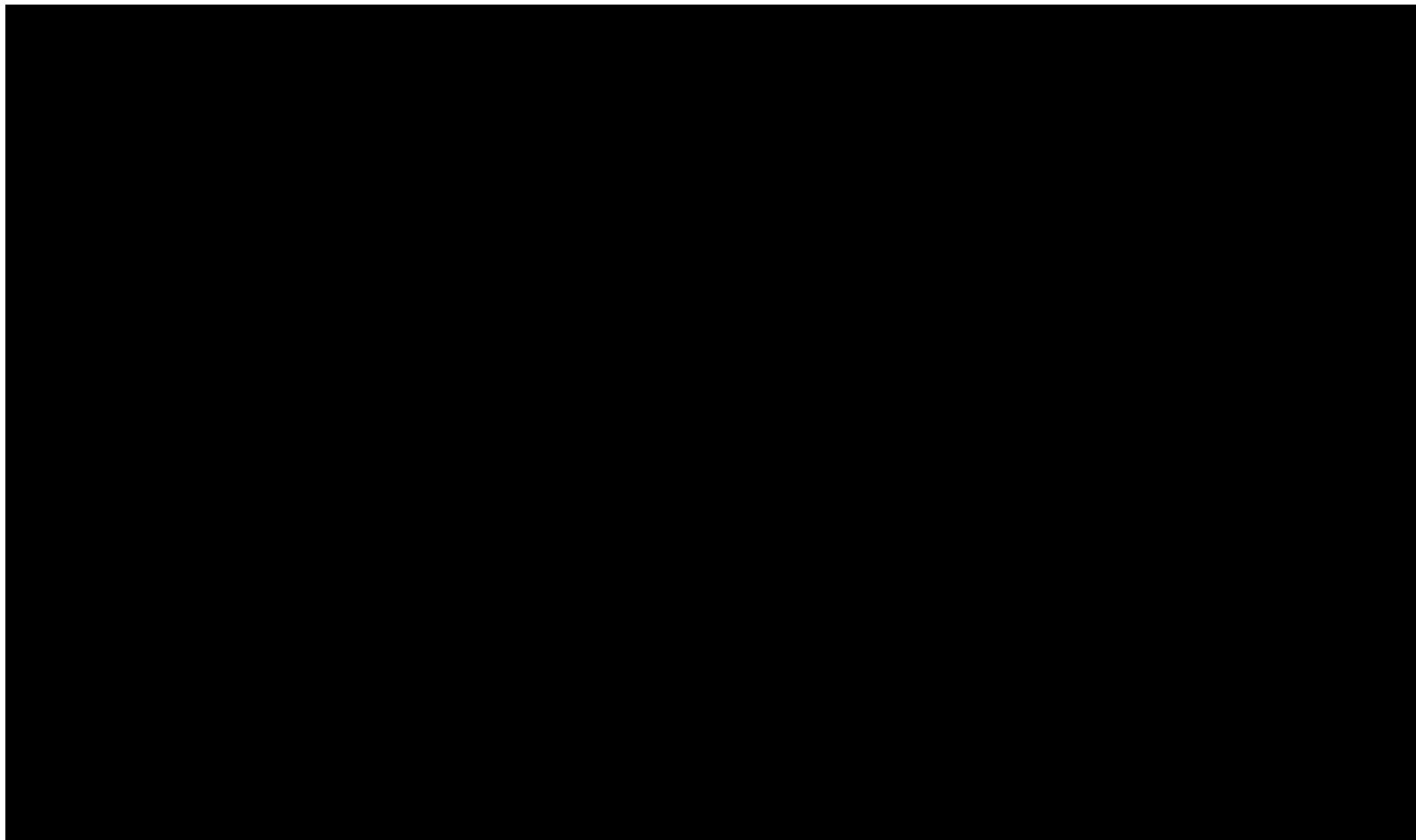
# Importance of Wi-Fi Hotspots





# Wi-Fi Hotspots for Small Cell Deployment

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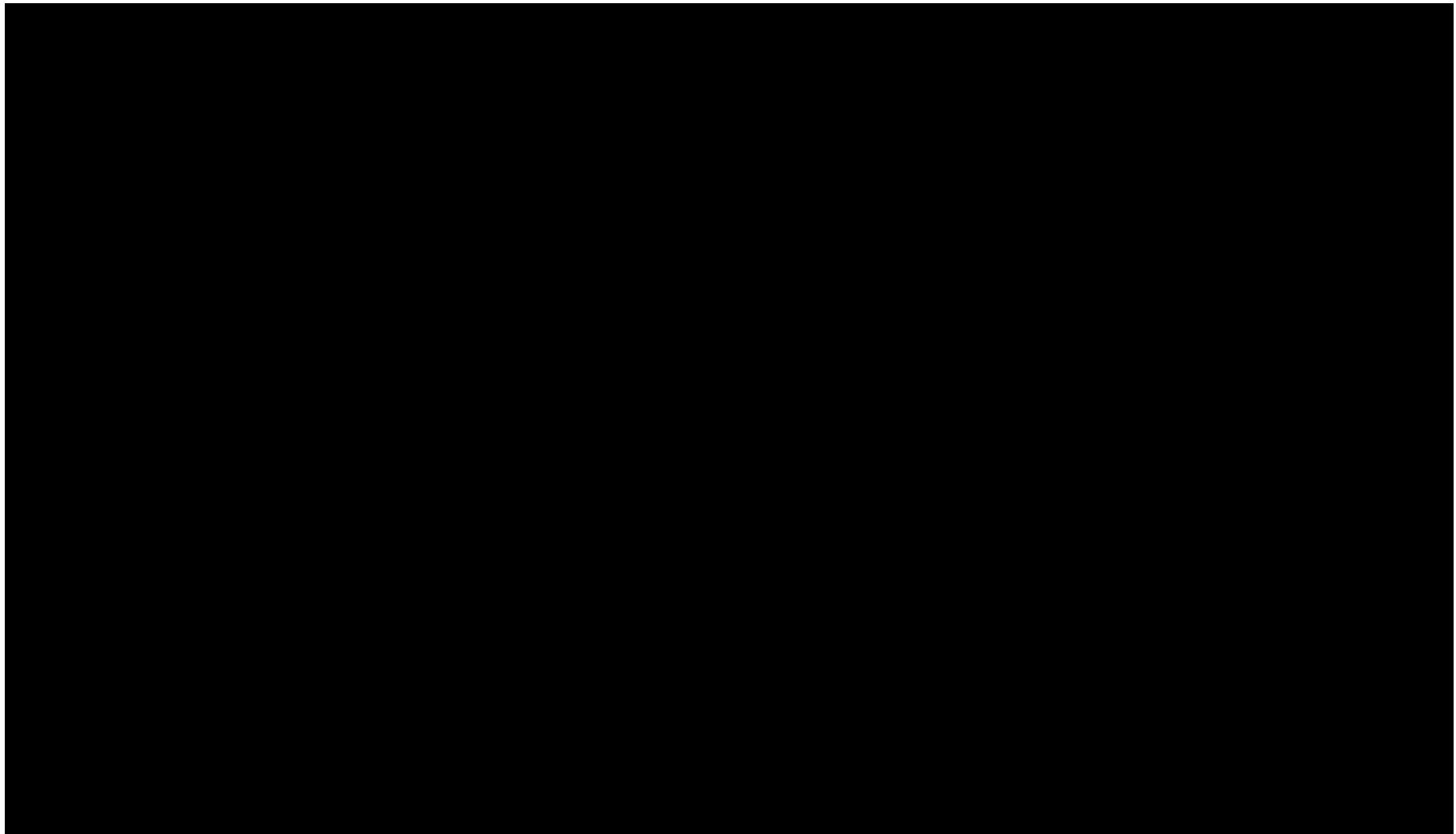
CA-A-0676 – Shaw Presentation titled “Wireless Network Architecture Overview” dated July 2021, p 28.





# Wi-Fi Hotspots for Small Cell Deployment

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CB-A-0404 – Rogers Presentation titled “Rogers Project Scotch: Small cell deployment – Discussion Document” dated April 28, 2022, p 7.





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# 6. Efficiencies Trade-Off

The Proposed Merger Will Not Result in Efficiencies  
That Outweigh and Offset the Anti-competitive  
Effects





# Efficiency gains must be “more likely than not”

---

- The burden is on the merging parties to prove efficiencies on a balance of probabilities
- *Tervita* (SCC), para 122 (per Rothstein J):
  - “merging parties bear the onus of establishing... the extent of the efficiency gains...”
- *Superior Propane I*, para 399:
  - “...the onus of alleging and proving the material facts which form the basis of the defence fell upon the respondents...”
- *FH v McDougall*, 2008 SCC 53, para 49:
  - “In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.”





# Analysis must be analytically rigorous

---

- Given that efficiencies are often assessed using a forward-looking approach, satisfying the balance of probabilities requires using the highest possible degree of analytical rigour:
- *Tervita* (SCC), para 125 (per Rothstein J, re: effects):
  - “Due to the uncertainty inherent in economic prediction, the analysis must be as analytically rigorous as possible in order to enable the Tribunal to rely on a forward-looking approach to make a finding on a balance of probabilities.”



