Merger Control

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Overview of merger control activity during the last 12 months

Two parts of the Competition Act ("Act") apply to mergers – Part IX contains the pre-merger notification provisions and Part VIII contains the substantive merger review provisions. These parts apply independently of each other. Thus, even if a transaction is not subject to pre-merger notification under Part IX, it is still subject to the substantive merger review provisions in Part VIII of the Act.

Transactions that exceed certain financial thresholds are subject to pre-merger review and may not be completed until the transacting parties have complied with Part IX of the Act. Under Part IX, the parties must either receive an advance ruling certificate ("ARC") from the Commissioner of Competition (the "Commissioner"), or file a pre-merger notification with the Competition Bureau ("Bureau") and wait until the applicable waiting period has expired, been waived, or been terminated. Failure to file 'without good and sufficient cause' is a criminal offence, punishable by a maximum fine of C$50,000.[1] Where the parties close prior to the expiry of the waiting period, the Commissioner can apply to the Court for a range of remedies. These remedies can include fines up to C$10,000 per day between closing and the expiry of the relevant waiting period.[2]

Pre-merger notification is required under the Act if both the 'size of transaction' and 'size of parties' thresholds are met. The 'size of transaction' threshold is generally satisfied if the target has assets in Canada, or revenues in or from Canada generated by assets in Canada, in excess of C$96m (for amalgamations, at least two of the amalgamating corporations must have assets or revenues that exceed the threshold).[3] The 'size of parties' threshold is satisfied if the parties to the transaction, including all affiliates,[4] combined, have assets in Canada or revenues in, from or into Canada in excess of C$400m. For share transactions, the notification requirement is triggered by the acquisition of more than 20% of the votes attached to all of the outstanding voting shares of a public company, or more than 35% of the votes attached to all of the outstanding voting shares of a private company (or, in each case, more than 50% of the votes attached to all of the outstanding voting shares if the acquirer already owns the percentages stated above).[5]

A transaction that is subject to notification cannot be completed until the termination, waiver or expiry of the applicable statutory waiting period. The submission of completed filings by both parties to a transaction commences an initial 30-day waiting period. The initial 30-day period can be extended by the Bureau, should it determine that it requires additional information to complete its review, through issuance of a Supplementary Information Request ("SIR") (akin to a second request in the U.S.). The issuance of a SIR triggers a second 30-day waiting period, which commences when both parties have substantially

complied with the SIR. The transaction may not close until the expiry or termination of this second waiting period (subject to certain exceptions).

The Act contains an explicit "efficiencies defence", which prohibits the Competition Tribunal ("Tribunal") from issuing an order under the merger provisions of the Act, where the gains in efficiency likely to be brought about by the merger are greater than, and would offset, the likely anti-competitive effects, and those efficiencies likely would not be achieved if the order were made. Considering the efficiencies defence in *Tervita Corp. v. Canada (Commissioner of Competition)*, the Supreme Court of Canada ("SCC") drew a distinction between quantitative and qualitative effects and set out a two-step inquiry. The first step is to compare the merger's quantitative efficiencies against its quantitative anti-competitive effects. The Commissioner bears the burden of proving all quantifiable anti-competitive effects of a merger, and any effects that are realistically measurable cannot be considered on a qualitative basis if no quantitative evidence is provided. The second step is to balance the merger's qualitative efficiencies against its qualitative anti-competitive effects, and then a final determination is made as to whether the efficiencies resulting from the merger offset its total anti-competitive effects. The efficiencies defence is available for "mergers to monopoly", does not require a minimum threshold of efficiency gains to apply, and does not require that consumers "benefit" from the efficiencies.

