

RECENT DEVELOPMENTS IN MERGER REVIEW**Shuli Rodal and Kaeleigh Kuzma¹***Osler, Hoskin & Harcourt LLP, Toronto*

Les praticiens en droit de la concurrence continuent de porter attention aux développements dans trois secteurs clés en matière d'examen des fusions. Premièrement, le Bureau de la concurrence continue de parfaire son approche en matière d'examen des fusions en appliquant le modèle d'examen des fusions à deux phases en vigueur depuis mars 2009. Deuxièmement, dans un régime où les cas de fusion faisant l'objet de litiges sont rares, deux cas de fusion ont récemment été portés devant le Tribunal de la concurrence et (au moment de la rédaction de cet article) une décision du Tribunal dans l'une de ces deux causes est attendue de façon imminente. Troisièmement, le Bureau a récemment entrepris des initiatives pour évaluer et parfaire son approche en matière d'examen et d'analyse des fusions. Principalement, le Bureau a révisé les lignes directrices en matière de fusion afin de déterminer quels changements s'imposaient depuis la publication de la dernière version des lignes directrices en 2004. Les lignes directrices révisées ont publiées en octobre 2011. Le Bureau a également publié un sommaire de son étude sur les mesures correctives en matière de fusion. Cet article discute de ces développements.

Competition law practitioners continue to monitor developments in three key areas of interest in Canadian merger review. First, the Competition Bureau ("Bureau") continues to refine its approach to merger review under the two-stage merger review process that came into effect in March 2009. Second, in a regime where litigated merger cases are rare, two merger related cases have recently been brought before the Competition Tribunal ("Tribunal") and (at the time of writing) the decision of the Tribunal in one of these cases is expected imminently. Third, the Bureau has recently undertaken a number of initiatives to evaluate and refine its substantive approach to merger review and analysis. Most notably, the Bureau revisited its *Merger Enforcement Guidelines* ("MEGs") to assess what changes were warranted in the Bureau's stated approach to the substantive review of mergers since the last review of the MEGs in 2004. Revised MEGs were released in October 2011. The Bureau also recently released a summary of its *Merger Remedies Study* ("Remedies Study"). These developments are discussed in further detail below.

A. Merger Review Process

Competition law practitioners in Canada continue to watch closely the Bureau's implementation of Canada's new merger review regime. In March 2009, the Canadian *Competition Act* merger review process was amended to align it more closely with the U.S. merger review process under the *Hart-Scott-Rodino Antitrust Improvements Act*. The Bureau continues to refine its approach to merger review under the new regime. Recent notable developments in this regard are the publication of the Bureau's finalized *Fee and Service Standards Handbook for Merger and Merger-Related Matters* ("Fee and Service Standards Handbook"), the release of updated *Merger Review Process Guidelines* ("Process Guidelines"), the issuance of new pre-merger notification interpretation guidelines, and the introduction of a new merger registry.

1. Bureau Caseload and Issuance of SIRs

Based on information provided by the Bureau, the number of merger examinations undertaken in the 2010-2011 fiscal year represented a small increase in the number of reviews as compared with the prior fiscal year. In the 2010-2011 fiscal year, the Bureau reportedly issued a supplementary information request ("SIR") in only five transactions. While complete statistics for the 2011-2012 fiscal year are not yet available, the Bureau reported issuing SIRs in a total of eight transactions, representing an increase over the previous year. It should be noted, however, that whether a SIR is issued is only one factor impacting the timeframe for the review of any given merger. As there are no statistics regarding such matters, it is uncertain how many other transactions were subject to an informal second stage review, either through a negotiated process involving a voluntary production of information and a timing agreement to delay closing, or where parties were technically in a position to close but the Bureau's review continued beyond the initial 30-day period. It is also uncertain how many reviews were extended through the practice of pulling (and possibly re-filing) a pre-merger notification.