# Evidence able to be challenged and weighed

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- *P&H* (2022 Comp Trib 18), para 697 (per Gascon J):
  - “...the same requirements imposed on the Commissioner for proof of anti-competitive effects... should also be imposed on the merging parties...

if a claimed efficiency is quantifiable, it must be quantified or at least estimated. That quantification or estimate must be grounded in evidence that can be challenged and weighed... Claimed qualitative efficiencies, if any, must also be supported by evidence that can be challenged and weighed.”

- In other words:
  - in Canada, efficiencies must be substantiated and objectively verifiable



# Efficiency Claims Must be Objectively Substantiated

---

- MEGs para 12.3:
  - "parties must be able to validate efficiency claims... to credit (or not) the basis on which the claims are being made"
- MEGs para 12.10:
  - "...parties should provide detailed and comprehensive information that substantiates the precise nature, magnitude, likelihood and timeliness of their alleged efficiency gains..."
- MEGs para 12.11:
  - "To enable the objective verification of anticipated efficiency gains, efficiency claims should be substantiated by documentation prepared in the ordinary course of business, wherever possible."



# Detailed and robust explanation supported by data

---

- MEGs para 12.13 (third bullet):
  - "...parties must provide a quantification of the gains in efficiency and a detailed and robust explanation of how the quantification was calculated..."
- MEGs para 12.14:
  - "...In many cases, such efficiencies can be quantifiably measured, objectively ascertained, and supported by engineering, accounting or other data..."



# Management Plans and Incentives not a Standard

---

A standard which assumes that any efficiencies identified in the course of integration planning are likely to occur would lead to the acceptance of essentially all efficiencies claims, regardless of whether the claim has merit

Source: Zmijewski Expert Report, pp. 24-25, ¶¶54-56.

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 essentially all efficiencies claims, regardless of whether those efficiencies claims have merit, and regardless of management's conflicting incentives

Source: Zmijewski Expert Report, pp. 25-26, ¶¶57-60.



# Productive Efficiency: Output Part of the Equation

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- *Tervita* (SCC) at para 102 (per Rothstein J):
  - “Productive efficiency is achieved when output is produced using the most cost-effective combination of production resources available...”
- MEGs para 12.14:
  - “Productive efficiencies from real cost savings in resources, which permit firms to produce more output or better quality output from the same amount of input...”
- MEGs para 12.20:
  - “Bureau excludes... savings resulting from a reduction in output, service, quality or product choice” (shorthand: “output”)



# Productive Efficiency: Output must be Analyzed

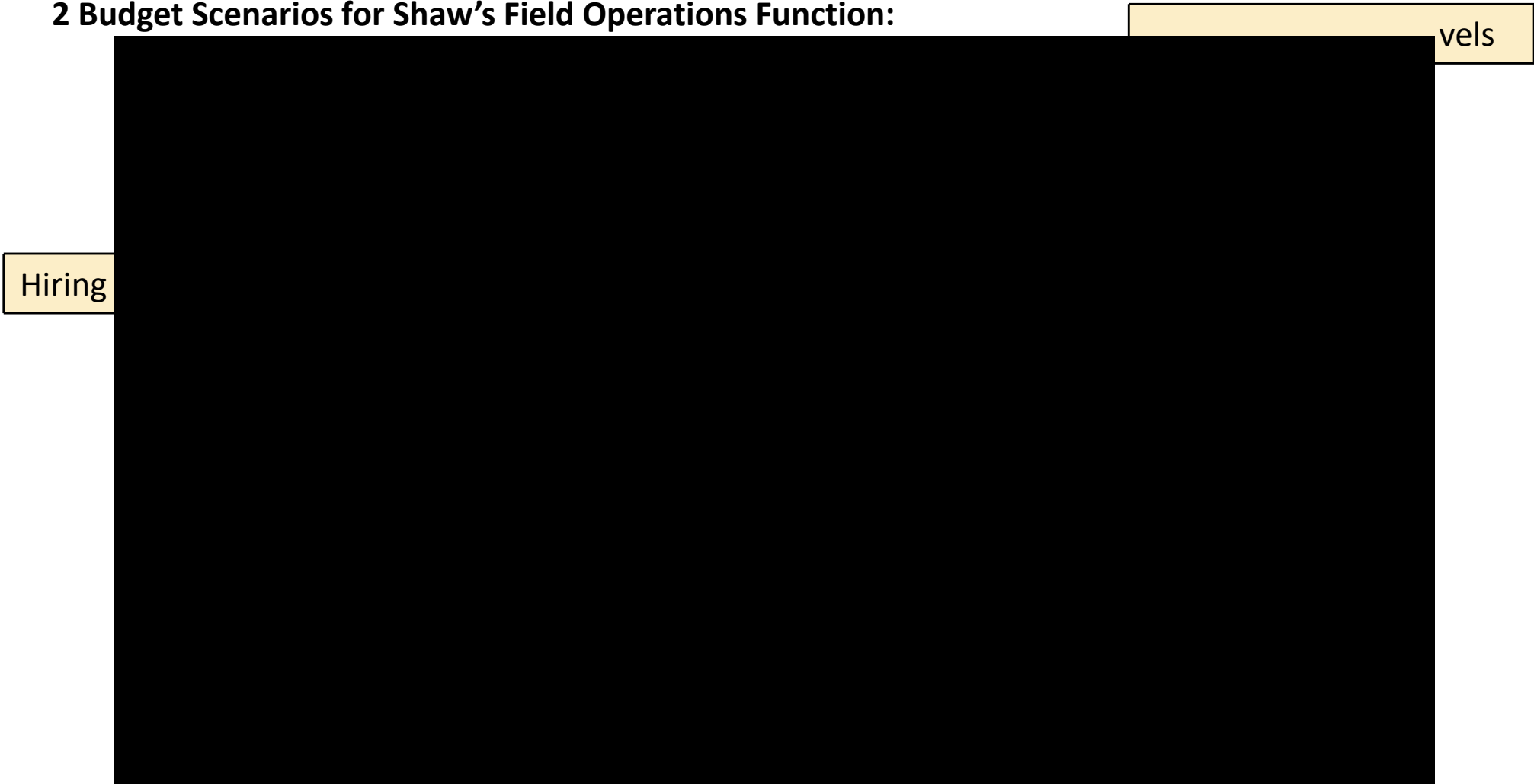
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- It is not appropriate to assume output without analysis:
  - “Simply assuming, without any independent analysis, that cost reductions will not lead to a reduction in quantity and quality of output does not provide an appropriate basis for an opinion 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.”