Since *Tervita*, the Bureau has relied on the efficiencies defence in several transactions including *Superior Plus Corp./Canexus Corporation* ("Canexus") in June 2016,[6] *Canexus/Chemtrade Logistics Fund* in March 2017,[7] and *Superior Plus LP/Gibson Energy ULC* in September 2017.[8]

In challenging a merger, the Bureau may apply to the Tribunal seeking an interim order under section 104 of the Act enjoining the parties from closing the transaction (in whole or in part) pending a final resolution on the merits.[9] The test applied by the Tribunal in determining whether to issue an order is the standard Canadian test for interlocutory or injunctive relief as set out in *RJR-Macdonald Inc. v. Canada (Attorney General)*[10]: (i) is there a serious issue to be tried; (ii) will it result in irreparable harm result if the requested relief is not granted; and (iii) does the balance of convenience favour granting the order? In the *Parkland/Pioneer* transaction, the Bureau did not seek to enjoin the transaction as a whole but proposed a limited hold separate; the Bureau's approach suggests it may be possible for parties to close a global transaction in the face of a challenge in Canada.[11]

In the six months ended September 30, 2018, the latest period for which the Bureau has published statistics, the Bureau concluded 114 merger reviews, issuing 57 no-action letters,[12] 49 ARCs and registered three consent agreements.[13] The Bureau's activity level was similar to its preceding fiscal year, in which the Bureau concluded 253 merger reviews and issued 132 no-action letters, 91 ARCs and registered six consent agreements.[14]

The Bureau has continued to solicit public comments regarding proposed transactions by inviting Canadian consumers and industry stakeholders to share their views online including, most recently, in Superior Plus LP's proposed acquisition of Canwest Propane.[15]

New developments in jurisdictional assessment or procedure

Pre-merger notification thresholds are indexed for inflation. As a result, the 'size of transaction' threshold for pre-merger notification increased from C$92m to C$96m.[16]

Key industry sectors reviewed and approach adopted to market definition, barriers to entry, nature of international competition, etc.

Over the last 12 months, the Bureau has reviewed transactions in a number of key sectors

including pharmacy distribution and franchising, agriculture & fertilisers, industrial gases, news & media, and aerospace.

Mergers approved via consent agreements

In April 2018, the Bureau announced that it had signed a consent agreement with METRO Inc. ("Metro") regarding its proposed acquisition of The Jean Coutu Group (PJC) Inc. The Bureau determined that the merger would likely have led to substantially higher prices or decreased services related to the purchase of medications and other pharmacy products in eight regions in Quebec. To resolve these concerns, Metro agreed to sell properties or leases to an alternative distributor and to terminate franchise, distribution and associated agreements related to pharmacies located in the markets of concern.[17] On February 18, 2019, the Bureau announced that it had approved Familiprix Inc. and Corporation Groupe Pharmessor, an affiliate of McKesson Canada Corporation, as the purchasers of Metro's interests in a number of pharmacies that Metro was selling in order to satisfy the terms of its consent agreement.[18]

On May 30, 2018, the Bureau announced that it had reached an agreement with Bayer AG ("Bayer") regarding its proposed acquisition of Monsanto Company ("Monsanto"). The Bureau concluded that the acquisition would have significantly harmed competition and innovation in the agricultural sector, particularly with regards to canola and soybean seeds and traits, carrot seeds, and seed treatments that protect crops against nematodes. To address the Bureau's concerns, Bayer agreed to sell its canola and soybean seeds and traits business, its carrot seed business, and a range of businesses involved in treating seeds. Given the global nature of the transaction, the Bureau coordinated with the European Commission and the U.S. Department of Justice when conducting its review of this transaction.[19] Pursuant to the consent agreement, on June 27, 2018, the Bureau announced that it had reached an agreement with BASF SE ("BASF") regarding the purchase of Bayer's divested assets. Due to the Bureau's concern that BASF's acquisition of the assets would substantially lessen competition in the supply of canola seeds and traits, the acquisition was conditioned upon BASF agreeing to sell its Clearfield Production System for Canola and related assets.[20]

On October 26, 2018, the Bureau announced that it had finalised a consent agreement with Linde AG ("Linde") and Praxair, Inc. ("Praxair") regarding their proposed merger. In order to respond to the Bureau's concern that the proposed merger would result in the substantial lessening of competition in the supply of certain industrial gases, Linde agreed to sell its Canadian business, including production facilities, filling stations, retail locations, contracts, and certain intellectual property rights.[21]

On November 13, 2018, the Bureau announced it had reached an agreement with La Coop fédérée ("LCF") regarding its acquisition of Cargill Limited ("Cargill")'s grain and retail crop inputs businesses in Ontario and a 50% equity interest in South West Ag Partners, Inc. The Bureau determined that the proposed transaction was likely to substantially lessen competition in the retail supply of crop inputs, and particularly for fertilisers and crop protection products, in southwestern and central Ontario. To address the Bureau's concerns, LCF agreed to sell Cargill's retail outlets in several locations in the affected regions.[22]

