MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Canada

April 2015

Website: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00114.html

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

QUICK LOOK SUMMARY		
Mandatory or voluntary regime?	☑ Mandatory	☐ Voluntary
Power to review non-notifiable transactions?	☑ Yes	☐ No
What are the time limits for review?	Initial review / Phase I: 30 days (see q. 10 & 11)	Extended review / Phase II: 30 days (see q. 10 & 11)
Substantive merger test?	☐ Dominance ☑ Substantial lessening of competition	☐ Significant impediment to effective competition ☐ Other

PART 1: LEGISLATION, GUIDELINES AND JURISDICTION

1. Legal authority and guidance: Merger notification and review

(please provide title(s), popular name(s), effective date and citation(s)/web address)

Statutory law	
A. Notification provisions	Part IX of the *Competition Act*, R.S.C., c. C-34 as amended (the "Act"), entitled Notifiable Transactions, contains sections 108 to 124, which set out notification requirements. 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://www.laws.justice.gc.ca/eng/acts/C-34/page-65.html#h-42
B. Substantive merger review provisions	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://www.laws.justice.gc.ca/eng/acts/C-34/page-58.html#h-40
C. Implementing regulations	Notifiable Transactions Regulations, SOR/87-348 as amended. The Regulations are available at http://lois-laws.justice.gc.ca/eng/regulations/SOR-87-348/index.html
D. Notification forms or information requirements	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"). The notification form is available at http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01705.html 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.
Agency guidance	

E. Guidance on merger notification process (*e.g.*, regarding the calculation of thresholds, etc.)	Merger Review Process Guidelines January 11, 2012 http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03423.html Procedures Guide for Notifiable Transactions and Advance Ruling Certificates Under the Competition Act November 1, 2010 http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03302.html Competition Bureau Fees and Service Standards Handbook for Mergers and Merger-Related Matters November 1, 2010 http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03375.html Interpretation Guidelines: Notifiable Transactions under Part IX of the Competition Act June 2011 http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03357.html Hostile Transactions Interpretation Guidelines July 2011 http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03395.html
F. Guidance on substantive assessment in merger review	Merger Enforcement Guidelines, October 6, 2011 http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03420.html
G. Guidance on merger remedies	Information Bulletin on Merger Remedies in Canada, September 22, 2006 http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02170.html Competition Bureau Merger Remedies Study Summary, August 11, 2011 http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03392.html
H. Guidance on the submission of information, especially regarding economic evidence or data, or electronic information	Procedures Guide for Notifiable Transactions and Advance Ruling Certificates Under the Competition Act November 1, 2010 See section 4.2 http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03302.html#s4_2
I. Guidance or statements regarding the treatment of confidential information and/or domestic laws/regulations on third-party or public access to information provided	Information Bulletin on the Communication of Confidential Information Under the Competition Act September 30, 2013 http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03597.html

during the review process (*e.g.,* transparency regulations or freedom of information provisions)	
J. Guidance on pre-notification consultations	
K. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	Other merger-related information may be found on the Competition Bureau's website at the Reviewing Mergers page, which may be found at http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00114.html
L. If available, please provide a link to statistics on annual notifications received, clearances, prohibitions etc.	Monthly Report of Concluded Merger Reviews http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02435.html Annual Report http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00169.html Quarterly Report http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_03803.html Merger Review Performance Report April 12, 2012 http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03452.html

2. Agency or agencies responsible for merger enforcement

A. Name of agency. If there is more than one agency, 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 anticompetitive. It determines and orders the appropriate remedy.
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	Commissioner of Competition 21st Floor, 50 Victoria Street, Gatineau, Quebec, K1A 0C9, Canada Tel. : (800) 348-5358; Fax : (819) 997-0324 Website : http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home

	Languages: English and French Competition Tribunal Thomas D'Arcy McGee Building, 90 Sparks Street, Suite 600, Ottawa, Ontario, K1P 5B4, Canada Tel: (613) 957-7851, Fax: (613) 952-1123; E-mail : tribunal@ct-tc.gc.ca Website : http://www.ct-tc.gc.ca Languages: English and French
C. Agency contact information for jurisdiction/filing guidance (including possible pre-notification consultations).	Merger Notification Unit tel: (819) 953-4297 or (819) 953-7092; fax: (819) 953-6169; e-mail: MergerNotification.Avisdefusion/@bc-cb.gc.ca website http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00114.html Languages: English and French