2. Guidance on Bureau Process

(a) Fee and Service Standards Handbook

In November 2010, following a period of public consultation on its initial revised draft released in May 2010, the Bureau released its finalized revised Fee and Service Standards Handbook.² The Fee and Service Standards Handbook outlines revised service standard timelines and complexity classifications for merger review. In addition, while the prior version of this document contained primarily procedural and administrative information, the revised document also outlines informational requirements for merger filings and provides some degree of insight into the Bureau's approach to the substantive assessment of mergers. The Fee and Service Standards Handbook also formally acknowledges

that the practice of pulling and re-filing a pre-merger notification is now a feature of the Canadian merger review regime.

(i) Service Standards and Complexity Classification

The Fee and Service Standards Handbook indicates that notwithstanding the new two-stage review process, the Bureau will continue to begin its assessment of mergers with an assignment of the level of “complexity” of the review required. The stated purpose of this assessment is to provide the parties to the transaction with a sense of the expected (but non-binding) practical timeframe for the Bureau’s review. The continued use of the complexity classification is a reflection of the fact that the timing of the Bureau’s review may not be aligned with the statutory waiting periods.

The Fee and Service Standards Handbook contemplates only two levels of complexity: complex and non-complex. The previous third category of “very complex” transactions has been abandoned with all transactions that are not “readily identifiable by the clear absence of competition issues” now classified as “complex”. The service standard (i.e. estimated but non-binding review period) for non-complex transactions is unchanged at 14 days. Complex transactions now have a 45-day service standard unless a SIR is issued, in which case the applicable service standard terminates 30 days after the parties comply with the SIR. In other words, the service standard for “complex” cases is aligned with the statutory waiting period where a SIR is issued but in “complex” cases where no SIR is issued, the Bureau’s practical timeframe for review extends well beyond the initial 30-day waiting period. In addition, it continues to be the case that the applicable service standard only commences once the Bureau is satisfied that it has “sufficient” information to assign a complexity classification, which may be well after a pre-merger notification filing or request for an advance ruling certificate is filed.

The Fee and Service Standards Handbook also provides some guidance on how mergers will be classified by the Bureau. In general, transactions that result in a combined market share of 10% or less will be classified as “non-complex”; transactions with combined shares of more than 35% will be classified as “complex”; and transactions with combined shares between 10% and 35% may be classified as “non-complex” or “complex,” depending on a number of factors (e.g. barriers to entry, effectiveness of remaining competition, credible complaints or competitive concerns, the incremental increase in share, and challenges in defining the relevant product and geographic markets).

(ii) Informational Requirements

The Fee and Service Standards Handbook sets out a non-exhaustive list of the information generally required by the Bureau in order to assess complexity

and commence the service standard. Of note, all information required in a notification (including customer contacts) is now requested for all transactions other than non-complex transactions with minimal overlap (i.e. below 10% post-merger). As a practical matter, however, making market contacts has become standard practice for the Bureau and customer contacts are routinely sought in virtually all cases of minimal competitive overlap, as well as some cases with no competitive overlap.

(iii) Pulling and Re-filing

In 2009, when the new merger review process took effect, Bureau representatives expressed the view that it should not be necessary for the U.S. practice of pulling and re-filing a notification in an effort to avoid the issuance of a SIR to become part of the Canadian process. However, the practice of pulling and re-filing has been used in a number of cases in Canada and is clearly now an informal part of the Canadian process. The Bureau has now effectively acknowledged that this practice has its place in Canada's two-stage review process by including in the Fee and Service Standards Handbook a new rule permitting merging parties to withdraw a notification once and re-file without paying a second fee, provided that the notification is re-filed within five business days.

(b) Process Guidelines

In January 2012, the Bureau released updated Process Guidelines to reflect the experience and practice since the enactment of the new merger review process in March 2009.³ Of particular note is a discussion of the dialogue between the Bureau and merging parties after a SIR is issued, and confirmation that parties are typically required to "refresh" their SIR responses where the period of time between the date of the SIR and the date of certifying a complete response exceeds 90 days. The Process Guidelines also include a more detailed section on timing agreements, stating that generally timing agreements will be requested of parties to a non-notifiable transaction and a target company in a hostile transaction. Included as an appendix to the Process Guidelines are sample instructions for responding to a SIR.

