

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

CANADA

March 2011

IMPORTANT NOTE: This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

A. Notification provisions	<p>Part IX of the <i>Competition Act</i>, R.S.C., c. C-34 as amended (the "Act"), entitled Notifiable Transactions, contains sections 108 to 124, which set out notification requirements.</p> <p>Notification of a proposed transaction is required by section 114, while sections 109 and 110 provide the size of the parties and size of the transaction tests, respectively, both of which must be satisfied in order for a transaction to be notifiable. Part IX is available at http://lois.justice.gc.ca/eng/C-34/page-6.html#anchorbo-ga:l_IX</p>
B. Notification forms or information requirements	<p>Subsection 114(1) provides that a person required to submit a notification has to supply the prescribed information set out in section 16 of the Notifiable Transactions Regulations (the "Regulations").</p> <p>The notification form is available at http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01705.html.</p> <p>Subsection 114(2) allows the Commissioner of Competition (the "Commissioner"), within 30 days after receiving the prescribed information, to require the person supplying the information to submit additional information that is relevant to the Commissioner's assessment of the proposed transaction.</p>
C. Substantive merger review provisions	<p>The substantive provisions respecting merger control are contained in sections 91 to 107 of Part VIII of the Act. Merger provisions are available at http://lois.justice.gc.ca/eng/C-34/page-5.html#anchorbo-ga:l_VIII-gb:s_91</p>

D. Implementing regulations	Notifiable Transactions Regulations, SOR/87-348 as amended. The Regulations are available at http://lois.justice.gc.ca/eng/SOR-87-348/index.html
E. Interpretive guidelines and notices	<p>Merger Enforcement Guidelines http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01245.html</p> <p>Merger Review Process Guidelines http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03128.html</p> <p>Interpretation Guidelines: Notifiable Transactions under Part IX of the Competition Act. http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01747.html</p> <p>Procedures Guide for Notifiable Transactions and Advance Ruling Certificates Under the Competition Act http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03302.html</p> <p>Competition Bureau Fees and Service Standards Handbook for Mergers and Merger-Related Matters http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03295.html</p> <p>Other merger-related information may be found on the Competition Bureau's website at the <i>Reviewing Mergers</i> page, which may be found at http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00114.html</p>

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	The Commissioner is the official responsible for the administration and enforcement of the Act, including merger enforcement, pursuant to section 7 of the Act. The Mergers Branch of the Competition Bureau (the "Bureau") is responsible for the conduct of merger reviews and is headed by the Senior Deputy Commissioner of Competition, Mergers Branch. The Competition Tribunal, an adjudicative body that operates independently of any government department, is the specialized court that determines, on application by the Commissioner, whether a proposed merger is anti-competitive. It determines and orders the appropriate remedy.
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	<p>Commissioner of Competition; 21st Floor, 50 Victoria Street, Gatineau, Quebec, K1A 0C9, Canada</p> <p>Merger Notification Unit, tel: (819) 953-4297 or (819) 953-7092; fax: (819) 953-6169; e-mail: mergernotification@cb-bc.gc.ca</p> <p>Competition Tribunal, Thomas D'Arcy McGee Building, 90 Sparks Street, Suite 600, Ottawa, Ontario, K1P 5B4, Canada</p> <p>Competition Tribunal, tel: (613) 957-7851, fax: (613) 952-1123; e-mail : tribunal@ct-tc.gc.ca</p>

	<p>Web sites:</p> <p>Competition Bureau, http://www.cb-bc.gc.ca/ Competition Tribunal, http://www.ct-tc.gc.ca/ Both are available in English and French.</p>
<p>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</p>	<p>The Merger Notification Unit staff is available for pre-notification consultations. Contact the Chief of Merger Notification Unit, telephone 1-819-953-4297.</p>