3. Jurisdiction: Covered transactions

A. Definitions of potentially covered transactions (*i.e.*, share acquisitions, asset acquisitions, mergers, de-mergers and combinations such as consolidations, amalgamations and joint ventures)	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://www.laws.justice.gc.ca/eng/acts/C-34/page-58.html#h-40
B. If change of control is a determining factor, how is control defined and interpreted in practice?	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." With respect to corporations, subsection 2(4) of the Act defines "control" as de jure 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. 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.
C. Are partial (less than 100%) interests/minority shareholdings covered? At what levels?	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. 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.
D. If the notification requirements cover joint ventures, what types of joint venture are covered (*e.g.,* production joint ventures)?	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://www.laws.justice.gc.ca/eng/acts/C-34/page-59.html#docCont Combinations that are joint ventures and meet the criteria set out in section 112 (http://www.laws.justice.gc.ca/eng/acts/C-34/page-67.html#h-47) 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. Sections 95 and 112 of the Act do not apply to corporate joint ventures.

4. Jurisdiction: Thresholds for notification

Key threshold information	
A. What are the thresholds for notification? If the thresholds are subject to adjustment, state on what basis and how frequently (*e.g.,* for inflation, annually)	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. The size of the parties test set out in section 109 (http://www.laws.justice.gc.ca/eng/acts/C-34/page-66.html#h-44) 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. The size of the transaction test set out in section 110 (http://www.laws.justice.gc.ca/eng/acts/C-34/page-66.html#h-44) varies depending upon the nature of the transaction. Generally, for purposes of premerger 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 2014 calendar year, the TSTA is $82 million. 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. 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 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. 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. Please see 4I for the size of the transaction test applicable to combinations. The Act provides that both thresholds can be increased by regulation. They were originally specified in sections 109 and 110 of the Act, which came into force on July 15, 1987. 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). 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. For the 2014 calendar year, the TSTA is $82 million. As per section 6 of the Regulations (http://www.laws.justice.gc.ca/eng/regulations/SOR-87-348/page-3.html#docCont), 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. As per subsections 7(a) and (b) of the Regulations (http://www.laws.justice.gc.ca/eng/regulations/SOR-87-348/page-

	3.html#docCont), 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 on the last day, which is not more than 15 months prior to notification, of the period: a) covered by the most recent audited financial statements in which those gross revenues are accounted for; and 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.
B. 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 in practice.**	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.
C. Can a single party trigger the notification threshold (*e.g.*, one party's sales, assets, or market share)?	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.
D. Are any sectors excluded from notification requirements? If so, which sectors?	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.
E. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)?	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. 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.
F. Does the agency have the	Yes. Under the Act, mergers of all sizes and in all sectors of the economy are subject to review by the Commissioner and his staff

authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so what is the procedure to initiate a review?	at the Bureau. 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.
Calculation guidance and related issues	
G. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required: **(i) the value of the transaction** **(ii) the relevant sales or turnover** **(iii) the relevant assets** **(iv) market shares** **(v) other (please describe)**	The thresholds are based on the gross revenues from sales and on the aggregate value of the assets. For the party-size threshold, in order to determine the aggregate value of the assets, the calculation includes all of the assets in Canada of all of the parties to the transaction and their affiliates. To determine the gross revenues from sales, the calculation includes the gross revenues from sales in, from or into Canada of all of the parties to the transaction and their affiliates. For the transaction-size threshold, in order to determine the aggregate value of the assets, the calculation includes all of the assets in Canada of the entity being acquired. To determine the gross revenues from sales, the calculation includes the gross revenues from sales in or from Canada generated by the above assets of the entity being acquired. As per subsection 5(1) of the Regulations (http://lois-laws.justice.gc.ca/eng/regulations/SOR-87-348/page-2.html#h-4), gross revenues from sales are determined by aggregating the following amounts accruing during that period: 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 b) amounts accruing from the rendering of services, without deducting any expenses or other amounts incurred or provided in relation to the sale or lease of goods or the rendering of services. In determining the gross revenues from sales, any amount that represents duplication arising from transactions between affiliates shall be deducted. As per subsection 4(1) of the Regulations (http://lois-laws.justice.gc.ca/eng/regulations/SOR-87-348/page-2.html#h-4), the aggregate value of assets is determined by the amount of the assets as stated in the books of the notifying party. However, the following amounts are to be deducted: a) any amount that represents duplication arising from transactions between affiliates; 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 c) any amount provided for depreciation and diminution of value.