# Output is Assessed in the Ordinary Course

2 Budget Scenarios for Shaw's Field Operations Function:



**Lower FTE -> Slower Customer Service -> Increased Churn**

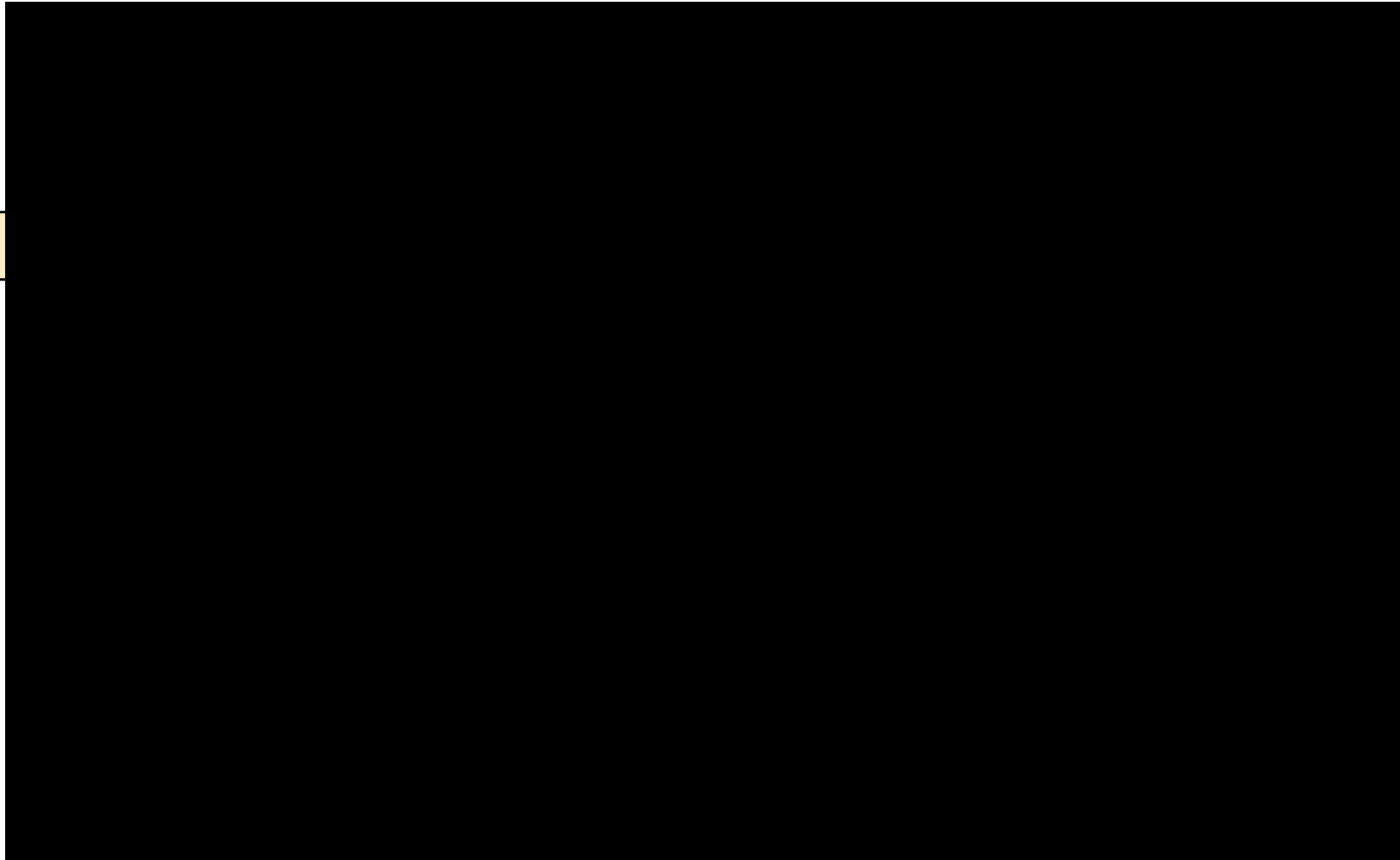






# Cost Savings Decisions Have Measurable Impacts

Decision



Impact

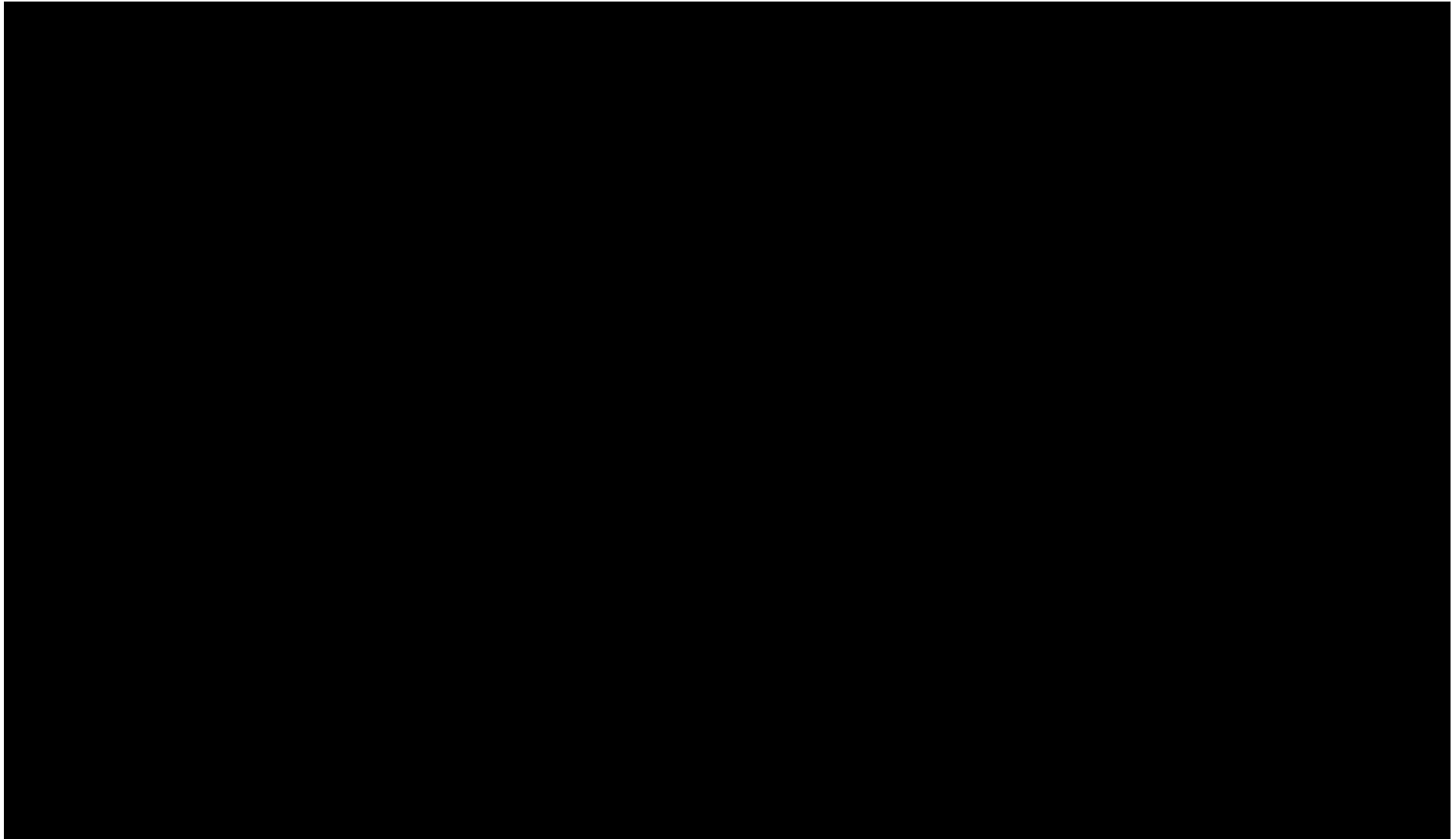
**Brattle Report fails to consider impacts (“output”) from the projected cost savings**





# Breakdown of Rogers Efficiency Claims

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# Labour Efficiencies – Unreliable inputs

## Labour Mapping:

- Methodology to map Shaw employees onto Rogers functions not provided
- No job descriptions provided
- Uses Shaw's Headcount, not FTE
- Assumes no reduction of Shaw Headcount absent the merger
- Does not consider external labour

## Salaries and Severance:

- *Rogers* salaries and severance, *not Shaw*
- No input document provided to support salaries
- Severance estimated using an arbitrary calculation, no methodology provided