3. Covered transactions

<p>A. Definitions of potentially covered transactions (i.e., concentration or merger)</p>	<p>Section 91 defines a merger as “the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over or significant interest in the whole or a part of a business of a competitor, supplier, customer or other person.” Section 91 is available at http://lois.justice.gc.ca/eng/C-34/page-5.html#codese:91.</p>
<p>B. If change of control is a determining factor, how is control defined?</p>	<p>The definition of “merger” includes two key elements: has there been an acquisition or establishment of (1) control over, or (2) a significant interest in, the whole or part of a business of a competitor, supplier, customer or other person. Please see 3C for a discussion of “significant interest.”</p> <p>With respect to corporations, subsection 2(4) of the Act defines “control” as <i>de jure</i> control, i.e., more than 50 per cent of the votes that may be cast to elect directors and which are sufficient to elect a majority of directors.</p> <p>Also defined under subsection 2(4) is control of a partnership. A partnership is controlled by a person if the person holds an interest in the partnership that entitles the person to receive more than fifty percent of the profits of the partnership or more than fifty percent of its assets upon dissolution.</p>
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>The Merger Enforcement Guidelines describe a “significant interest” in the whole or a part of a business as existing when one or more persons have the ability to materially influence the economic behaviour of that business or of a part of that business.</p> <p>For example, a significant interest in a corporation may be found to exist when one or more persons, directly or indirectly, hold enough voting shares to obtain a sufficient level of representation on the board of directors of a corporation to either materially influence the board or to block special or ordinary resolutions of the corporation.</p>

<p>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</p>	<p>Non-incorporated joint ventures are subject to the substantive merger control provisions unless they are undertaken for a specific project or a program of research and development as described in section 95 of the Act. http://lois.justice.gc.ca/eng/C-34/page-5.html#codese:95</p> <p>Combinations that are joint ventures and meet the criteria set out in section 112 (http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:112) are exempt from the notification requirements of the Act. Section 112 requires that: all of the persons who propose to form the combination to be parties to an agreement in writing or intended to be put in writing that imposes on one or more of the parties an obligation to contribute assets and governs a continuing relationship between the parties; no change in control over any party to the combination would result from the combination; and finally, the written agreement restricts the range of activities that may be carried on pursuant to the combination and contains provisions for its orderly termination.</p> <p>Sections 95 and 112 of the Act do not apply to corporate joint ventures.</p>
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4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>Part IX of the Act requires compulsory notification if a merger satisfies both parts of a dual threshold test based on (i) size of the parties and (ii) size of the transaction.</p> <p>The size of the parties test set out in section 109 (http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:109) requires that the parties to the transaction, together with their affiliates, have combined assets in Canada or annual gross revenues from sales in, from or into Canada in excess of C\$400 million.</p> <p>The size of the transaction test set out in section 110 (http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:110) varies depending upon the nature of the transaction. Generally, for purposes of pre-merger notification, the aggregate value of the assets in Canada, or the annual gross revenues from sales in or from Canada generated from those assets, must exceed the transaction-size threshold amount (the “TSTA”). For the 2010 calendar year, the TSTA was \$70 million.</p> <p>In the case of an acquisition of assets (ss. 110(2)), the value of the Canadian assets acquired, or the annual gross revenues from sales in or from Canada generated by those assets, must be greater than the TSTA.</p> <p>In the case of an acquisition of voting shares (ss. 110(3)(a)), pre-merger notification is required where the asset or sales TSTA is exceeded and the acquisition results in the acquiring party holding voting shares which exceed specified percentages of share ownership. If it is an acquisition of voting shares that are publicly traded, the proposed acquisition must result in the acquiring party, together with its affiliates, holding in excess of 20% of the target corporation’s voting interests, unless the acquiring party already owns more than a 20% voting interest, in which case the proposed acquisition must result in the acquiring party holding in excess of 50% of the target corporation’s voting interests; or if it is an acquisition of voting shares that are not publicly traded, the proposed acquisition must result in the acquiring party, together with its affiliates, holding in excess of 35% of the target corporation’s voting interests, unless</p>
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	<p>the acquiring party already owns more than a 35% voting interest, in which case the proposed acquisition must result in the acquiring party holding in excess of 50% of the target corporation's voting interests.</p> <p>In the case of an amalgamation (ss. 110(4)), the assets or annual gross revenues from sales in or from Canada of the continuing corporation must exceed the TSTA, and each of at least two of the amalgamating corporations, together with its affiliates, must have assets in Canada, or annual gross revenues from sales in, from or into Canada, that would exceed the TSTA.</p> <p>Please see 4L for the size of the transaction test applicable to combinations.</p>
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>Relevant firms include affiliates which are subject to control by a common entity as defined by subsection 2(2) of the Act (http://lois.justice.gc.ca/eng/C-34/page-1.html#codese:2).</p> <p>For the party-size threshold, all of the assets and sales by the parties to the transaction and their affiliates are included in the calculation. Under subsection 109(2), the parties to a proposed acquisition of shares are the person(s) who propose to acquire the shares and the corporation the shares of which are to be acquired.</p> <p>For the transaction-size test, calculations are based on the target assets or entity(ies), as the case may be.</p>
<p>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>Yes, the Act provides that the party-size threshold (s. 109) and the transaction-size threshold (s. 110) can be increased by regulation. The thresholds were originally specified in sections 109 and 110 of the Act, which came into force on July 15, 1987.</p> <p>The transaction-size threshold amount ("TSTA") was increased from C\$35 million to C\$50 million on April 1, 2003 (except for amalgamations which remained at C\$70 million). The TSTA was increased on March 12, 2009 from C\$50 million to C\$70 million (except for amalgamations which remained at C\$70 million).</p> <p>The 2009 amendments to the Act also introduced an indexing mechanism, set out in ss. 110(8) of the Act, for subsequent years to adjust the TSTA based on changes in the level of Nominal Gross Domestic Product at market prices. The TSTA when determined for a particular year by the Minister of Industry will be published in the Canada Gazette and posted on the Bureau's website. Alternatively, a threshold amount may be prescribed by regulation. If no amount is prescribed or published in a particular year, the threshold from the previous year remains in effect.</p> <p>For the 2011 calendar year, the TSTA is \$73 million.</p>
<p>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>As per section 6 of the Regulations (http://lois.justice.gc.ca/eng/SOR-87-348/page-2.html#codese:6), the aggregate value of assets of a person is determined as of the last day of the period (calendar or fiscal, as determined by the internal practices of the notifying party) covered by the most recent audited financial statements in which those assets are accounted for, where that day is not more than 15 months prior to notification.</p> <p>As per subsections 7(a) and (b) of the Regulations (http://lois.justice.gc.ca/eng/SOR-87-348/page-2.html#codese:7), the gross revenues from sales of a person are determined for the annual period (calendar or fiscal, as determined by the internal practices of the notifying party) ended</p>