(c) Interpretation Guidelines

The Bureau's Pre-Merger Notification Interpretation Guidelines were updated in June 2011. Notably, the Bureau introduced *Pre-Merger Notification Interpretation Guideline Number 13: Satisfying the Information Requirements set out in Section 16 of the Notifiable Transactions Regulations and Completeness of Notification* ("Guideline 13").⁴ Guideline 13 describes the Bureau's policy with respect to issues such as the determination of significant affiliates and principal businesses of the filing parties, the provision of interim financial statements and information relating to customers and suppliers, and the Bureau's approach to incomplete notifications.

The Bureau also recently released interpretation guidelines for hostile transactions. *Hostile Transactions Interpretation Guideline Number 1: Bureau Policy on Disclosure of Information* confirms that the confidentiality provisions contained in section 29 of the *Competition Act* apply in the context of hostile transactions, and that the *Competition Act* places limited obligations on the Bureau to disclose information to the parties to a hostile transaction.⁵ The Bureau has advised that when it shares “pertinent information” (e.g. complexity designation, review timeline, date of certifying completeness in response to a SIR, etc.) with one party it will strive to disclose such information equitably to the other party, subject to its obligations under section 29 of the *Competition Act*. Given the complexities that can arise in a hostile transaction, the application of this policy will be considered on a case-by-case basis.

Hostile Transactions Interpretation Guideline Number 2: Bureau Policy on Running of Subsection 123(1) Waiting Periods confirms that, consistent with the provisions of the *Competition Act*, the initial 30-day statutory waiting period in the context of a hostile transaction commences upon receipt of a complete pre-merger notification from the bidder without reference to the date on which the target’s portion of the pre-merger notification is submitted.⁶ Similarly, the subsequent 30-day waiting period following compliance with a SIR commences upon the bidder’s certification of a complete response to the SIR. However, the Bureau has now also adopted a policy on the running of the applicable waiting period when a previously hostile transaction becomes consensual. Specifically, where a hostile transaction turns friendly during the running of either statutory waiting period, such change in status will have no effect on the expiry of that waiting period (provided the Bureau has not challenged the completeness of the response). On the other hand, where a hostile transaction turns friendly after the issuance of a SIR but prior to the bidder having certified a complete response to the SIR (such that the transaction is no longer hostile at the time the bidder certifies completeness), the Bureau’s position is that the subsequent 30-day waiting period will not commence until all parties have submitted certified complete responses to the SIR, provided the Bureau has not challenged the completeness of any such responses.

The Bureau recently released for consultation three new interpretation guidelines: *Pre-Merger Notification Interpretation Guideline Number 12: Requirement to Submit a New Pre-Merger Notification and/or ARC Request Where a Proposed Transaction is Subsequently Amended*;⁷ *Pre-Merger Notification Interpretation Guideline Number 14: Duplication Arising From Transactions Between Affiliates*;⁸ and *Pre-Merger Notification Interpretation Guideline Number 15: Assets in Canada and Gross Revenues From Sales in, from or into Canada (Sections 109 and 110 of the Act)*.⁹ Aspects of these proposed guidelines are controversial and it remains to be seen whether there will be refinements before they are finalized.

(d) Procedures Guide

In November 2010, the Bureau released the updated *Procedures Guide for Notifiable Transactions and Advance Ruling Certificates under the Competition Act* (“Procedures Guide”).¹⁰ The Procedures Guide provides an overview of Part IX of the *Competition Act* and the *Notifiable Transactions Regulations*, guidance for determining whether Part IX of the *Competition Act* applies to a proposed transaction, and outlines the circumstances in which information can be excluded from a pre-merger notification. It also explains the statutory waiting periods and describes factors parties may want to consider in determining when to notify the Bureau of a proposed transaction. Guidance relating to the issuance of advance ruling certificates and logistical matters regarding the submission of a pre-merger notification and/or request for an advance ruling certificate is also included.

(e) Merger Registry

In February 2012 the Bureau launched a merger registry. The registry contains a monthly report of concluded merger reviews where a pre-merger notification was made under section 114 of the *Competition Act* and/or a request was made for an advance ruling certificate under section 102 of the *Competition Act*, and identifies the result of the Bureau’s review. The merger registry is promoted by the Bureau as part of its effort to increase transparency.

It can also be noted that most likely as part of the effort to improve transparency, the Bureau has in recent months also commenced publishing with increased frequency position statements outlining its approach to merger review in certain transactions.