**UNRELIABLE INPUTS x FLAWED METHODOLOGY = UNSUBSTANTIATED EFFICIENCIES**



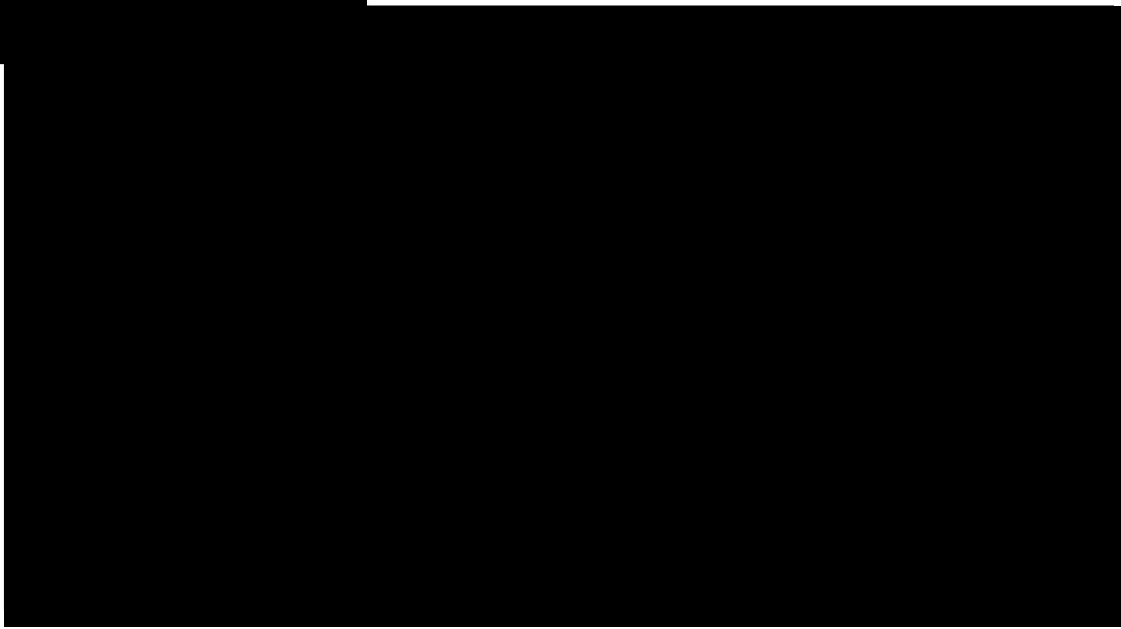


# Labour Mapping Makes Undocumented Assumptions

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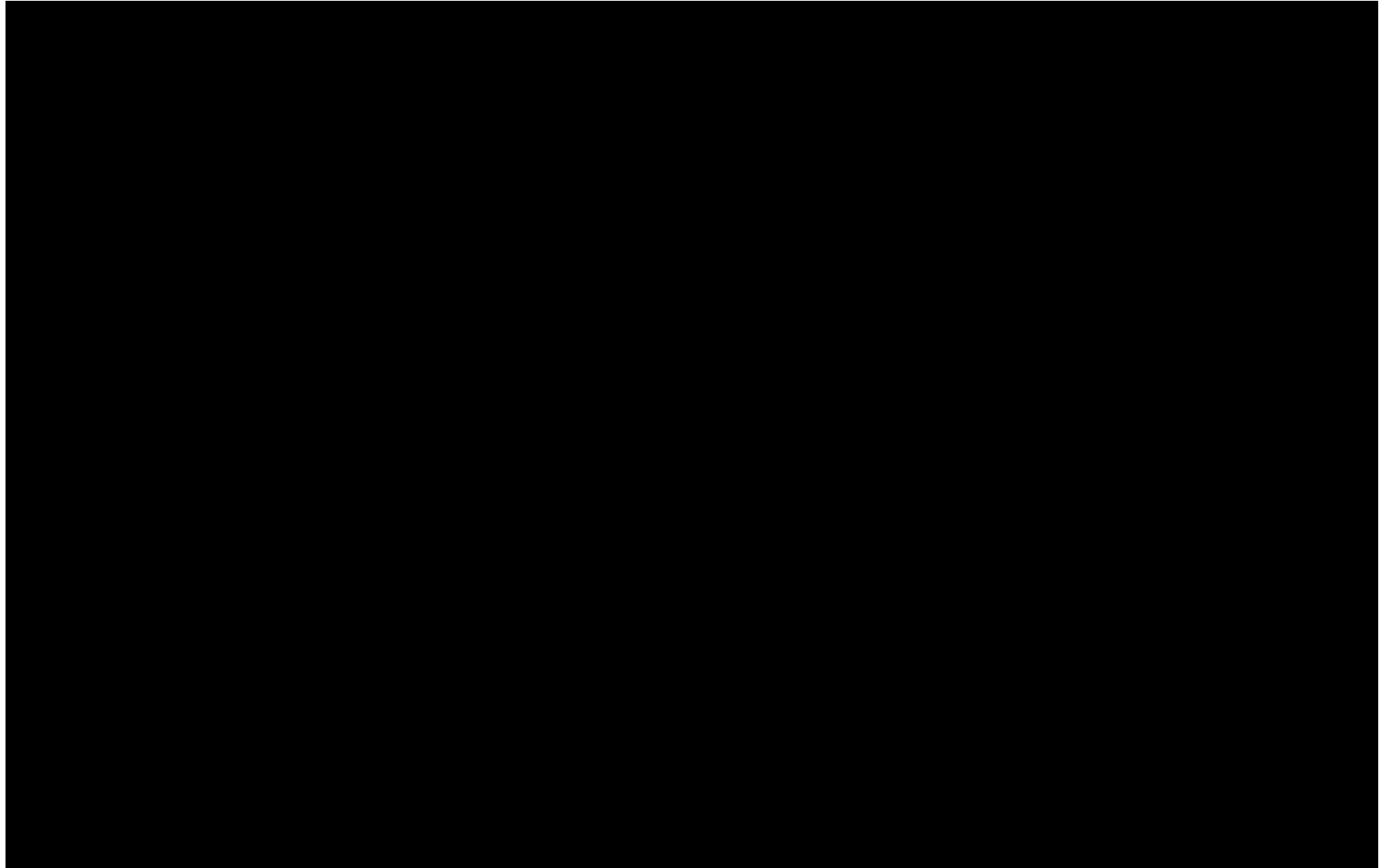


Shaw employees “mapped” to  
Rogers functions that do not  
correspond to Shaw functions





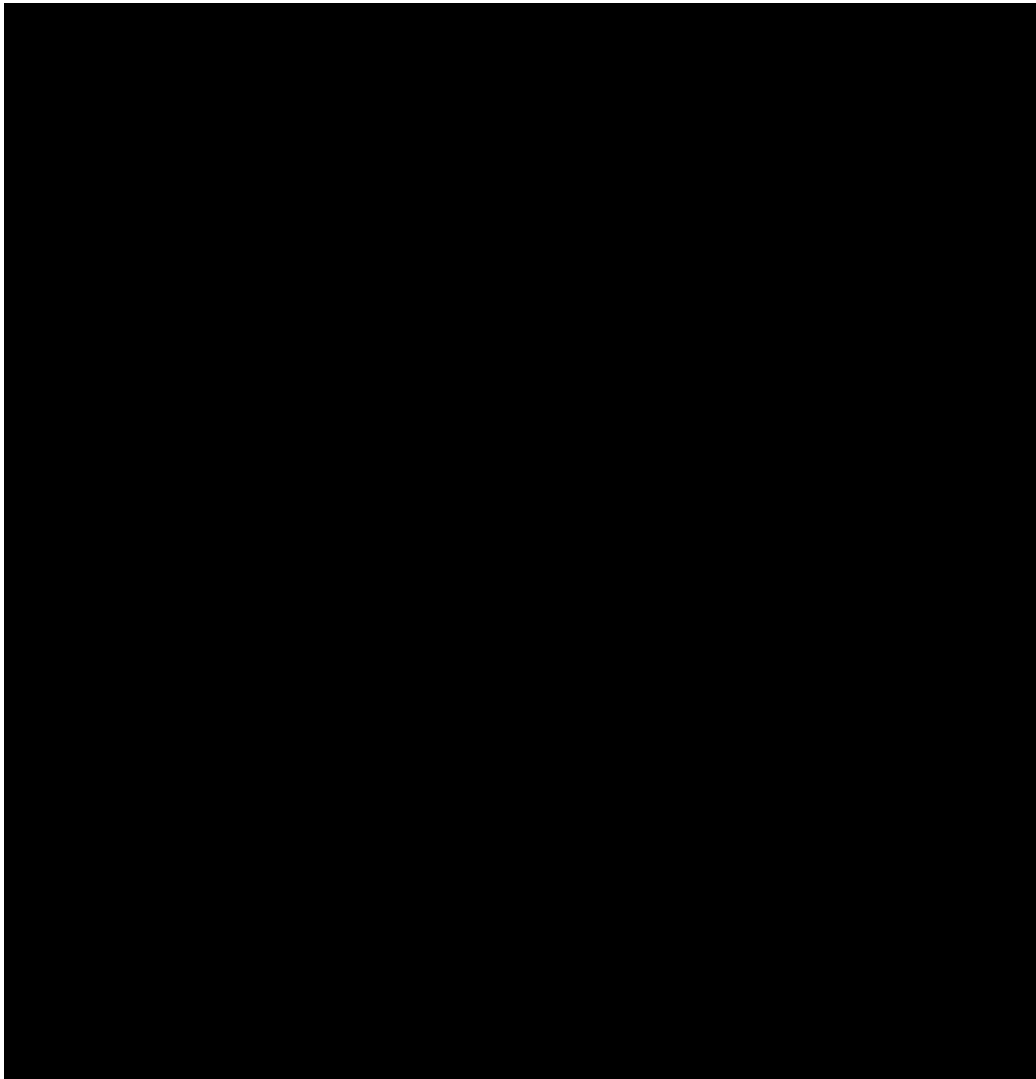
# Shaw Planned Headcount Reductions Absent Merger





# Assumed Percentage Method

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Based on business judgment  
No factual or analytical  
foundation for the assumed  
percentage reductions



# Labour Efficiencies – Flawed Methodology

## Narrow KPI:

- Single KPI selected
- Does not match with KPIs used in the ordinary course of business
- Does not account for potential confounding factors (e.g., customers in different geographies)
- Does not consider output – quality or quantity

## Arbitrarily applied:

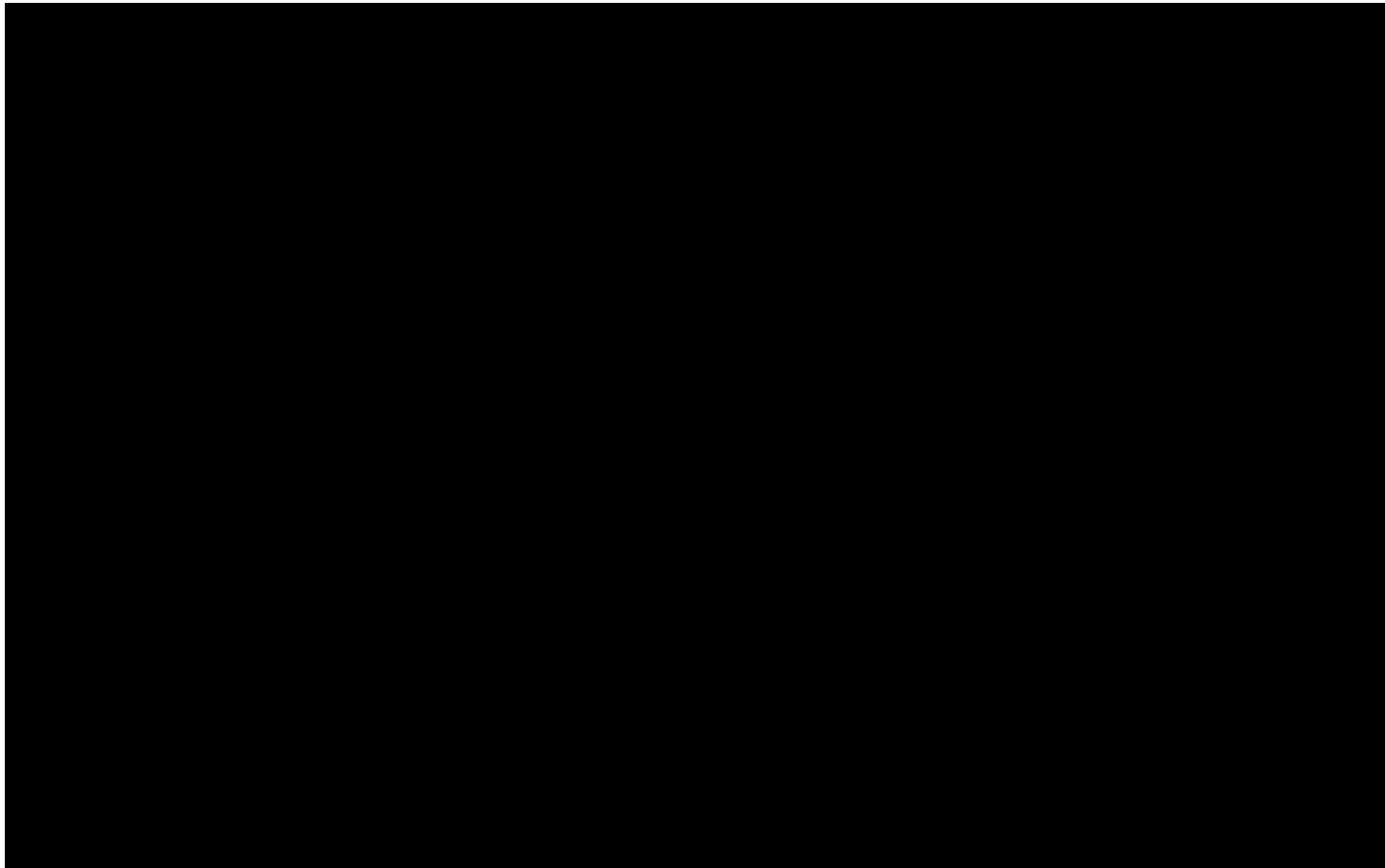
- Assumption of % of Rogers KPI that Shaw employees will achieve
- No steps or costs listed for legacy Shaw employees to improve efficiency
- Does not account for Rogers' inefficient Manager:Clerical ratio