Mergers approved without consent agreements

On August 20, 2018, the Bureau issued a no-action letter in respect of the proposed merger between Stewart Information Services Corporation and Fidelity National Financial Inc. The Bureau concluded that the proposed transaction was not likely to lead to a substantial lessening or prevention of competition with respect to title insurance given the presence of at least two other firms providing title insurance in Canada, and relatively low barriers of

entry into the supply of title insurance, including modest investment requirements, particularly for other property and casualty insurance companies.[23]

On October 1, 2018, the Bureau concluded its review of the proposed acquisition of Rockwell Collins, Inc. by United Technologies Corporation ("UTC") and issued a no-action letter. The Bureau determined that the transaction was likely to negatively affect competition in Canadian markets for pneumatic ice protection systems and trimmable horizontal stabiliser actuators. However, the Interim Commissioner concluded that the settlement agreement reached between the U.S. Department of Justice and UTC would resolve Canadian competition concerns after a coordinated review of the transaction.[24]

Mergers not approved

On May 25, 2018, the Commissioner informed Bell Canada Enterprises Inc. ("Bell") and Corus Entertainment Inc. ("Corus") that it would not approve Bell's proposed acquisition of Corus' French language specialty channels. Bell's interest in these channels had previously been divested to Corus as part of a remedy package related to Bell's acquisition of Astral Media Inc. in 2013. The consent agreement arising from that transaction specified that Bell could not reacquire any divested programming service for a period of 10 years without the Commissioner's prior approval. The Bureau declined to approve the transaction having concluded that the conditions giving rise to the initial remedy package had not materially changed, despite the growth in services such as Netflix, meaning that the original remedy was still necessary.[25]

Key economic appraisal techniques applied e.g. as regards unilateral effects and co-ordinated effects, and the assessment of vertical and conglomerate mergers

Economic analysis is a fundamental component of the Bureau's merger review process. The Bureau rarely considers economic models determinative but uses such models as either an initial screening mechanism, or for guidance as the merger review progresses. Economic models have gained importance since the SCC's decision in *Tervita*,[26] in which the Court held that the Commissioner has the obligation to quantify all quantifiable anti-competitive effects if the merging parties have raised the efficiencies defence.[27] For example, the Bureau retained an external economic expert to model the likely effects, including deadweight loss, of the *Superior/Canexus* transaction – a transaction that the Bureau ultimately cleared on the basis of efficiencies.[28] The Bureau also performed a deadweight loss analysis with respect to the *Superior/Canwest* transaction.[29]

The Bureau uses a broad variety of economic analyses in the course of its merger reviews. For example, in the retail sector, the Bureau may use diversion ratio analyses, critical loss analyses, price correlation/cointegration analyses, and regression analyses in order to define a relevant market, and it may use the empirical examination of natural experiments, upward pricing pressure analyses, and merger simulation models in analysing unilateral competitive effects.[30]

In its position statements, the Bureau often references the economic models it has used during its review. In the *Dow/DuPont* and *Couche-Tard/CST* transactions, for example, the Bureau undertook a diversion analysis and estimated the mergers' likely price effects.[31] In *Superior/Canwest*, the Bureau specifically mentioned the use of the Bertrand model of competition with Logit demand, to help analyse the merger and quantify its likely anti-competitive effects.[32] In *Metro/Jean Coutu*, the Bureau conducted a horizontal merger simulation and regression analysis[33] and in *LCF/Cargill*, the Bureau conducted a hypothetical monopolist test and pricing pressure and merger simulation analyses.[34]

Approach to remedies (i) to avoid second stage investigation and (ii) following second stage investigation

Supplementary Information Requests

Where a transaction raises serious competition issues in Canada, there is a strong likelihood that the Bureau will issue a Supplementary Information Request ("SIR"). That being said, the issuance of a SIR does not signal that a remedy is inevitable. Indeed, among the transactions where we are aware of the Bureau having completed its review after issuing a SIR, we understand that roughly two-thirds proceeded without any remedy.

