



Merger Control:

A new transatlantic convergence?



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Inter-Agency Cooperation

- Essential part of the Bureau's work in today's global marketplace
- Analytical fundamentals of antitrust cases are the same
 - market definition
 - competitive effects analysis
 - efficiencies
- Inter-agency coordination helps promote consistency in the treatment of multi-jurisdictional cases
 - Divergence generally relates to the factual circumstances found in different jurisdictions and process issues





Amendments to the *Competition Act*

- Recent modernization of the *Competition Act* in response to the recommendations of an expert panel:
 - brings the legislation more closely in line with the competition laws of Canada's major trading partners
 - an element of the Government of Canada's priority to enhance the productivity and competitiveness of Canada
 - increases the predictability, efficiency and effectiveness of the administration of the *Competition Act*





Amendments to the *Competition Act*, continued

- Key Changes:
 - Merger review process
 - Competitor Collaborations (in force March 2010)
 - Decriminalization of certain pricing practices
 - Increases in administrative monetary penalties (AMPs), fines and prison terms
 - AMPs now available for abuse of dominance





Merger Review Process – Key Changes

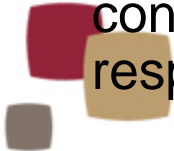
- Introduction of a two-stage review process
 - Includes use of “supplementary information requests” (SIRs), similar to U.S. second request process
- Increase in financial thresholds for merger notification
 - Accompanied by a formula for automatic annual adjustments based on changes in GDP
- Limitation period for Commissioner to challenge merger reduced to one year from three





Revised Merger Review Process – Guidelines

- New *Merger Review Process Guidelines* issued in September 2009 (consulted widely April-September on draft version), to outline how Bureau approaches the administration of the new two-stage review process
- Focus on practices and procedures to minimize the burden on parties responding to a SIR, while allowing the Bureau to obtain all required information, e.g.:
 - early dialogue
 - default limits on the number of custodians
 - limiting documents to relevant time period
 - potential for using information supplied to another authority in a multi-jurisdictional transaction
- Goal in issuing SIR is to quickly identify key issues of potential concern, and settle them early with front-end-loaded documentary responses on potentially dispositive issues.





Features of the New Merger Review Process

- Changes are strictly procedural: no change in mandate, analysis of competitive effects, factors considered, etc.
- Process has been vastly improved by aligning incentives: parties can no longer simply “wait out the clock” to close their transaction in those few problematic cases; Bureau no longer forced to seek costly production orders while the waiting period runs – was distracting for parties and Bureau alike and did not promote timely reviews
- Certainty enhanced for parties: Bureau continues to communicate decision within 10 days in over 90% of cases
 - SIR process tested early with a highly complex transaction shortly after the passage of amendments (PetroCanada/Suncor) – reviewed and appropriate remedies secured in less than four months
- Harmonization with U.S. review process simplifies response for parties to cross-border mergers





Merger Review and Convergence

- Competition Bureau works with the U.S. Department of Justice, the U.S. Federal Trade Commission and DG Comp to coordinate independent merger reviews
 - substantive convergence on analytical approach in merger review
 - employee exchanges; bilateral meetings; day to day contact on specific matters
- Canadian merger review framework now harmonized with the U.S.
 - more similar time frames and framework spell an enhanced opportunity to cooperate on information gathering analysis and, where appropriate remedy design and implementation; closer timelines
 - *Guidelines* account for parties providing the same materials to authorities in both jurisdictions



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