**UNRELIABLE INPUTS x FLAWED METHODOLOGY = UNSUBSTANTIATED EFFICIENCIES**





# KPI Method Applied Inconsistently

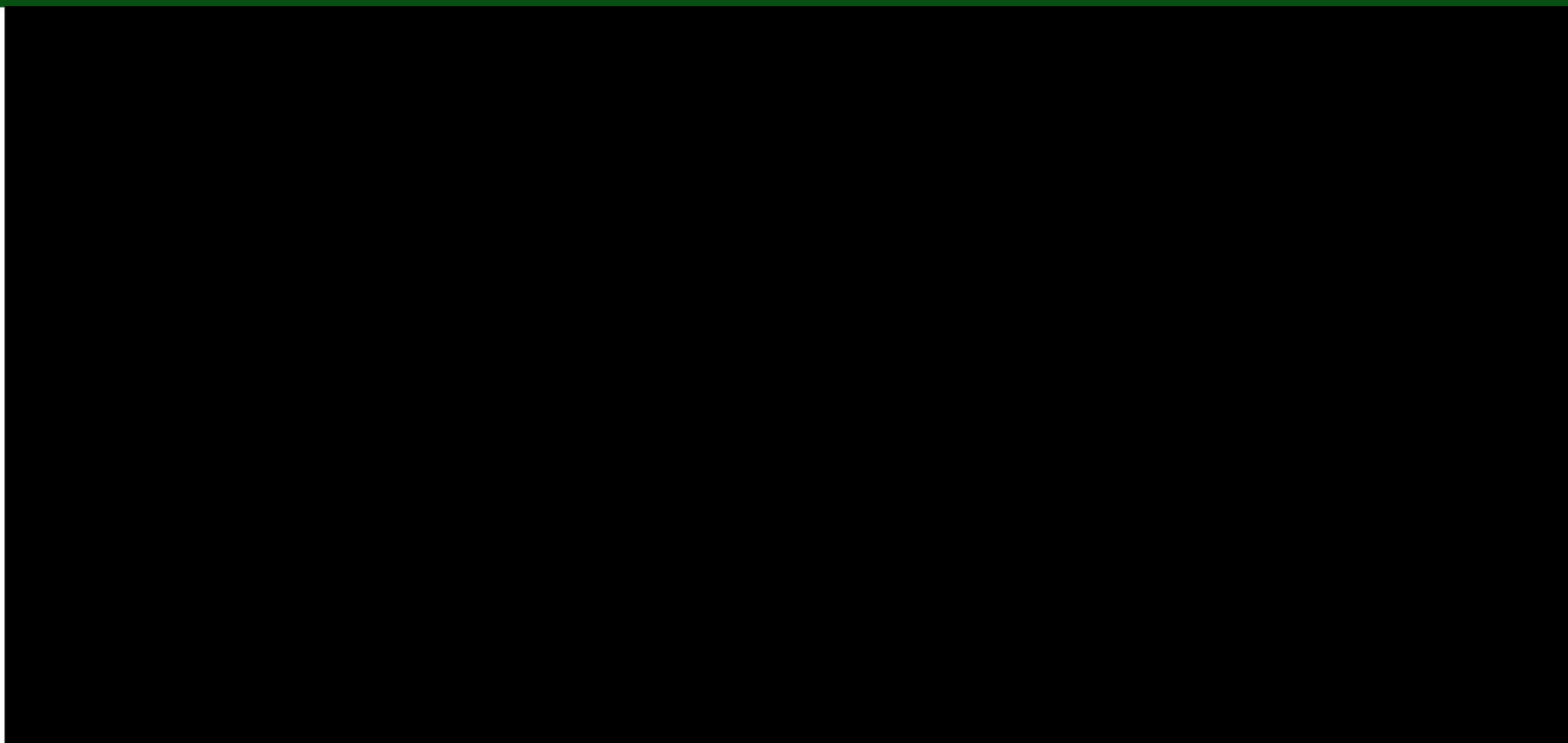


Source: Brattle Report Schedules 2.1.2, 2.1.3, 2.1.4, 2.1.5; Zmijewski Expert Report, pp. 35-39, ¶¶84-92. Discounted cost savings calculated based on information provided in Brattle Report, Schedules 2, 2.1, 2.1.2 – 2.1.5.





# KPI Method – Supply Chain confounding factor



Source: Brattle Report, Schedule 2.1.3; Zmijewski Expert Report, pp. 37-38, ¶¶87-90.



# Outsourcing is a confounding factor

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External labour practices are different at Rogers and Shaw for many functions

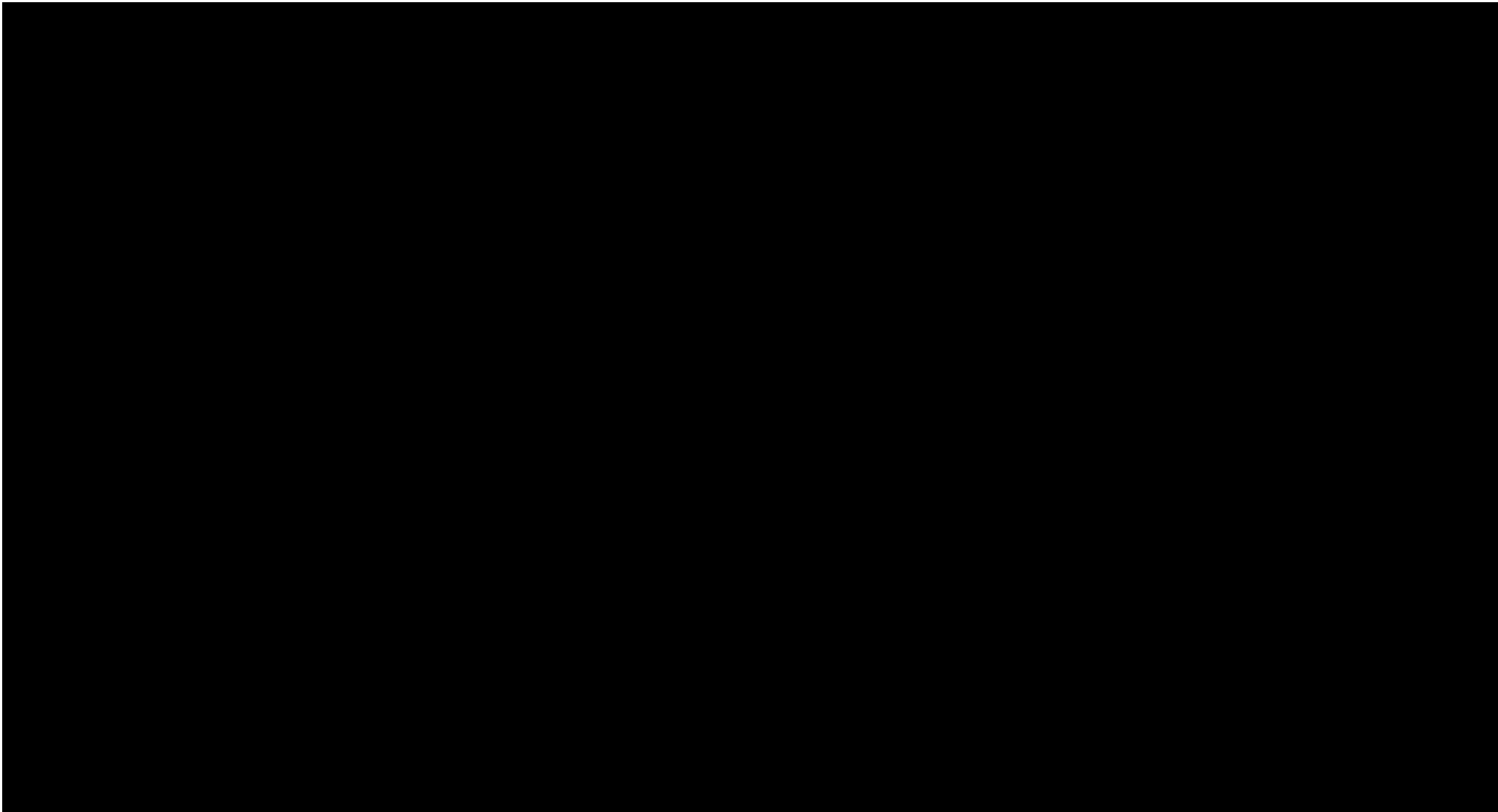
For example, Supply Chain comparison prepared for the purpose of the merger