	<p>on the last day, which is not more than 15 months prior to notification, of the period:</p> <p>a) covered by the most recent audited financial statements in which those gross revenues are accounted for; and</p> <p>b) in the case where the period covered by the financial statements referred to in (a) is less than 12 months, covered by those financial statements and by audited financial statements in which the gross revenues are accounted for, covering the balance of the 12-month period.</p>
<p>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</p>	<p>As per subsection 5(1) of the Regulations (http://lois.justice.gc.ca/eng/SOR-87-348/page-2.html#codese:5), gross revenues from sales are determined by aggregating the following amounts accruing during that period:</p> <p>a) amounts accruing from the sale or lease of goods, other than amounts that are not properly included in revenue in accordance with generally accepted accounting principles, and</p> <p>b) amounts accruing from the rendering of services,</p> <p>without deducting any expenses or other amounts incurred or provided in relation to the sale or lease of goods or the rendering of services.</p> <p>In determining the gross revenues from sales, any amount that represents duplication arising from transactions between affiliates shall be deducted.</p> <p>As per subsection 4(1) of the Regulations (http://lois.justice.gc.ca/eng/SOR-87-348/page-2.html#codese:4), the aggregate value of assets is determined by the amount of the assets as stated in the books of the notifying party.</p> <p>However, the following amounts are to be deducted:</p> <p>a) any amount that represents duplication arising from transactions between affiliates;</p> <p>b) any amount that represents duplication arising from an ownership interest of one person in another person, whether or not those persons are affiliated; and</p> <p>c) any amount provided for depreciation and diminution of value.</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>Based on subsections 4(4) and 5(4) of the Regulations (http://lois.justice.gc.ca/eng/SOR-87-348/page-2.html#codese:4 and http://lois.justice.gc.ca/eng/SOR-87-348/page-2.html#codese:5), the conversion into Canadian dollars of the aggregate amount of assets or gross revenues from sales reported in foreign currency shall be based on the noon exchange rate quoted by the Bank of Canada on the last day of the annual period for which the aggregate amount of assets or gross revenues from sales are to be determined.</p>
<p>G. Do thresholds apply to</p>	<p>As per subsection 109(1)(a) (http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:109), assets are limited to assets in Canada (within the</p>