In our experience, the likelihood and scope of a SIR depend on a number of factors, including: the public and media profile of the deal; the complexity of the industry; whether the transaction is subject to review in other jurisdictions; the degree and nature of competitive overlap; the extent to which historical business documents provided to the Bureau in the initial period support or refute the "theory of the case"; the likelihood and timing of complaints from market participants; and the extent to which specific issues have been addressed to the Bureau's satisfaction during the initial 30-day statutory waiting period.

Even if a SIR cannot be avoided entirely, parties may be able to reduce the burden of complying with a SIR by educating the Bureau about the parties' businesses, the transaction and the industry, by making business people available to address questions from the Bureau early in the review process, and by being responsive to potential Bureau concerns in parallel with the SIR compliance process.

Parties can reduce the likelihood of the Bureau issuing a SIR by providing the Bureau with additional time to review the merger. Though a pull-and-refile strategy is generally not used in Canada, a similar result can be achieved by engaging with the Bureau prior to the formal commencement of the statutory waiting period.

Remedies

Remedies may be required where a merger is likely to prevent or lessen competition substantially in one or more relevant markets. The guiding principle in determining an appropriate remedy was set out by the SCC in *Canada (Director of Investigation and Research) v. Southam Inc.*, where the Court stated that the "appropriate remedy for a substantial lessening of competition is to restore competition to the point at which it can no longer be said to be substantially less than it was before the merger".[35] The Court also noted that: "If the choice is between a remedy that goes farther than is strictly necessary to restore competition to an acceptable level and a remedy that does not go far enough even to reach the acceptable level, then surely the former option must be preferred. At the very least, a remedy must be effective. If the least intrusive of the possible effective remedies overshoots the mark, that is perhaps unfortunate, but from a legal point of view, such a remedy is not defective."[36]

As a matter of practice, the Bureau will first seek to negotiate a remedy with the parties prior to resorting to litigation, and has also shown a willingness to obtain a remedy through mediation prior to completion of the litigation.[37] In seeking a remedy, the Bureau prefers structural remedies, such as divestitures, over behavioural remedies, "because the terms of such remedies are more clear and certain, less costly to administer, and readily enforceable".[38] Structural remedies are also preferred by the courts, as noted by the Tribunal in *Canada (Commissioner of Competition) v. Canadian Waste Services Holdings Inc.*,[39] where the Tribunal stated: "[O]nce there has been a finding that a merger is likely to substantially prevent or lessen competition, a remedy that permanently constrains that market

power should be preferred over behavioural remedies that last over a limited period of time and require continuous monitoring of performance."

Voluntary remedies are implemented through consent agreements. The Competition Tribunal's decision in *Rakuten Kobo Inc. v. Canada (Commissioner of Competition)* clarified the elements that must exist for a consent agreement to secure approval from the Tribunal: (i) the consent agreement must be sufficiently detailed in order for the Tribunal to conduct its review; (ii) the Commissioner must set out in the consent agreement the conclusions arrived at with respect to there being a substantial lessening or prevention of competition; and (iii) there must be a link between the remedy contained in the consent agreement and the Commissioner's conclusion of a substantial lessening or prevention of competition.[40]

As a general matter, where a consent agreement includes either structural or behavioural remedies, or a combination of the two, the Bureau will require that a monitor be appointed to ensure that the merging parties abide by the terms of the consent agreement. Further, to facilitate the implementation of structural remedies, the Bureau generally requires the use of interim hold separate arrangements to "ensure the merging parties do not combine their operations or share confidential information before the divestiture occurs".[41] Pursuant to a hold separate agreement, the parties are required to hold separate the assets to be divested pending the completion of the divestiture. Hold separates have been utilised in several recent mergers, including in *Superior/Canwest*, *Metro/Jean Coutu*, *LCF/Cargill*, and *Linde/Praxair*. While the Bureau's preference is for structural remedies, this is not to say that, in cases where both the respondents and the Commissioner consent, behavioural remedies cannot be effective.[42]

Indeed, the Bureau has been open to using behavioural remedies as a means of addressing competitive concerns in connection with certain mergers. This is somewhat of a recent shift, as historically the Bureau has been concerned with the potential difficulty in monitoring behavioural remedies, determining the appropriate duration for the remedy, and the direct and indirect costs associated with monitoring the remedy and its effect on market participants.[43] In recent years, the Bureau has accepted behavioural remedies in a number of matters including *Bell/Astral*, *Agrium/Glencore*, *Telus/Public Mobile* (2013), *Transcontinental/Quebecor* (2014), *BCE/Rogers*' acquisition of GLENTEL, *Parkland/Pioneer* (2015), and *Superior/Canwest* (2017).