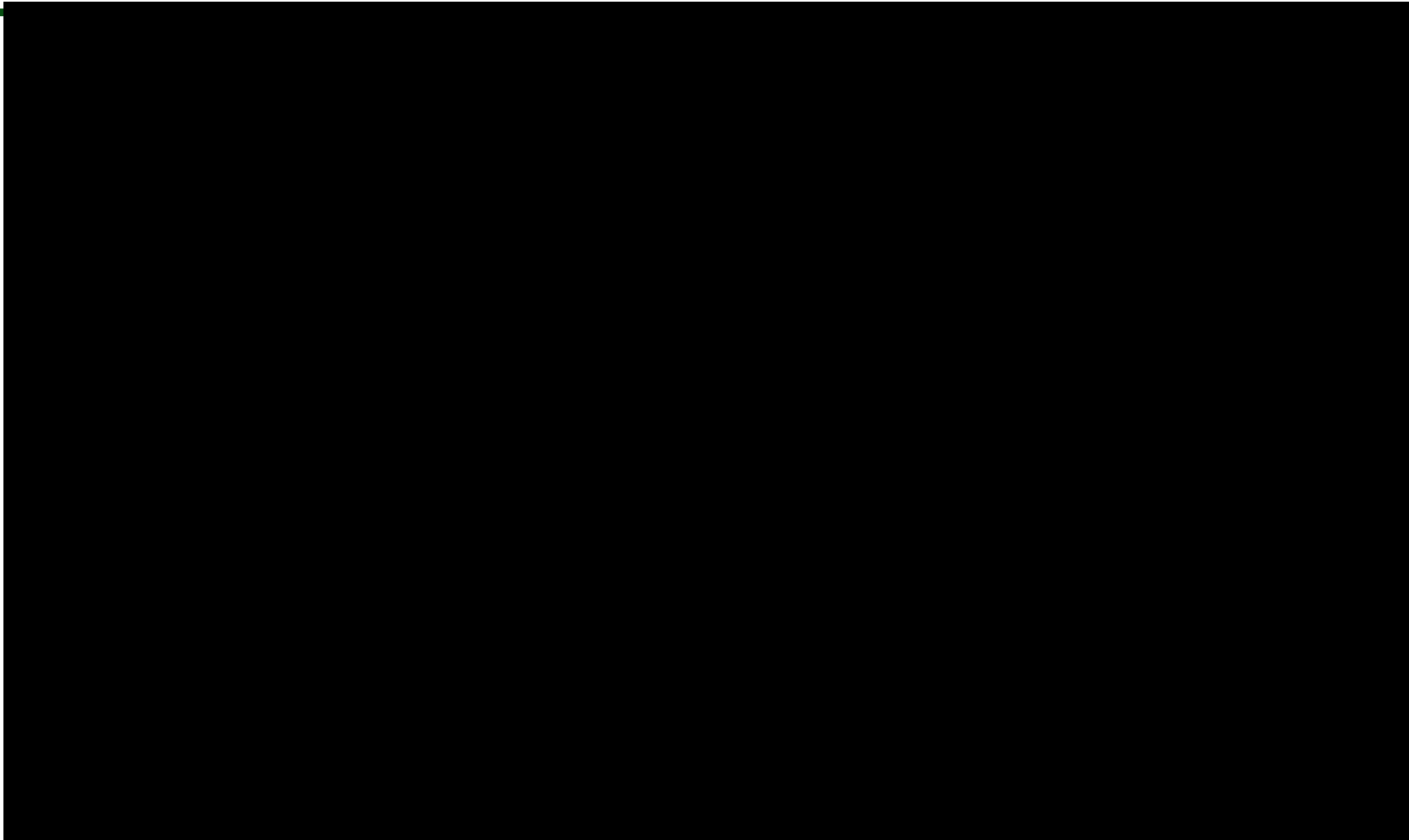
# “Impractical results” appear to accord with reality

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# KPI Method – Clerical Employees per Manager

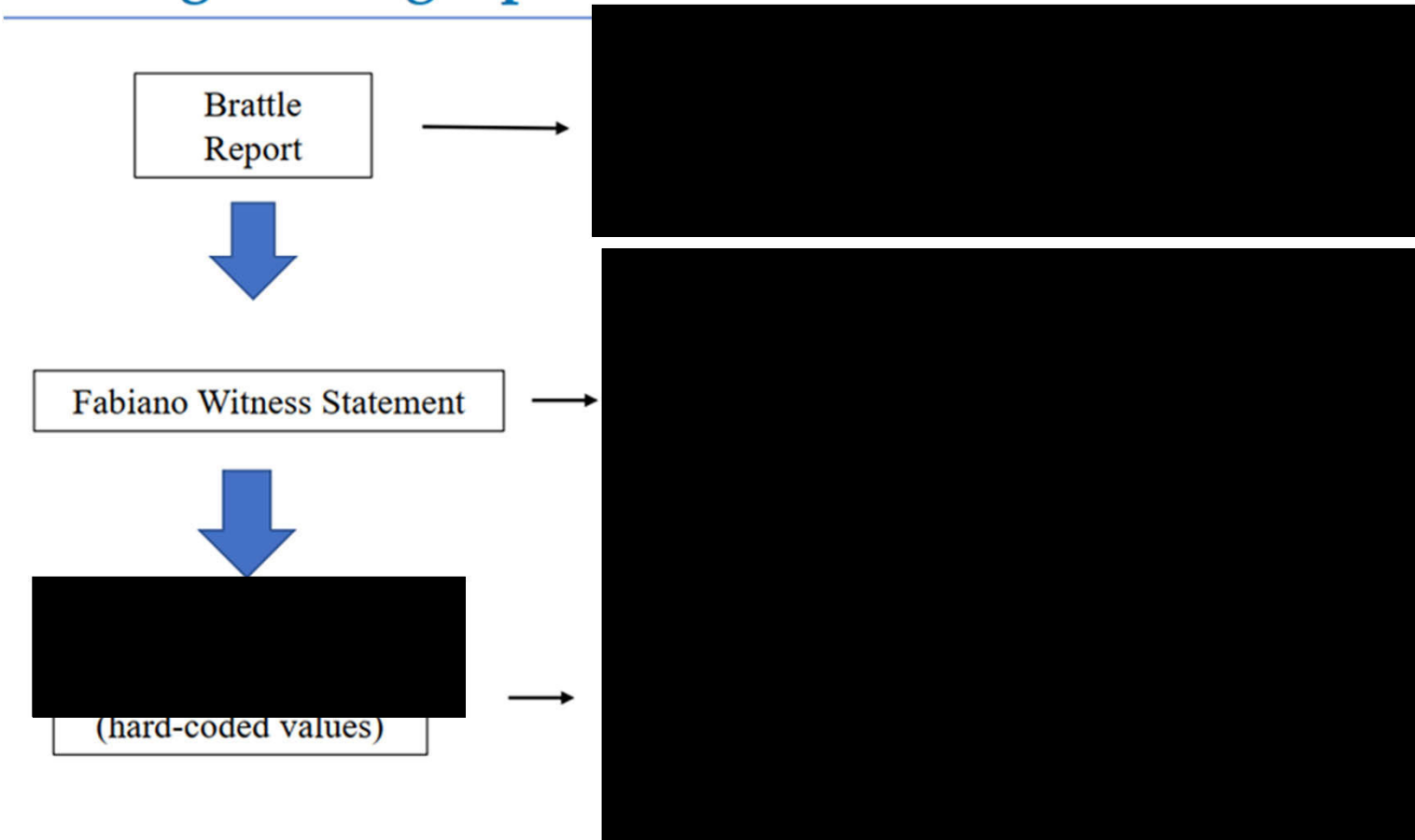


Source: Brattle Report, Schedules 2.1.2 – 2.1.4.



# Corporate IT - Example

## Ex: Engineering Opinion – Hard-Coded Values



Absence of documentation. Engineering Opinion not substantiated.