<p>worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>jurisdiction).</p> <p>For gross revenues from sales, the party-size threshold, subsection 109(1)(b) (http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:109), includes sales in, from or into Canada, whereas the transaction-size threshold is limited to sales in or from Canada (in both instances, worldwide sales).</p>
<p>H. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</p>	<p>Yes. If the party being acquired has: (i) with its affiliates, assets in Canada or annual gross revenues from sales in, from or into Canada in excess of C\$400 million and therefore satisfies the party-size threshold set out in section 109; and (ii) satisfies the transaction-size threshold set out in section 110.</p>
<p>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine,” please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an “effects” test?</p>	<p>With respect to notifications, the size of the parties test measures assets or gross revenues of sales “in, from or into Canada” while the size of the transaction test measures assets or gross revenues from sales “in or from Canada.” Canada may assert substantive jurisdiction over any merger affecting Canadian markets, where such merger prevents or lessens, or is likely to prevent or lessen, competition substantially.</p>
<p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p>	<p>For the party-size threshold, sales are allocated based on both the location of the customer and/or the location of the seller. For the transaction-size test, sales are allocated to the location of the seller.</p>
<p>K. If market share tests are used, are there guidelines for calculating market shares?</p>	<p>Not applicable.</p>
<p>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</p>	<p>There are no special thresholds for particular sectors.</p> <p>Joint ventures, partnerships, and some co-ownership agreements (depending on the terms therein) are notifiable pursuant to the combination provisions of the Act under subsection 110(5) and 110(6).</p> <p>Subsection 110(5) (http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:110) requires notification of a proposed combination being formed where at least one of the parties is contributing assets from an operating business, the size of the parties threshold under subsection 109 is met, and the aggregate value of the assets in Canada or the gross revenues from sales in or from Canada generated from those assets exceed the TSTA.</p> <p>Subsection 110(6) (http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:110) requires notification of the proposed acquisition of an interest in a combination that carries on an</p>

	<p>operating business other than through a corporation, where the size of the parties threshold is met and the aggregate value of the assets in Canada or the gross revenues from sales in or from Canada generated from those assets exceed the TSTA, and as a result of the acquisition a person will be entitled to over 35% of the profits of a combination or the assets on dissolution, or where the person acquiring the interest is already so entitled, to over 50% of such profits or assets.</p> <p>However, combinations are exempted from notification if the following criteria set out in section 112 (http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:112) are all met. First, all of the persons are parties to an agreement in writing or intended to be put in writing that imposes on one or more of the parties an obligation to contribute assets and governs a continuing relationship between the parties. Second, no change in control over any party to the combination would result from the combination. Finally, the written agreement restricts the range of activities that may be carried on pursuant to the combination and contains provisions for its orderly termination.</p> <p>Such combinations remain subject to the substantive merger control provisions of the Act (please refer to 3D for the applicable exemption).</p>
<p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>No sector is specifically exempt from the notification requirements of Part IX of the Act and from the substantive provisions respecting merger control contained in sections 91 to 107 of Part VIII of the Act. However, an amalgamation or acquisition involving banks, trust companies or insurance companies may be exempt from the prohibitions relating to mergers if certified by the Minister of Finance as being desirable in the interest of the financial system pursuant to section 94. An acquisition involving transport companies may also be exempt if certified by the Minister of Transport pursuant to section 94. Typically, such certification would only be issued after a substantive review of a proposed transaction has been conducted by the Competition Bureau and the Commissioner of Competition has provided advice to the relevant Minister with respect to the competitive impact of the proposed transaction.</p>
<p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p>	<p>No special rules exist for these circumstances; however, the assets and revenues of the parties and the transaction must meet the “in Canada” test described above in order for a transaction to be notifiable.</p> <p>In addition, all that is required for a merger to be reviewable under the substantive merger control provisions of the Act is that it affects competition in Canada.</p>
<p>O. Does the agency have the authority to review transactions that fall below the thresholds?</p>	<p>Yes. Under the Act, mergers of all sizes and in all sectors of the economy are subject to review by the Commissioner and her staff at the Bureau.</p> <p>Section 97 provides that no application may be made under section 92 in respect of a merger more than one year after the merger has been substantially completed.</p>