Further, where behavioural remedies "would not, on their own, be effective alternatives to a successful structural remedy", the Bureau has recognised that, "[i]ncluding behavioural components in a remedy may be useful if such components provide a buyer and/or other industry participants with the ability to operate effectively and as quickly as possible".[44] In that respect, the Bureau has negotiated combination remedies including both structural and behavioural aspects in various matters, including remedies in a number of recent transactions, notably *Superior/Canwest*, *Metro/Jean Coutu*, *LCF/Cargill*, and *Praxair/Linde*.

Post-closing investigations

Under the Act, the Commissioner can challenge a transaction for up to one year post-closing and seek an order from the Tribunal to dissolve the merger or require the sale of assets to remedy the harm to competition. The Bureau has recently demonstrated a willingness to review mergers after closing. On July 20, 2018, the Bureau announced that it would continue to review the merger of Tervita Corporation and Newalta Corporation with a focus on the merger's effect on competition in the provision of oilfield waste disposal services.[45] On September 26, 2018, the Bureau confirmed that it had concluded a similar review and would not challenge the acquisition of Veresen Inc. by Pembina Pipeline Corporation which had

closed on October 2, 2017, having determined that the available evidence was insufficient to support a challenge.[46]

Criminal merger investigations

In March 2018, the Commissioner announced that the Bureau was investigating Torstar Corporation ("Torstar") and Postmedia Network Canada Corp. ("Postmedia") for alleged anti-competitive conduct contrary to the conspiracy provisions of the Act in addition to the Act's merger provisions.[47] On November 27, 2017, Torstar and Postmedia announced the completion of a transaction involving the swap of 41 community newspapers.[48] On the same day that the transaction closed, the parties announced that 36 of the papers would be closed with staff of each paper dismissed by the paper's original owner. As part of its investigation, the Bureau obtained warrants to search the parties' offices in March 2018, and in December 2018, the Bureau obtained a court order requiring former and current employees of Torstar to be interviewed under oath.[49]

Key policy developments

In February 2019, for the first time, the Commissioner submitted a report to the Minister of Transport in support of a public interest review of a merger under the *Canada Transportation Act*. In its report, the Bureau concluded that the proposed merger of First Air and Canadian North airlines would likely result in a substantial lessening of competition in passenger travel and cargo services in regions of Nunavut and the Northwest Territories. The final decision regarding the merger will be made by the Cabinet based on the advice of the Minister of Transport.[50]

The SCC's decision in *Tervita* has led the Bureau to reconsider its approach to efficiencies in the merger review process. On March 20, 2018, the Bureau published a draft guide regarding the assessment of efficiencies in merger reviews. In its announcement, the Bureau noted that it has gained additional experience conducting highly complex efficiencies analysis since it last published guidance regarding efficiencies in 2011. The announcement also invited interested parties to provide comments and feedback on the draft guide.[51] The Bureau has not yet published the final version of its efficiencies guide. The Bureau also announced in May 2018 that it would be conducting a study focused on efficiencies achieved after the closing of transactions. The Bureau recognised that efficiency claims had gained significance as a result of recent SCC jurisprudence but stated that agencies in other jurisdictions had noted the inability of firms to realise post-merger synergies.[52]

On May 1, 2018, amendments to the Act came into force which broaden the Act's affiliation rules and have a significant effect on Canada's merger review regime. Prior to the amendments, two corporations were considered affiliates under the Act, whereas a corporation and a non-corporate entity (such as partnerships, sole proprietorships, and trusts) or two non-corporate entities would not be considered affiliates despite a functionally identical relationship. The amendments eliminate this asymmetry by expanding the Act's definition of affiliation to treat corporations and non-corporate entities in the same manner. Affiliation plays an important role in determining: (i) whether a transaction is subject to notification; and (ii) the content of pre-merger notification filings (as customer and supplier information must be included for all relevant affiliates). While the revisions to the affiliation rules now exempt most internal reorganisations from notification under the Act, they also result in transactions that would not have been notifiable under the old affiliation rules being notifiable going forward.