3. Substantive Review and Remedies

In the 2011-2012 fiscal year, there were no formal remedies negotiated consensually or ordered by the Tribunal. In the 2010-2011 fiscal year, formal remedies were negotiated consensually in the following cases:

- Teva Pharmaceutical Industries Ltd.’s merger with ratiopharm (the parties agreed to sell assets and associated licenses of either Teva or ratiopharm relating to the sale and supply of certain dosage forms of acetaminophen oxycodone tablets and morphine sulfate sustained-release tablets in Canada);¹¹
- Novartis AG’s acquisition of Alcon, Inc. (Novartis agreed to divest certain assets and licenses for certain ophthalmic products in Canada);¹²
- IESI-BFC Ltd.’s merger with Waste Services Inc. (the parties agreed to divest commercial waste collection assets in Calgary, Edmonton, Ottawa, Hamilton and Simcoe County, as well as WSI’s commercial waste transfer station located in Hamilton);¹³ and

- The Coca-Cola Company's acquisition of Coca-Cola Enterprises Inc. (a vertical integration transaction in which Coca-Cola agreed to information use restrictions and restrictions related to accessing certain personnel).¹⁴

In addition to the above, in the Nufarm/AH Marks transaction, the Bureau relied primarily on a consent decree between Nufarm and the United States Federal Trade Commission ("FTC") to adequately resolve competition concerns in Canada. The Bureau indicated that it worked closely with FTC staff throughout the investigation to arrive at a proposed settlement order that restores competition in both Canada and the United States.¹⁵

B. Merger Challenges

Since September 2010, the Commissioner has filed two section 92 applications with the Tribunal. These cases are being followed closely both because there is very little merger litigation in Canada (it has been years since there was a litigated merger case) and because the cases raise interesting substantive and procedural issues.

1. CCS Corporation/Complete Environmental

The Commissioner filed an application with the Tribunal to challenge the completed acquisition by CCS Corporation of Complete Environmental Inc., the owner of a proposed secure landfill site in north east British Columbia.¹⁶ The case is of interest for a number of reasons:

- The transaction was not subject to mandatory notification under Part IX of the *Competition Act*. However, the respondents had notified the Bureau on a voluntary basis prior to completing the transaction.
- Interestingly, prior to completing the transaction, the respondents did not enter into a hold separate arrangement with the Commissioner; rather, CCS Corporation undertook to preserve the landfill until the Commissioner's application is determined.
- Significantly, the Commissioner's case is focussed on the *prevention* of competition (rather than the lessening of competition) as the Commissioner alleges Complete Environmental was poised to enter the market. The Commissioner claims that but for the merger, oil and gas companies in north east British Columbia who must dispose of certain hazardous waste materials at a secure landfill would have enjoyed the competitive benefits that would have resulted from Complete Environmental's entry.
- The Commissioner is seeking a dissolution of the transaction (and only in the alternative, a divestiture).
- The Commissioner has requested that the respondents be required to provide 30 days' notice of any future non-notifiable proposed merger, with this

requirement to remain in effect for five years (under section 92 of the *Competition Act* the Tribunal cannot make an order to take action without the consent of the party so the respondents would have to consent to such an order).

In October 2011, the vendors brought a motion to dismiss the Commissioner's application as against them by challenging the Commissioner's right to seek dissolution of the transaction. The vendors (as well as CCS Corporation) claimed that should the Commissioner prove her case, the most appropriate and least intrusive remedy would be a divestiture. As the vendors no longer hold an interest in Complete Environmental (or the secure landfill site) and therefore would not be involved in the process should a divestiture be ordered, they claimed they ought to be released from the proceedings.

The Tribunal dismissed the motion, thereby confirming the availability of dissolution as a potential remedy to address the anti-competitive effects of a completed merger. While a proposed remedy of dissolution raises complex issues, the Tribunal determined that a summary judgment motion is not the appropriate forum to evaluate these issues. The Tribunal agreed with the Commissioner that divestiture is only a realistic remedy where the assets to be divested can be sold to a purchaser in a timely manner, and found that, to date, the respondents had not brought forward evidence that such a sale could occur.