H. Which entities are included in determining relevant undertakings/firms for threshold purposes? **If based on control, how is control determined for notification purposes?**	Relevant firms include affiliates which are subject to control by a common entity as defined by subsection 2(2) of the Act (http://www.laws.justice.gc.ca/eng/acts/C-34/page-1.html#h-4). 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. For the transaction-size test, calculations are based on the target assets or entity(ies), as the case may be.
I. 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)? If yes, for which sectors and types of transactions?	There are no special thresholds for particular sectors. 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). Subsection 110(5) (http://www.laws.justice.gc.ca/eng/acts/C-34/page-66.html#h-44) 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. Subsection 110(6) (http://www.laws.justice.gc.ca/eng/acts/C-34/page-66.html#h-44) requires notification of the proposed acquisition of an interest in a combination that carries on an 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. However, combinations are exempted from notification if the following criteria set out in section 112 (http://www.laws.justice.gc.ca/eng/acts/C-34/page-67.html#docCont) 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. Such combinations remain subject to the substantive merger control provisions of the Act (please refer to 3D for the applicable exemption).
J. Describe the methodology for calculating exchange	Based on subsections 4(4) and 5(4) of the Regulations (http://www.laws.justice.gc.ca/eng/regulations/SOR-87-348/page-2.html#docCont), the conversion into Canadian dollars of the aggregate amount of assets or gross revenues from sales

rates.	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.

PART 2: PRE-NOTIFICATION, NOTIFICATION AND DECISION

5. Pre-notification

A. If applicable, please describe the pre-notification procedure (e.g., time limits, type of of guidance given etc.)	Not applicable. However, the Bureau strongly encourages parties to a proposed transaction to consult with the Bureau prior to, or as soon as possible after, submitting a notification or an ARC request. Early consultation ensures that sufficient information is submitted to facilitate the review of a proposed transaction. This approach also enables the Bureau to more readily focus its investigation, minimize any requests for additional information, and complete its review in a timely manner. The Merger Notification Unit ("MNU") is responsible for the receipt and initial processing of Notifications and ARC requests, as well as requests for written opinions under section 124.1 of the Act relating to Notifiable Transactions. The MNU also handles other issues regarding the application and interpretation of Part IX of the Act, filing procedures and the notification form, and will provide non-binding verbal assistance in this regard. Where parties are uncertain about whether a proposed transaction is notifiable, whether an exemption is applicable, or the type of information that must be provided to the Bureau, parties are encouraged to contact the MNU for guidance. This informal advice is not binding on the Commissioner, but is provided to facilitate compliance with the law. Parties involved in matters that raise complicated fact scenarios or legal issues are encouraged to seek private legal counsel.
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	Not applicable.

6. Notification requirements and timing of notification

A. Is notification…	☑ Mandatory pre-merger ☐ Mandatory post-merger ☐ Voluntary

B. If parties can make a voluntary merger filing when may they do so?	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. 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.
C. 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?)?	The parties may notify a proposed transaction anytime prior to the completion of the transaction, taking into account the applicable waiting period. In a consensual transaction, the parties can notify on the basis of a preliminary agreement, such as a memorandum of understanding, a binding term sheet or a letter of intent.
D. When must notification be made? If there is a triggering event, describe the triggering event (*e.g.*, definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	As mentioned above, notification can be made anytime prior to the completion of the transaction, taking into account the applicable waiting period. In the case of an unsolicited share takeover, under subsection 114(3) (http://lois-laws.justice.gc.ca/eng/acts/C-34/page-68.html#h-49), the target corporation must notify within ten days after being notified by the Commissioner that he has received a filing from the acquiror. Where a public tender is hostile, the waiting period commences as soon as the Merger Notification Unit receives a complete filing from the acquiror.
E. If there is a notification deadline, 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.	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.
F. Are parties allowed to submit information beyond what is required	While parties to a proposed transaction may elect to submit only the prescribed information set out in section 16 of the Regulations (http://lois-laws.justice.gc.ca/eng/regulations/SOR-87-348/page-

in the initial filing voluntarily (*e.g.*, to help narrow or resolve potential competitive concerns)?	6.html#h-10), they are encouraged to provide additional information to help expedite the merger review. In the Bureau's experience, the more comprehensive the information provided by the parties at the initial stages of a matter, the more focused and expeditious the review process becomes. This generally translates into more targeted subsequent requests for information on the part of the Bureau, and fewer, more focused third party contacts. The Competition Bureau Fees and Service Standards Handbook for Mergers and Merger-Related Matters (http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03375.html) provides lists of suggested information depending on the complexity of the proposed transaction.

7. Simplified procedures

A. 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 information requirements, *etc.*).	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 6B. 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.