On April 1, 2019, the Bureau announced that the filing fee for merger reviews had been

increased from C$72,000 to C$73,584, effective immediately.[53] The filing fee applies to companies seeking pre-merger review from the Bureau through submission of a pre-merger notification filing or by requesting an ARC.

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Endnotes

1. See section 65(2) of the Act.
2. See section 123.1 of the Act.
3. The size of transaction threshold is subject to adjustment for inflation, and annual adjustments are published in the *Canada Gazette*.
4. Affiliation rules under the Act are complex but generally prescribe a legal control test (i.e., more than 50% ownership of voting interests).
5. See section 110(3)(b) of the Act.
6. Competition Bureau, *Competition Bureau statement regarding Superior's proposed acquisition of Canexus* (June 28, 2016), available at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04111.html.
7. Competition Bureau, *Acquisition of Canexus by Chemtrade will not be challenged* (March 8, 2017), available at: https://www.canada.ca/en/competition-bureau/news/2017/03/acquisition_of_canexusbychemtradewillnotbechallenged.html.
8. *Competition Bureau statement regarding Superior Plus LP's proposed acquisition of Canwest Propane from Gibson Energy ULC* (September 28, 2017), available at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04307.html.
9. In addition to seeking an interim order where it has already commenced an application challenging a merger, the Bureau can, under section 100 of the Act, apply for an interim order prohibiting the completion or implementation of a proposed merger where: (i) the Commissioner is conducting an inquiry under section 10(1)(b) of the Act and asserts that more time is required to complete the inquiry, and the Tribunal finds that in the absence of the order a party to the proposed merger or any other person is likely to take an action that would substantially impair the ability of the Tribunal to remedy the effect of the proposed merger on competition because that action would be difficult to reverse; or (ii) the Tribunal finds that there has been a violation of the merger notification provisions.
10. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311, 1994 CanLII 117, available at: http://canlii.ca/t/1frtw.
11. Competition Bureau, *Statement from the Commissioner of Competition: Tribunal issues interim order in the Parkland/Pioneer merger* (June 3, 2015), available at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03925.html.
12. A "no-action letter" is a letter from the Commissioner indicating that the Commissioner is of the view that he or she does not, at that time, intend to make an application to the Tribunal under section 92 of the Act challenging the transaction. See section 123(2) of the Act.
13. The Commissioner and a merging party or parties may enter into a consent agreement to remedy the Commissioner's concerns with a transaction or proposed transaction. Consent agreements may be filed with the Tribunal; doing so provides the consent

agreement with the same force and effect as an order of the Tribunal. See section 105(4) of the Act. The Bureau has published a template consent agreement which largely reflects recent consent agreements. The template is available on the Bureau's website at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02310.html.

14. Competition Bureau, *Competition Bureau Performance Measurement & Statistics Report For the period ending September 30, 2018*, available at: https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04397.html.
15. Competition Bureau, *Bureau welcomes input on Superior's proposed acquisition of Canwest*, (April 24, 2017), available at: https://www.canada.ca/en/competition-bureau/news/2017/04/bureau_welcomes_inputonsuperiorsproposedacquisitionofcanwest.html.
16. Competition Bureau, *2019 pre-merger notification transaction-size threshold* (January 31, 2019), available at: https://www.canada.ca/en/competition-bureau/news/2019/01/2019-pre-merger-notification-transaction-size-threshold.html.
17. Competition Bureau, *Competition preserved in pharmacy distribution and franchising services in Quebec* (April 23, 2018), available at: https://www.canada.ca/en/competition-bureau/news/2018/04/competition-preserved-in-pharmacy-distribution-and-franchising-services-in-quebec.html.
18. Competition Bureau, *Competition Bureau approves transfer of interests in 10 Quebec pharmacies from Metro to Familiprix, McKesson* (February 18, 2018), available at: https://www.canada.ca/en/competition-bureau/news/2019/02/competition-bureau-approves-transfer-of-interests-in-10-quebec-pharmacies-from-metro-to-familiprix-mckesson.html.
19. Competition Bureau, *Competition and innovation safeguarded in the Canadian agricultural sector* (May 30, 2018), available at: https://www.canada.ca/en/competition-bureau/news/2018/05/competition-and-innovation-safeguarded-in-the-canadian-agricultural-sector.html.
20. Competition Bureau, *Competition Bureau reaches agreement with German chemical company BASF* (June 27, 2018), available at: https://www.canada.ca/en/competition-bureau/news/2018/06/competition-bureau-reaches-agreement-with-german-chemical-company-basf.html.
21. Competition Bureau, *Competition preserved in the supply of industrial gases in Canada* (October 26, 2018), available at: https://www.canada.ca/en/competition-bureau/news/2018/10/competition-preserved-in-the-supply-of-industrial-gases-in-canada.html.
22. Competition Bureau, *Competition Bureau reaches agreement with La Coop fédérée and Cargill Limited* (November 13, 2018), available at: https://www.canada.ca/en/competition-bureau/news/2018/11/competition-bureau-reaches-agreement-with-la-coop-federee-and-cargill-limited.html.
23. Competition Bureau, *Competition Bureau statement regarding proposed merger between Stewart and Fidelity National Financial* (September 4, 2018), available at: https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04386.html.
24. Competition Bureau, *Competition Bureau will not oppose aerospace systems acquisition* (October 1, 2018), available at: https://www.canada.ca/en/competition-bureau/news/2018/10/competition-bureau-will-not-oppose-aerospace-systems-acquisition.html.