The Tribunal further held that the Commissioner is not required to explicitly allege that dissolution is the only effective remedy. Rather, the Commissioner is entitled to propose alternative remedies and, if the Tribunal finds a transaction is likely to result in a substantial lessening or prevention of competition, it is the Tribunal's decision as to which remedy would be most appropriate.

The hearing took place in November 2011; however, the Tribunal decision has not yet been released.¹⁷

2. Air Canada/United Continental

In June 2011, the Commissioner filed an application with the Tribunal to prohibit a proposed joint venture between Air Canada and United Continental.¹⁸ The Commissioner claims that if the joint venture goes ahead, it will result in a monopoly on ten routes between Canadian and American cities, and substantially reduce competition on nine additional routes, leading to increased prices and reduced consumer choice on key transborder routes.

The Commissioner is seeking an order under section 92 of the *Competition Act* prohibiting the implementation of the proposed joint venture or, in the alternative, an order prohibiting the respondents from implementing the proposed joint venture in relation to direct passenger air transport services operated by the respondents on the 19 identified transborder routes. As with the

CCS Corporation/Complete Environmental challenge, the Commissioner has requested that the respondents be required to provide 30 days' notice of any future non-notifiable proposed merger or any future proposed agreement or arrangement among Air Canada and one or more of the respondents for a period of five years. The Commissioner has also requested that in such circumstances the parties provide the information required by the *Notifiable Transactions Regulations* and abide by the statutory waiting periods set out in Part IX of the *Competition Act*.

In addition to the section 92 challenge, the Commissioner is also challenging certain coordination agreements which allegedly allow the respondents to coordinate pricing, scheduling and revenue-sharing, and is seeking an order under section 90.1 of the *Competition Act* prohibiting the respondents from undertaking or implementing pricing or inventory coordination, revenue pooling, and route and schedule planning (alternatively, the Commissioner has requested that such a prohibition only extend to the 19 identified transborder routes). This is the first time the Commissioner has sought a remedy under the new section 90.1 civil provision relating to agreements between competitors that are likely to result in a substantial lessening or prevention of competition.

The hearing is scheduled to commence in November 2012.

C. Bureau Analysis and Guidance on Substantive Review and Remedies

1. Revisions to the Merger Enforcement Guidelines

In September 2010, the Bureau announced a public consultation to consider the merits of revising the MEGs. The stated purpose of the consultation was to assess whether the MEGs accurately reflect current practice at the Bureau, the potential impact of the revised *Horizontal Merger Guidelines* in the United States, and address other legal and economic developments. In February 2011, the Bureau announced that it would be making “moderate” changes to the MEGs and released a draft for public consultation in June 2011. The revised MEGs were released in October 2011.¹⁹

The revisions to the MEGs do not reflect a material change in the Bureau's substantive approach to merger review. The revised MEGs:

- Clarify the role of market definition in the merger review process through a statement that merger review is an iterative process and while market definition generally forms a part of that process, it is not the required first step of the analysis nor is it a mandatory step in the analysis;
- Confirm that the tools available to the Bureau depend upon the facts specific to each case, and that the Bureau may look to qualitative evidence such as ordinary-course documents created by the merging parties or first-hand

observations of the industry by market participants, as well as quantitative evidence such as statistical analyses of price, quantity, costs or other data;

- Focus on how to assess competitive effects where the merging parties operate in *homogenous* product industries, *differentiated* product industries, and *bidding/bargaining* markets. The revised MEGs reference the use of the diversion ratio to measure the closeness of competition between merging parties' differentiated products, and acknowledge that a merger is unlikely to result in a substantial prevention or lessening of competition where there are many bidders or potential suppliers that are similarly situated *vis-a-vis* the merging parties;
- Provide further guidance on the analysis of coordinated effects;
- Expand discussion of the Bureau's approach to monopsony power, countervailing power, interlocking directorates and minority interests;
- Eliminate the concept of a two-year timeframe for potential entry into the market in the assessment of whether such new entry will constrain the merged entity from exercising market power;
- Elaborate on the Bureau's approach to non-horizontal mergers, and acknowledge that while non-horizontal mergers are less likely to harm competition and often create significant efficiencies, there are circumstances in which non-horizontal mergers may reduce competition (e.g., foreclosure); and
- Provide a more detailed discussion of efficiencies, and emphasize the onus on merging parties to present "detailed and comprehensive information that substantiates the precise nature, magnitude, likelihood and timeliness of their alleged efficiency gains". The revised MEGs state that the Bureau may not take an efficiencies defence into account unless it is presented in a timely fashion.