5. Notification requirements and timing of notification

<p>A. Is notification mandatory pre-merger?</p>	<p>Yes.</p> <p>Parties that complete a notifiable transaction without submitting a notification under subsection 114(1) may have committed a criminal offence under subsection 65(2) of the Act, and may be liable to a maximum fine of \$50,000.</p> <p>In addition, parties may have contravened section 123, which prohibits completing a transaction prior to expiry of the applicable waiting period, and may be subject to an order under section 123.1 of the Act.</p> <p>Where a transaction has been completed in violation of the Act, it is important to bring the matter to the attention of the Merger Notification Unit and submit a notification, together with the applicable filing fee and an explanation for the failure to notify, as soon as possible.</p>
<p>B. Is notification mandatory post-merger?</p>	<p>No. Please see 5A : Notification is mandatory pre-merger. This obligation to notify remains unchanged should the parties illegally implement the merger without prior notification.</p>
<p>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</p>	<p>Even if a filing is not mandatory, parties may make a voluntary pre-merger filing by applying for an Advance Ruling Certificate (“ARC”) pursuant to section 102 of the Act. The Commissioner may issue an ARC if satisfied that a proposed transaction does not give rise to sufficient grounds to challenge the transaction before the Competition Tribunal. Once an ARC is issued, the Commissioner cannot make an application to the Competition Tribunal on substantially the same facts if the transaction is completed within one year of the issuance of the ARC. Where an ARC is denied, a No-Action Letter may be issued, indicating that the Commissioner does not, at that time, intend to make an application under section 92 in respect of the proposed transaction.</p> <p>An ARC may be requested if a filing is not mandatory, on its own when a filing might otherwise be required, or in conjunction with a mandatory filing. An ARC request provided by itself where a transaction might otherwise require a full notification carries an inherent risk that the ARC request may be refused and a full notification may be required, which results in the statutory waiting period beginning to run only when the complete notification is received.</p>
<p>D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive)?</p>	<p>The parties may notify a proposed transaction anytime prior to the completion of the transaction, taking into account the applicable waiting period.</p>
<p>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the</p>	<p>As mentioned above, notification can be made anytime prior to the completion of the transaction, taking into account the applicable waiting period.</p> <p>In the case of an unsolicited share takeover, under subsection 114(3) (http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:114), the target corporation must notify within ten days after being notified by the Commissioner.</p>

<p>deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p>	<p>Where a public tender is hostile, the waiting period commences as soon as the Merger Notification Unit receives a complete filing from the acquiror.</p>
<p>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	<p>Not applicable. As mentioned above, The parties may notify a proposed transaction anytime prior to the completion of the transaction, taking into account the applicable waiting period.</p>

6. Simplified procedures

<p>Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).</p>	<p>The Act provides that in lieu of a notification filing the parties may submit an application for an ARC. Where an ARC is issued, the parties are exempt from any further notification requirements as long as the transaction is completed within one year of the issuance of the ARC. Where an ARC is not issued, further notification, by way of submission of a notification filing, is required unless the Commissioner exempts further notification on the basis that the ARC application supplied substantially similar information to that contained in a notification filing. This exemption may be granted in conjunction with the issuance of a No-Action Letter, as described in 5C.</p> <p>Further, the Act provides that the statutory waiting period, or a part thereof, may be abridged when the parties are notified that the Commissioner does not intend to challenge the merger at that time.</p>
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7. Documents to be submitted

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</p>	<p>Parties must provide a summary description of their principal businesses and of the principal categories of products within such businesses, including contact information for the top 20 customers and suppliers for each such product category.</p> <p>The notification filing also requires the most recent annual report to be submitted, or, if the annual report is not available or if the financial statements are different from those contained in the report, audited financial statements relating to the principal businesses of the party for its most recently completed fiscal year and for subsequent interim periods.</p> <p>The notification filing further requires the transaction documents and all studies, surveys, analyses and reports relating to evaluating or analyzing the proposed transaction with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into new products or geographic regions.</p>
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	For more information, see the Notifiable Transactions Form (http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01705.html) and subsection 16(1) of the Regulations (http://lois.justice.gc.ca/eng/SOR-87-348/page-5.html#anchorbo-ga:s_16).
B. Are there any document legalization requirements (e.g., notarization or apostille)?	Notifying parties shall provide a sworn affidavit attesting to the completeness and correctness of the filing.
C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?	No.

8. Translation

A. In what language(s) can the notification forms be submitted?	English or French.
B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.	<p>The two official languages of Canada are English and French, and the Bureau accepts notification filings and ARC requests in either language. It is not necessary to translate pre-existing documents for the purpose of a notification; however, if, at the time of filing, there is an English or French language outline, summary, extract or verbatim translation of any part of a foreign language document required to be submitted pursuant to subsection 114(1) of the Act, all such English or French language versions (or one complete translation) shall be filed along with the foreign language document.</p> <p>Documentary materials or information in a foreign language required to be submitted in response to a supplementary information request pursuant to subsection 114(2) of the Act shall be translated into either English or French. The foreign language document must be submitted with the English or French translation attached thereto.</p>