8. Information and documents to be submitted with a notification

A. Describe the types of documents that parties must submit with the notification (*e.g.*, agreement, annual reports, market studies, transaction documents, internal documents).	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. 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. 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. 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-laws.justice.gc.ca/eng/regulations/SOR-87-348/page-6.html#h-10).
B. Is there a procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?	In the case of an unsolicited share takeover, under subsection 114(3) (http://lois-laws.justice.gc.ca/eng/acts/C-34/page-68.html#h-49), the target corporation must notify within ten days after being notified by the Commissioner that he has received a filing from the acquiror.
C. Are there any document legalization requirements (*e.g.,* notarization or apostille)? What documents must be legalised?	Notifying parties shall provide a sworn affidavit attesting to the completeness and correctness of the filing.
D. What is the agency's practice regarding exemptions from information requirements (*e.g.* information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?	There is no specific exemption from information requirements for transactions in which the acquiring and acquired parties are foreign. However, Subsection 116(2) of the Act provides that a party submitting a Notification may withhold information that it would otherwise be required to produce on the grounds that the information is not relevant to a competition assessment; provided, however, that the party informs the Commissioner under oath or solemn affirmation of the basis for its determination of non-relevance and identifies the information that is not being supplied. Pursuant to subsection 116(3) of the Act, where a person chooses not to supply the Commissioner with information required under section 114 and so informs the Commissioner in accordance with subsection 116(2), the Commissioner, or a person authorized by the Commissioner, may, within seven days after having been so informed, notify that person that the information is required.
E. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?	The Bureau can request third parties to submit information voluntarily. Alternatively, the Bureau can apply to a court for an order under section 11 of the Act requiring a third party to be examined under oath, to provide records or to provide written responses under oath.

9. Translation

A. In what language(s) can	English or French.

the notification forms be submitted?	
B. Describe any requirements to submit translations of documents: **(i) with the initial notification; and** **(ii) later in response to requests for information.** **In addition:** **(iii) what are the categories or types of documents for which translation is required;** **(iv) what are the requirements for certification of the translation;** **(v) which language(s) is/are accepted; and** **(vi) are summaries or excerpts are allowed in lieu of complete translations and in which languages are summaries accepted?**	(i) 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. (ii) 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.

10. Review periods

A. Describe any applicable review periods following notification.	The Bureau aims to provide a response to merger notifications and ARC requests within a service standard time frame. Service standards represent the maximum time within which the Bureau will endeavour to advise parties of the Bureau's position in respect of a particular transaction assuming cooperation from the parties. 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). In the rest of the Review periods section, we refer only to these service standards periods. The statutory waiting periods are discussed in section 11.

B. Are there different rules for public tenders (*e.g.,* open market stock purchases or hostile bids)?	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. In the case of an unsolicited share takeover, under subsection 114(3) (http://lois-laws.justice.gc.ca/eng/acts/C-34/page-68.html#h-49), the target corporation must notify within ten days after being notified by the Commissioner that he has received a filing from the acquiror. Where a public tender is hostile, the waiting period commences as soon as the Merger Notification Unit receives a complete filing from the acquiror.
C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?	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 noncomplex matter and 5 days for a complex matter. Once the additional information is received, the service standard "clock" will resume.
D. Is there a statutory or other maximum duration for extensions?	There is no maximum duration for pauses under the service standard timeframe. As mentioned in 10c, the service standard "clock" resumes once additional information is received from the merging parties.
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	The review periods cannot be suspended, other than in the circumstances described above. It is worth noting that the service standard period ends when the parties are either: (i) issued an ARC or a No-Action Letter; or (ii) advised that, without a remedy, the proposed transaction is likely to prevent or lessen competition substantially. The time devoted to discussions or negotiations aimed at resolving issues, the preparations required for proceedings before the Competition Tribunal, and the time required to conduct proceedings before the Tribunal are not included in the service standards.
F. What are the time periods for accelerated review of non-problematic transactions, if any?	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. 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.

	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.
G. What is the procedure for offering and assessing remedies and how does this impact the timing of the review?	Once merging parties have been advised that, without a remedy, the proposed transaction is likely to prevent or lessen competition substantially, they may offer proposed remedies to eliminate the substantial lessening or prevention of competition that would otherwise result from the proposed transaction. Alternatively, the Bureau may identify potential remedies. Parties may also propose a remedy while the Bureau's review is ongoing. The Bureau will market test any proposed remedy to determine whether it is sufficient to remedy the likely substantial lessening or prevention of competition. As mentioned in 10E, the time devoted to discussions or negotiations aimed at resolving issues, is not included in the service standards.