2. The Merger Remedies Study

In August 2011, the Bureau released the results of its internal study of the effectiveness of remedies obtained under the merger provisions of the *Competition Act* during the period 1995-2005. The Bureau examined a total of 23 cases where remedies were obtained by the Bureau and implemented, and where sufficient information was available to conduct an assessment.²⁰ The Bureau conducted 135 interviews, approximately 45% of which were with customers. The cases reviewed involved structural remedies, quasi-structural remedies, combination remedies and standalone behavioural remedies. However, 20 of the 23 reviewed cases included at least one divestiture remedy, confirming that structural remedies are the most common (and most preferred) remedies.

Divestitures were completed in all but two of the 20 cases. In the majority of

cases, the divestitures were viewed as having been effective in achieving their objective of eliminating the substantial lessening or prevention of competition that would have resulted from the merger. In the two cases where the divestitures were not completed, interviewees suggested that the divestiture may not have been successful because:

- The divestiture package was not attractive to buyers and owing to economic conditions;
- The divestiture orders included minimum pricing provisions; and
- There was a limited pool of buyers given foreign ownership restrictions in certain industries.

Other comments by interviewees noted in the Remedies Study that may impact Bureau practice when negotiating remedies include the following:

- Interviewees raised concerns that in some cases the assets to be divested were of a poor quality, or that the divestiture package did not contain sufficient assets to be viable or saleable. As a result of these comments, the Remedies Study acknowledges that there is a need for the Bureau to fully “market test” a proposed divestiture package during remedy negotiations.
- Interviewees commented that the quality of a purchaser also contributed to the success of a divestiture, with financially stable purchasers and those with relevant industry experience more likely to result in a successful divestiture.

The study also reviewed the length of sale periods for divestiture packages, noting that initial sale periods ranged from 3 to 24 months and trustee sale periods varied from 3 to 12 months, except in one case where it was unlimited. The study found that a longer sale period was associated with degradation of the assets or market changes that affected the saleability of the divestiture package. In certain cases concerns were also raised about interim arrangements and maintenance of the assets pending divestiture.

The Remedies Study indicates that a number of concerns were raised about the use of behavioural remedies, particularly on a standalone basis. For example, the Remedies Study noted as follows:

- In a case where a merged firm agreed to a series of behavioural commitments, some parties identified the failure to appoint a monitor as a factor that detracted from the effectiveness of the remedy.
- Some market participants commented that standalone behavioural remedies tended to be less effective because they did not address the underlying issue of the merged firm’s ability to exercise market power and because it is difficult to predict market conditions when a remedy is crafted.

However, the Remedies Study also suggested that there may be cases where a behavioural remedy can be successful. For example, in several cases it was determined that a particular purchaser was unlikely to be successful without access to certain downstream services. In such cases, agreements between the merged entity and the purchaser providing for relatively long-term access to such downstream services at fixed rates (e.g. supply agreements) were determined to be successful in enabling the purchaser to become an effective competitor in the relevant market.

The Bureau plans to use the information obtained from the study and subsequent experience to update the *Information Bulletin on Merger Remedies in Canada* and revise the consent agreement template.²¹

ENDNOTES

¹ Shuli Rodal is a partner in the Competition and Foreign Investment Group at Osler, Hoskin & Harcourt LLP. Kaeleigh Kuzma is an associate in the Group. This paper was originally presented to the Canadian Bar Association's 2011 Annual Fall Competition Law Conference on October 6-7, 2011, at Hilton Lac-Leamy, Gatineau, Québec, and was subsequently updated in April 2012.

² Competition Bureau, *Competition Bureau Fee and Service Standards Handbook for Merger and Merger-Related Matters* (November 1, 2010), see <http://www.competition-bureau.gc.ca/eic/site/cb-bc.nsf/eng/03295.html>.