# Corporate IT - Example

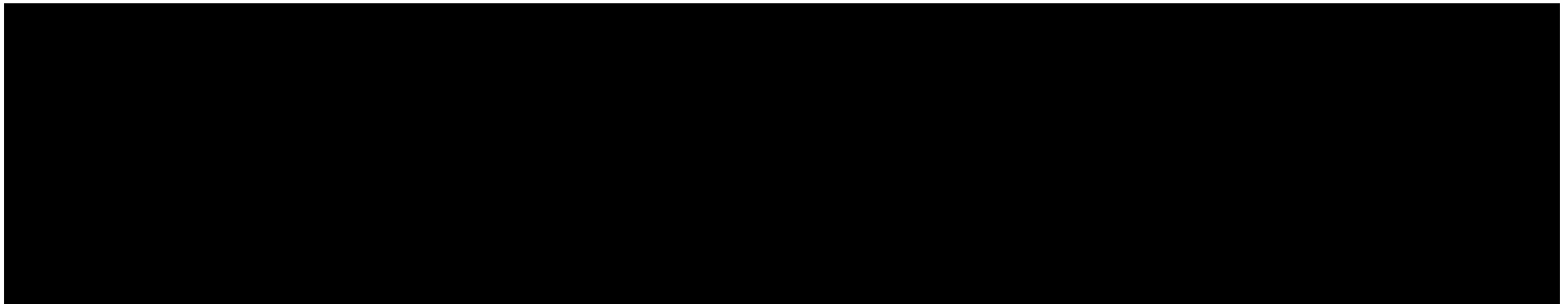




# Corporate IT - Example

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Contrary to this evidence, Harington assumes both of these claimed efficiencies are merger specific and will be fully realized within 2 years:





# Network Efficiencies do not Reflect Rogers' Commitments

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- M Davies: Rogers post-outage commitments do not align with the network efficiency claims put forward by the Respondents

First, his analysis does not reflect the impact on the overall network architecture from the Rogers July 8, 2022 outage and the resultant network changes that Rogers has publicly committed to make, which invalidate the efficiencies based on the Unified Fibre Plan (UFP), as well as other network efficiencies affected by Rogers' post outage plans.<sup>137</sup>





# Draft documents not relied on in ordinary course

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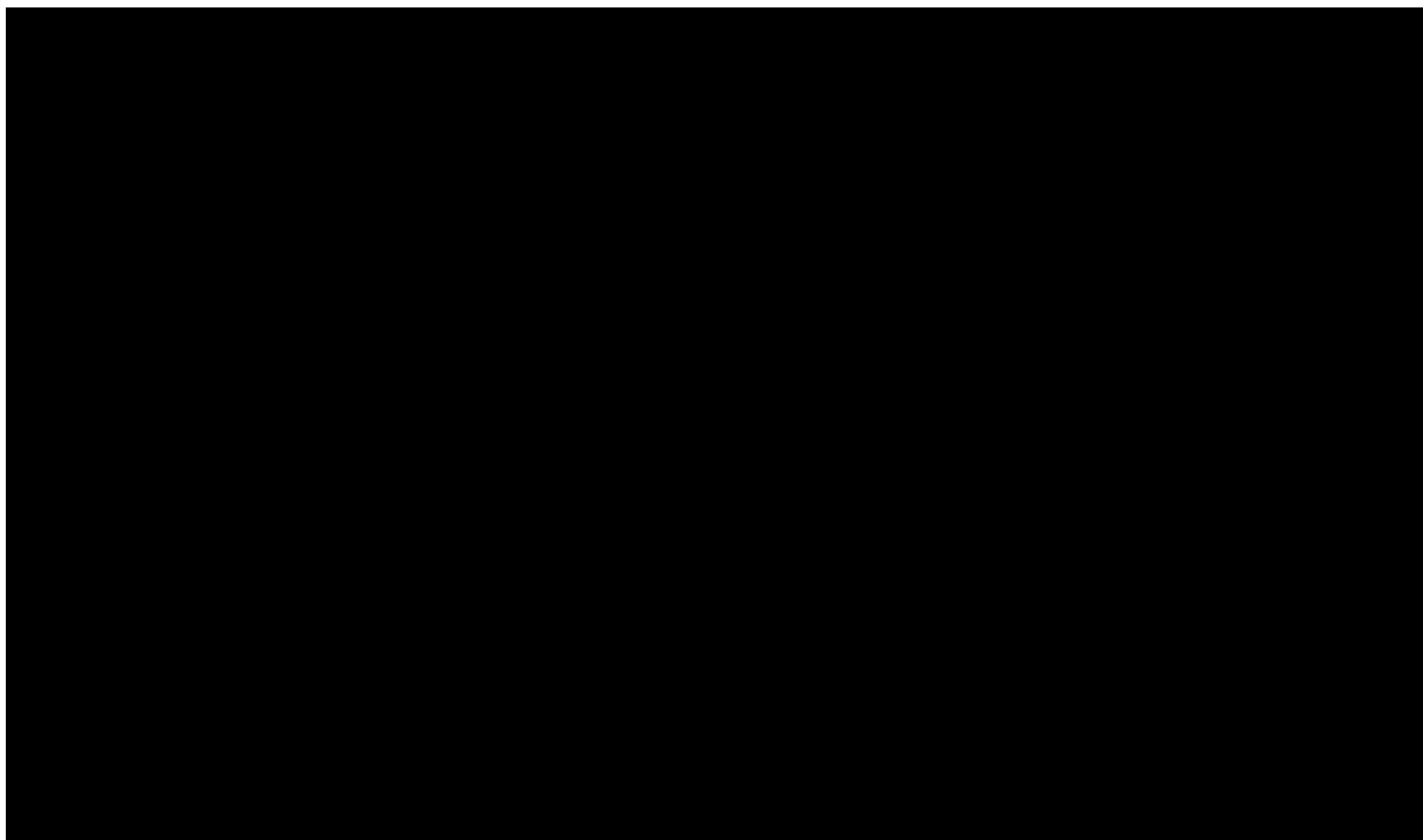
- Prevost: “Rogers executives almost never rely on incomplete or draft documents when making strategic decisions in the ordinary course.”

7. Drafts and incomplete versions of documents should not be taken as reflecting a final, developed analysis of the subject matter in question, either on the part of the draft’s author or on the part of Rogers as an organization. Slide decks, reports and other deliverables often go through multiple rounds of review, during which sometimes significant changes are made. Moreover, as noted above, documents in draft form are almost never circulated among the ELT or to the Board of Directors. In my experience, Rogers executives almost never rely on incomplete or draft documents when making strategic decisions in the ordinary course.



# Network Efficiencies – Example Supporting Document

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# “Unsubstantiated” Costs to Achieve

- Prof. Zmijewski conservatively did not include certain “unsubstantiated” Costs to Achieve

## Substantiated Rogers Claimed Efficiencies

Substantiated Rogers Discounted Claimed Efficiencies (over 10 years)			Reason “Substantiated” Conclusion is Conservative
<u>Cost Savings</u>	<u>Brattle Report</u>	<u>Amount Substantiated</u>	
Real estate savings (non-labour)	[REDACTED]	[REDACTED]	No investigation of whether closure compromises quantity or quality of service; assumed merger specificity
Marketing cost savings			No supporting calculation or analysis underpinning assumptions; relies upon business judgment
Retail facility closure savings			Value of reduction in quality as an offset to the cost savings not included
General & administrative cost savings			No foundation for assumed percentage reduction
<b>TOTAL</b>			

Source: Zmijewski Expert Report, pp. 52-55, 62-65; ¶¶124-128, 130-132, 160-170, 171-173; Brattle Report, Schedule 2; Zmijewski Report Exhibit VI-10; Examination in Chief of Mr. Andrew C. Harington, November 2022, p. 15.



# Efficiencies from Divestiture are not Cognizable

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- Section 96 of the *Act*: “...merger in respect of which the application is made”
- Section 92 of the *Act*: “The Tribunal, on application by the Commissioner, may...”
- The Commissioner’s application is made in respect of the Proposed Transaction as defined in the Notice of Application:

**TAKENOTICE THAT** the Commissioner of Competition (the “**Commissioner**”) will make an application to the Competition Tribunal (the “**Tribunal**”), on a day and place to be determined by the Tribunal, pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Act**”) for:

- a. an order directing the Respondents not to proceed with the Proposed Transaction;

### III. THE PROPOSED TRANSACTION

14. On March 13, 2021, Rogers agreed to purchase all of the issued and outstanding shares of Shaw for approximately \$26 billion, inclusive of debt, under an “Arrangement Agreement” made as of that date (the “Proposed Transaction”).