25. Competition Bureau, *Backgrounder: Commissioner of Competition's decision regarding Bell's proposed acquisition of Historia and Séries+* (May 31, 2018), available at: https://www.canada.ca/en/competition-bureau/news/2018/05/backgrounder-commissioner-of-competitions-decision-regarding-bells-proposed-acquisition-of-historia-and-series.html.
26. See *supra* endnote 6.
27. For an overview of the efficiencies defence, see the "Overview of merger control activity during the last 12 months" section above.
28. See *supra* endnote 7.
29. See *supra* endnote 9.
30. Competition Bureau, *Economic analysis of retail mergers at the Competition Bureau* (September 15, 2014), available at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03796.html.
31. Competition Bureau, *Competition Bureau statement regarding the merger between Dow and DuPont* (June 27, 2017), available at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04247.html; and Competition Bureau, *Competition Bureau statement regarding Couche-Tard's acquisition of CST and divestiture of certain assets to Parkland* (July 6, 2017), available at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04252.html.
32. See *supra* endnote 9.
33. Competition Bureau, *Competition Bureau statement regarding METRO Inc.'s acquisition of The Jean Coutu (PJC) Group Inc.* (May 16, 2018), available at: https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04363.html.
34. Competition Bureau, *Competition Bureau statement regarding La Coop fédérée's proposed acquisition of Cargill Limited's grain and retail crop inputs businesses in Ontario* (November 14, 2018), available at: https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04403.html.
35. [1997] 1 SCR 748, at para. 85, available at: http://canlii.ca/t/1fr34.
36. *Ibid*, at para. 89.
37. Competition Bureau, *Competition Bureau statement regarding Parkland's acquisition of Pioneer* (April 1, 2016), available at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04053.html.
38. Competition Bureau, *Information Bulletin on Merger Remedies in Canada* (September 22, 2006), available at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02170.html.
39. 2001 Comp. Trib. 34, CT-2000-002, available at: http://www.ct-tc.gc.ca/CMFiles/CT-2000-002_0087_49PBY-982004-9241.pdf.
40. 2016 Comp. Trib. 11, available at: http://www.ct-tc.gc.ca/CMFiles/CT-2014-002_Reasons%20for%20Order%20and%20Order_234_66_6-10-2016_3576.pdf. Brian A. Facey and Cassandra Brown, "*Competition and Antitrust Laws in Canada: Mergers, Joint Ventures and Competitor Collaborations*", 2nd ed., LexisNexis Canada: 2017 at p 369.
41. See *supra* endnote 37.
42. *Ibid*, at para. 110.

43. *Ibid*.
44. See *supra* endnote 37.
45. Competition Bureau, *Competition Bureau continues Tervita and Newalta merger review*, (July 20, 2018), available at: https://www.canada.ca/en/competition-bureau/news/2018/07/competition-bureau-continues-tervita-and-newalta-merger-review.html.
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