³ Competition Bureau, *Merger Review Process Guidelines* (January 11, 2012), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03423.html>.

⁴ Competition Bureau, *Pre-Merger Notification Interpretation Guideline Number 13: Satisfying the Information Requirements set out in Section 16 of the Notifiable Transactions Regulations and Completeness of Notification* (June 20, 2011), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03370.html>.

⁵ Competition Bureau, *Hostile Transactions Interpretation Guideline Number 1: Bureau Policy on Disclosure of Information* (July 21, 2011), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03142.html>.

⁶ Competition Bureau, *Hostile Transactions Interpretation Guideline Number 2: Bureau Policy on Running of Subsection 123(1) Waiting Periods* (July 21, 2011), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03372.html>.

⁷ Competition Bureau, *Pre-Merger Notification Interpretation Guideline Number 12: Requirement to Submit a New Pre-Merger Notification and/or ARC Request Where a Proposed Transaction is Subsequently Amended* (March 23, 2012, for public consultation), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03369.html>.

⁸ Competition Bureau, *Pre-Merger Notification Interpretation Guideline Number 14: Duplication Arising From Transactions Between Affiliates* (March 23, 2012, for public consultation), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03371.html>.

⁹ Competition Bureau, *Pre-Merger Notification Interpretation Guideline Number 15: Assets in Canada and Gross Revenues From Sales in, from or into Canada (Sections 109 and 110 of the Act)* (April 11, 2012, for public consultation), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03153.html>.

¹⁰ Competition Bureau, *Procedures Guide for Notifiable Transactions and Advance Ruling Certificates under the Competition Act* (November 1, 2010), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03302.html>.

¹¹ *The Commissioner of Competition v. Teva Pharmaceutical Industries Ltd., Merckle GMBH, CT Arzneimittel GMBH and ABZ-Pharma Holding GMBH* (CT-2010-007), see <http://www.ct-tc.gc.ca/CasesAffaires/CasesDetails-eng.asp?CaseID=330>.

¹² *The Commissioner of Competition v. Novartis AG* (CT-2010-008), see <http://www.ct-tc.gc.ca/CasesAffaires/CasesDetails-eng.asp?CaseID=331>.

¹³ *The Commissioner of Competition and IESI-BFC Ltd., BFI Canada Inc., Waste Services Inc., and Waste Services (CA) Inc.* (CT-2010-005), see <http://www.ct-tc.gc.ca/CasesAffaires/CasesDetails-eng.asp?CaseID=328>.

¹⁴ *The Commissioner of Competition v. The Coca-Cola Company* (CT-2010-009), see <http://www.ct-tc.gc.ca/CasesAffaires/CasesDetails-eng.asp?CaseID=332>.

¹⁵ Competition Bureau, "Competition Bureau Requires Divestitures in Herbicide Merger" (July 28, 2010), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03264.html>.

¹⁶ *Commissioner of Competition v. CCS Corporation, Complete Environmental Inc., Babkirk Land Services Inc., Karen Louise Baker, Ronald John Baker, Kenneth Scott Watson, Randy John Wolsey, and Thomas Craig Wolsey* (CT-2011-02), see <http://www.ct-tc.gc.ca/CasesAffaires/CasesDetails-eng.asp?CaseID=336>.

¹⁷ Ed. note: on May 29, 2012, the Tribunal upheld the Commissioner's argument, and ordered CCS to divest itself of the assets or shares of Babkirk Land Services Inc.

¹⁸ *The Commissioner of Competition v. Air Canada, United Continental Holdings Inc., United Airlines Inc., and Continental Airlines Inc.* (CT-2011-004), see <http://www.ct-tc.gc.ca/CasesAffaires/CasesDetails-eng.asp?CaseID=348>.

¹⁹ Competition Bureau, *Merger Enforcement Guidelines* (October 6, 2011), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03420.html>.

²⁰ Competition Bureau, *Competition Bureau Merger Remedies Study* (August 11, 2011), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03392.html>.

²¹ Competition Bureau, *Information Bulletin on Merger Remedies in Canada* (September 22, 2006), see <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02170.html>.



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