9. Review periods

<p>A. Describe any applicable review periods following notification.</p>	<p>The Bureau aims to provide a response to merger notifications and ARC requests within a service standard time frame. Within five days of receipt of a complete request, parties will be informed of the complexity level and applicable service standard: non-complex (14 days) or complex (45 days, except where a supplementary information request (“SIR”) is issued by the Commissioner under subsection 114(2), in which case the service standard would be 30 days after compliance with the SIR).</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>With respect to the service standard, there are no different rules set out for public tenders. However, the statutory waiting period may be affected, as described below.</p> <p>In the case of an unsolicited share takeover, under subsection 114(3) (http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:114), the target corporation must notify within ten days after being notified by the Commissioner.</p> <p>Where a public tender is hostile, the waiting period commences as soon as the Merger Notification Unit receives a complete filing from the acquiror.</p>
<p>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority’s discretion or with the parties’ consent)? Is there a statutory maximum for extensions?</p>	<p>The service standard for a merger review may be paused if the Bureau requires more information to complete its assessment and the additional information is not received within a specified time frame: 3 days for a non-complex matter and 5 days for a complex matter. Once the additional information is received, the service standard “clock” will resume.</p>
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>A non-problematic transaction is usually notified to the Bureau by way of a request for an ARC. An ARC may be issued by the Commissioner to a party or parties to a proposed merger transaction who want to be assured that the transaction will not give rise to proceedings under section 92 of the Act. Section 102 of the Act provides that an ARC may be issued when the Commissioner is satisfied that there would not be sufficient grounds on which to apply to the Competition Tribunal for an order against a proposed merger. Under subsection 113(b) of the Act, an ARC exempts the named transaction from the pre-merger notification provisions under Part IX. Under subsection 102(2), the Commissioner shall consider any request for an ARC as expeditiously as possible.</p> <p>The issuance of an ARC is discretionary. An ARC cannot be issued for a transaction that has been completed, nor does an ARC ensure approval of the transaction by any agency other than the Bureau.</p> <p>Where an ARC is denied, a No-Action Letter may be issued, indicating that the Commissioner does not, at that time, intend to make an application under section 92 in respect of the proposed transaction. In such a case, if the information that has been supplied in the ARC request is substantially similar to the information required under subsection 114(1), the</p>

	Commissioner may, pursuant to paragraph 113(c) of the Act, waive the notification requirement under subsection 114(1) and, consequently, the applicable waiting period.
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10. Waiting periods / suspension obligations

<p>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.</p>	<p>If a complete notification filing is submitted the parties are not permitted to close until the expiration of the 30 day statutory waiting period.</p> <p>If additional information has been required by the Commissioner under subsection 114(2), the parties to the transaction are not permitted to close until the expiration of the 30 day statutory waiting period that is triggered once the additional information has been received.</p> <p>In general, notifications are submitted at the discretion of the parties once there is a proposed transaction and must be provided sufficiently in advance of the intended closing date of the transaction to allow the applicable statutory waiting period to run.</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>The issuance of an ARC or notice that the Commissioner does not intend to contest the merger at that time will have the effect of terminating the waiting period.</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the</p>	<p>Any closing that would have an effect on assets or revenues within Canada is subject to action by the Commissioner. If parties were to hold separate the Canadian operations from those outside of Canada, it would be possible to close the non-Canadian elements of the transaction prior to the expiry of the waiting period, so long as it would have no effect in Canada.</p>

<p>suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Yes. The parties are free to close the transaction once the statutory waiting period expires unless the Commissioner (successfully) applies to the Competition Tribunal under section 100 or 104 for an interim order preventing the completion of the transaction. However, where parties close a transaction before the Bureau has completed its assessment, they do so at their own risk. Section 97 of the Act provides a one-year period following completion of a transaction during which the Commissioner may choose to challenge the transaction before the Tribunal.</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>The waiting period may be extended only in the following circumstances:</p> <p>1) pursuant to section 100, (http://lois.justice.gc.ca/eng/C-34/page-5.html#codese:100), when the Commissioner has commenced an inquiry pursuant to ss. 10(1)(b)(ii) of the Act (http://lois.justice.gc.ca/eng/C-34/page-2.html#codese:10) and believes that more time is required to complete the inquiry; and,</p> <p>2) pursuant to section 104, (http://lois.justice.gc.ca/eng/C-34/page-5.html#codese:104), when the Commissioner has made another application to the Competition Tribunal respecting the same matter.</p> <p>In these circumstances, the Commissioner may apply to the Competition Tribunal for an interim order preventing the completion of the transaction.</p> <p>As well, the Commissioner may instead ask the merging parties not to complete the proposed transaction until the Bureau has completed its review.</p> <p>Finally, the waiting period is effectively extended if, pursuant to ss. 114(2) of the Act; (http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:114), within thirty days of receiving a notification filing, the Commissioner requires the parties to submit additional information as a result of identified potential competition issues, which indicate a need for further information and analysis. In this instance, the waiting period will be extended to 30 days following receipt by the Commissioner of the required additional information.</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>As mentioned in 10 B), the issuance of an ARC or notice that the Commissioner does not intend to contest the merger at that time will have the effect of terminating the waiting period.</p> <p>Where an ARC is denied, a No-Action Letter may be issued, indicating that the Commissioner does not, at that time, intend to make an application under section 92 in respect of the proposed transaction. In such a case, if the information that has been supplied in the ARC request is substantially similar to the information required under subsection 114(1), the Commissioner may, pursuant to paragraph 113(c) of the Act, waive the notification requirement under subsection 114(1) and, consequently, the applicable waiting period.</p>
<p>G. Describe any provisions or procedures allowing the</p>	<p>The parties cannot close the transaction before the expiration of the applicable waiting period (other than in the circumstances described above in 10 F). In the circumstance where the waiting period has expired but</p>