# Efficiencies from Divestiture are not Cognizable

➔	Mar 15, 2021	Rogers and Shaw announce the Proposed Merger. <sup>41</sup>
	Apr 13, 2021	[REDACTED] <sup>42</sup>
	May 3, 2021	Rogers and Shaw filed Pre-Merger Notifications with the CB. <sup>43</sup>
	Oct 18, 2021	[REDACTED] <sup>44</sup>
	Nov 8, 2021	[REDACTED]
	Nov 22, 2021	[REDACTED]
	Jan 18, 2022	[REDACTED]
	Feb 8, 2022	[REDACTED]
	Feb 25, 2022	[REDACTED]
➔	Mar 15, 2022	[REDACTED]
➔	Mar 25, 2022	[REDACTED]
➔	Apr 11, 2022	[REDACTED]
	Apr 27, 2022	Meeting [REDACTED] regarding inadequacies of remedy proposal and concerns with a wireless-only remedy. <sup>53</sup>
	Apr 28, 2022	Meeting with the Commissioner regarding inadequacies of remedy proposal and concerns with a wireless only remedy. <sup>54</sup>
➔	May 9, 2022	Commissioner files Notice of Application with the Competition Tribunal. <sup>55</sup>
➔	Jun 17, 2022	Binding letter agreement and term sheet agreed between Videotron, Rogers and Shaw. <sup>56</sup>
	Jun 24, 2022	CB receives ARC request from Videotron, Rogers and Shaw. <sup>57</sup>
	Aug 12, 2022	Definitive Share Purchase Agreement agreed between Videotron, Rogers and Shaw. <sup>58</sup>

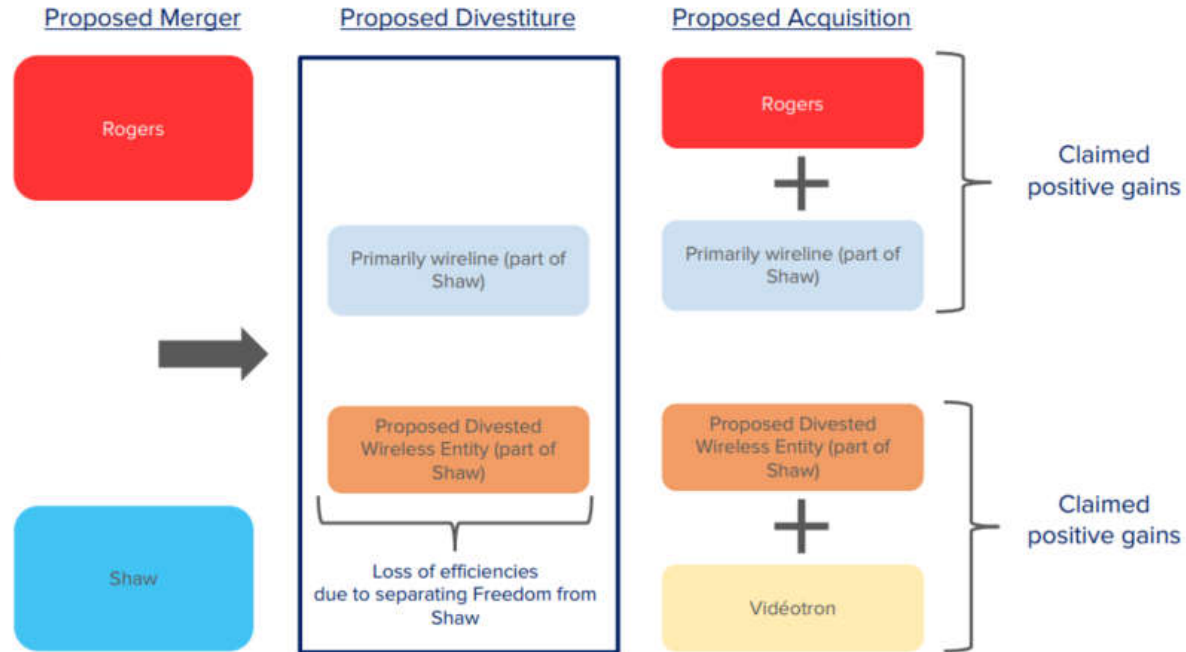


# Divestiture will Result in Negative Efficiencies

CONFIDENTIAL LEVEL B

## The correct calculation

- Only calculated positive gains
- Did not consider losses from divestiture
- Hence, did not calculate **NET** gains



Summarizing and highlighting Davies Reply Report, ¶¶ 100-107.

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# Spectrum Efficiencies

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12                   The value of spectrum arises is that it has an  
13 impact on the number of different places that you have to  
14 put the radios in. All things equal, spectrum -- sorry,  
15 all things equal, capacity is determined by the radios.

16 Small caveat, you may need to put radios in some places  
17 where they're very little used to provide coverage, but  
18 subject to that very small caveat, it's always the same  
19 number of radios. It's just how many different places are  
20 you going to put them in.

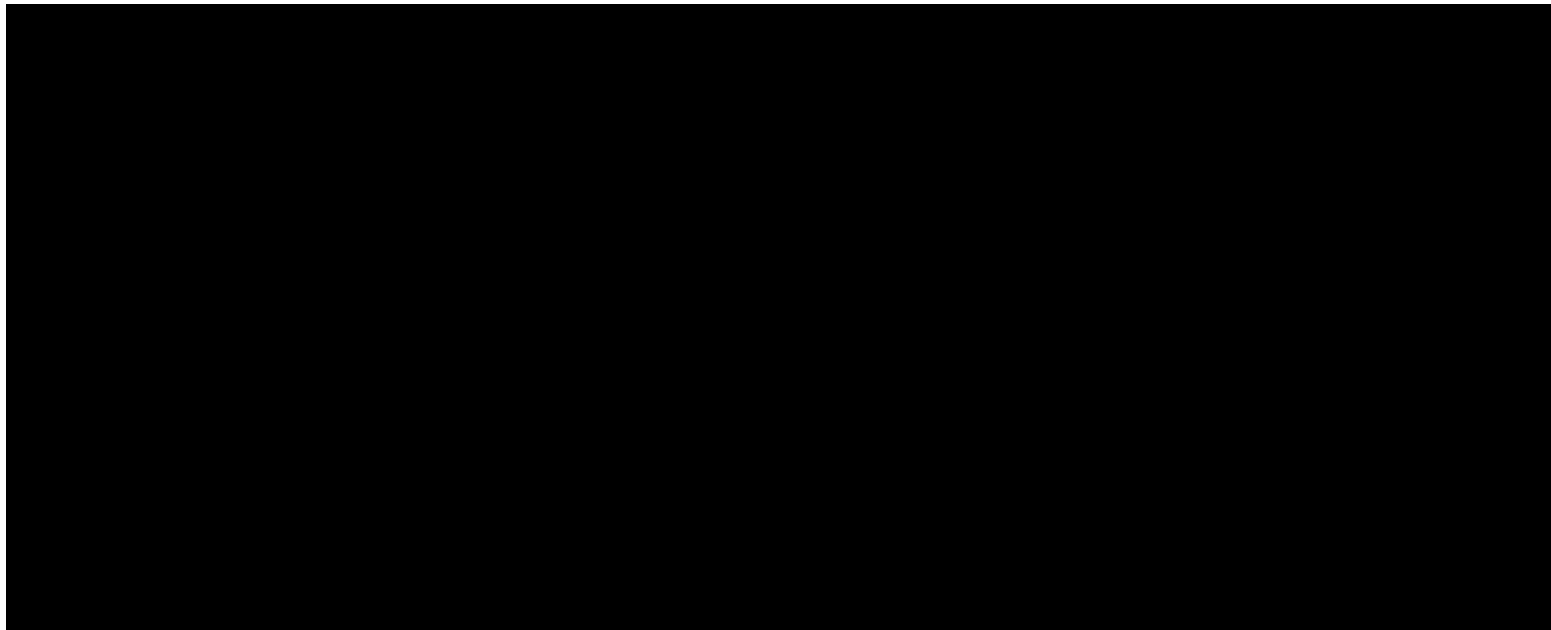
21                   Secondly, it ignores growth in demand. You  
22 only need extra radios if there is growth in demand and  
23 that growth in demand is so rapid that it's outstripping  
24 the available capacity you already have and the  
25 improvements in how those radios use the spectrum, which is



# Spectrum Efficiencies

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Available capacity:







## Conclusion – Gains in Efficiency

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- Rogers has not met its burden to substantiate the vast majority of its efficiency claims
- Claimed efficiencies from the Proposed Divestiture are not cognizable
- The efficiency defence applied to a domestic merger is contrary to Parliament's intent





# Trade-Off (Quantitative)

Anticompetitive Effects Scenario	Quantified Anticompetitive Effects (\$MM, 10-year NPV) <sup>89</sup>	Quantified Efficiencies (\$MM, 10-year NPV) <sup>90</sup>
Proposed Merger (Weighted Surplus Approach)	Deadweight Loss: \$2,259 <sup>91</sup> Redistributive Effect: \$2,364 <sup>92</sup> Total: \$4,623 <sup>93</sup>	[REDACTED]
Proposed Merger (Socially Adverse Transfer Approach)	Deadweight Loss: \$2,259 <sup>96</sup> Redistributive Effect: \$3,291 <sup>97</sup> Total: \$5,551 <sup>98</sup>	[REDACTED]
Proposed Divestiture Order (Weighted Surplus Approach)	Deadweight Loss: \$293 <sup>99</sup> Redistributive Effect: \$279 <sup>100</sup> Total: \$572 <sup>101</sup>	[REDACTED]
Proposed Divestiture Order (Socially Adverse Transfer Approach)	Deadweight Loss: \$293 <sup>102</sup> Redistributive Effect: \$335 <sup>103</sup> Total: \$628 <sup>104</sup>	[REDACTED]