<p>parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>clearance has yet to be granted, the Bureau will typically send a letter to the parties advising that the Bureau has not completed its review and that they are free to close the transaction, but do so at their own risk.</p>
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11. Responsibility for notification / representation

<p>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</p>	<p>Both.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>As indicated in 5E, in a hostile takeover, the target corporation will receive a letter from the Commissioner advising that it must file a notification within 10 days.</p> <p>Where a public tender is hostile, the waiting period commences as soon as the Merger Notification Unit receives a complete filing from the acquirer.</p>
<p>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</p>	<p>No.</p>
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</p>	<p>Not applicable.</p>

12. Filing fees

<p>A. Are any filing fees assessed</p>	<p>Filing fees for ARC requests and notifications are currently C\$50,000.</p>
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<p>for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?</p>	
<p>B. Who is responsible for payment?</p>	<p>The Bureau does not determine whether the acquirer or acquiree is responsible for payment. This must be determined by the parties.</p> <p>In the context of an ARC request, the fee is payable by the person submitting the request. In the context of a notification, the obligation to pay the fee is on the parties to the proposed transaction, and it is up to them to determine who will pay the fee.</p> <p>When the fee is not included with a notice, the Bureau will send an invoice to the party who first submitted the notice.</p>
<p>C. When is payment required?</p>	<p>Upon filing.</p>
<p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p>	<p>Payments may be made by cheque payable to the Receiver General for Canada or by wire transfer. For further information regarding wire transfers, parties should contact the Merger Notification Unit. Parties should also be aware of any administrative fees from financial institutions.</p>

13. Confidentiality

<p>A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?</p>	<p>Pursuant to section 29, the Commissioner is prohibited from revealing if any person has filed and any information contained in a filing. http://lois.justice.gc.ca/eng/C-34/page-2.html#codese:29</p> <p>Further information regarding the Bureau's confidentiality policies may be found in the Bureau's bulletin on confidentiality entitled <i>Communication of Confidential Information Under the Competition Act</i>. http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01277.html</p>
<p>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</p>	<p>Pursuant to section 29 of the Act, the fact that a person has notified the Commissioner of a proposed transaction, and any information contained in a filing or ARC request, is held in strict confidence.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what</p>	<p>Notification materials are expressly listed as confidential materials that are not to be disclosed pursuant to section 29 of the Act. Similarly, notification materials are also exempt from any applications by third parties under the Access to Information Act.</p>

circumstances?	Note that section 29 allows the Commissioner to communicate confidential materials to a Canadian law enforcement agency or for the purposes of administration or enforcement of the Act. Such communications are very rare. Any disclosure to a Canadian law enforcement agency would only relate to information relevant to its mandate and to the extent necessary. It is the Commissioner's policy to request that the information be kept in confidence by a requesting law enforcement agency.
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	As the Commissioner is prohibited, pursuant to section 29 of the Act, from revealing if any person has filed a notification and from disclosing any information contained in a notification, no specific procedures are required.
E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	Canada and the Bureau are party to various cooperation agreements and memoranda of understanding, as well as free trade agreements that include competition chapters, all of which contemplate the exchange of information. These include foreign agencies and governments of Australia, Brazil, Chile, Costa Rica, the European Union, Japan, Mexico, New Zealand, Republic of Korea, the United Kingdom and the United States. The agreements are publicly available on the Bureau's website at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00128.html .
F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?	Yes. The Bureau does not need the consent from the parties to exchange confidential information with other reviewing agencies. Section 29 of the Act allows the Commissioner to communicate confidential materials to a foreign competition agency for the purposes of the administration or enforcement of the Act. However, it is the Bureau's policy to inform merging parties prior to exchanging confidential information with foreign competition agencies and to seek assurances on use and protection of confidential information by foreign competition agencies. While a confidentiality waiver is not required for the Bureau to be able to provide confidential information to other reviewing agencies, other competition agencies may require consent from the parties to exchange confidential information.

14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	Yes. The Bureau's annual reports may be found at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00169.html
B. Does the agency publish press releases related to merger policy or	Yes. These press releases may be found on the Bureau's <i>Media Centre</i> page: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_02766.html

investigations?	
C. Does the agency publish decisions on why it cleared / blocked a transaction?	<p>As a matter of course, the Bureau does not publish decisions. However, the Bureau issues press releases, information notices or technical backgrounders for key merger cases that are considered important in terms of impact, profile, enforcement policy or remedies.</p> <p>The above-mentioned technical backgrounders are intended to describe the Bureau's analysis in a particular investigation, and the reasons underlying its final conclusions.</p> <p>http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00147.html</p>

15. Sanctions/penalties

A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?	<p>Subsection 65(2) provides that a failure to notify is a criminal offence punishable by a summary or indictable conviction and a fine not exceeding C\$50,000.</p> <p>http://lois.justice.gc.ca/eng/C-34/page-4.html#codese:65</p> <p>Section 123.1 of the Act provides that where the court determines that a party has completed, or is likely to complete a notifiable transaction prior to the end of the applicable waiting period under section 123, the court may (a) order the party to submit information under subsection 114(2), (b) issue an interim order prohibiting any person from doing anything that may constitute or be directed toward the completion or implementation of the proposed transaction, (c) order the dissolution of the merger or the disposition of assets or shares, (d) order the party to pay an administrative monetary penalty not exceeding \$10,000 for each day on which they have failed to comply with section 123, or (e) grant other relief that the court considers appropriate.</p> <p>http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:123_1</p>
B. Which party/ies are potentially liable?	<p>All parties to a notifiable transaction are potentially liable, as well as any other person, including an officer, director or agent of a corporation, involved in the failure to notify or the completion of the transaction prior to the end of the applicable waiting period. It is important to note that in the context of share acquisitions, the parties are the persons proposing to acquire the shares and the corporation the shares of which are being acquired.</p>
C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	<p>The Bureau cannot impose these sanctions directly. In the case of a failure to notify under subsection 65(2), the Bureau may refer the matter to the Attorney General of Canada for prosecution. An order under section 123.1 would be issued by a court, on application by the Commissioner.</p>

16. Judicial review

Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.

Pursuant to s. 13 of the *Competition Tribunal Act* (<http://lois.justice.gc.ca/eng/C-36.4/page-1.html#codese:13>), interim, interlocutory and final orders of the Competition Tribunal with respect to a merger may be appealed to the Federal Court of Appeal.

Subsequent appeal from the Federal Court of Appeal may be made to the Supreme Court of Canada. Appeals to the Federal Court of Appeal must be filed within 30 days of the Competition Tribunal's decision (ss. 27(2)(b) *Federal Courts Act*, R.S.C. 1985, c. F-7), or within 10 days from the date that an interlocutory judgement was ordered by the Competition Tribunal (ss. 27(2)(a) *Federal Courts Act*, R.S.C. 1985, c. F-7).

17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?

Yes, certain types of transactions may be subject to the *Investment Canada Act* (<http://lois.justice.gc.ca/eng/I-21.8/index.html>).

There are also sector-specific review regimes in areas such as financial services, transportation and broadcasting.

18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?

Pursuant to ss. 103 and 119 of the Act (<http://lois.justice.gc.ca/eng/C-34/page-5.html#codese:103> and <http://lois.justice.gc.ca/eng/C-34/page-6.html#codese:119> , respectively) closing of a transaction must take place within one year of the date of notification of a transaction in the case of a clearance (No-Action) letter, or within one year of issuance of an ARC.

19. Post merger review of transactions

Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a

Section 97 of the Act (<http://lois.justice.gc.ca/eng/C-34/page-5.html#codese:97>) provides a one year period during which the Commissioner may bring a matter before the Competition Tribunal.

time limit on this authority?