11. Waiting periods / suspension obligations

A. Describe any waiting periods/suspension obligations following notification (*e.g.,* full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.	If a complete notification filing is submitted the parties are not permitted to close until the expiration of the 30 day statutory waiting period. 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. 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.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	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.
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the	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

jurisdiction (*e.g.*, acquisition or merger of local undertakings/business units)? **If not, to what extent can the parties implement the transaction outside the jurisdiction prior to clearance (*e.g.*, derogation from suspension, hold separate arrangements)?**	waiting period, so long as it would have no effect in Canada.
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	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.
E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	The waiting period may be extended only in the following circumstances: 1) pursuant to section 100, (http://www.laws.justice.gc.ca/eng/acts/C-34/page-61.html#docCont), when the Commissioner has commenced an inquiry pursuant to ss. 10(1)(b)(ii) of the Act (http://www.laws.justice.gc.ca/eng/acts/C-34/page-4.html#docCont) and believes that more time is required to complete the inquiry; and, 2) pursuant to section 104, (http://www.laws.justice.gc.ca/eng/acts/C-34/page-64.html#docCont), when the Commissioner has made another application to the Competition Tribunal respecting the same matter. In these circumstances, the Commissioner may apply to the Competition Tribunal for an interim order preventing the completion of the transaction. As well, the Commissioner may instead ask the merging parties not to complete the proposed transaction until the Bureau has completed its review. Finally, the waiting period is effectively extended if, pursuant to ss. 114(2) of the Act; (http://www.laws.justice.gc.ca/eng/acts/C-34/page-68.html#h-49), 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.

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.	As mentioned in 11 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. 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.
G. Describe any provisions or procedures allowing the 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).	The parties cannot close the transaction before the expiration of the applicable waiting period (other than in the circumstances described above in 11 F). In the circumstance where the waiting period has expired but 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.

12. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?	Both.
B. Do different rules apply to public tenders (*e.g.,* open market stock purchases or hostile bids)?	As indicated in 6D, in a hostile takeover, the target corporation will receive a letter from the Commissioner advising that it must file a notification within 10 days. Where a public tender is hostile, the waiting period commences as soon as the Merger Notification Unit receives a complete filing from the acquiror.
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)?	No.
D. How does the validity of the representation need to be attested (*e.g.*, power	Not applicable.

of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?	

13. Filing fees

A. Are any filing fees assessed 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)?	Filing fees for ARC requests and notifications are currently C$50,000.
B. Who is responsible for payment?	The Bureau does not determine whether the acquirer or acquiree is responsible for payment. This must be determined by the parties. 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. When the fee is not included with a notice, the Bureau will send an invoice to the party who first submitted the notice.
C. When is payment required?	Upon filing.
D. What are the procedures for making payments (*e.g.*, accepted forms of payment, proof of payment required, wire transfer instructions)?	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.

14. Process for substantive analysis and decisions

A. What are the key procedural stages in the substantive assessment	Upon receipt of an application for an ARC or No-Action Letter, or notifcations, a complexity designation with a corresponding service standard will be assigned to the proposed transaction,

(e.g., screening mergers, consulting third parties)?	provided sufficient information has been provided to assign complexity. Guidance on the information typically required to assign complexity can be found in the Competition Bureau Fees and Service Standards Handbook for Mergers and Merger-Related Matters (http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03375.html). The Bureau will inform parties of the complexity designation and service standard within 5 business days of receipt of sufficent information to assign complexity. It is standard practice in merger reviews for the Bureau to communicate with market participants, including customers, suppliers, and competitors of the merging parties. During the course of a review, it is common practice to request that parties voluntarily provide information required for the Bureau's review, as necessary. In addition, voluntary information requests may be made to market participants. Alternatively, the Bureau can apply to a court for an order under section 11 of the Act requiring a third party to be examined under oath, to provide records or to provide written responses under oath. Where a proposed transaction is subject to notification under section 114 of the Act, and complete notifcations containing prescribed information are received, an initial 30-day waiting period is triggered, during which the parties are legally prohibited from closing their proposed transaction. Within the initial 30-day waiting period, the Bureau may issue a supplementary information request ("SIR") requiring parties to submit additional information relevant to the Bureau's assessment of the proposed transaction. In accordance with section 118 of the Act, the information supplied in response to an SIR must be certified as being correct and complete in all material respects. Where an SIR has been issued, the parties to the transaction are not permitted to close until the expiration of a second 30-day statutory waiting, which commences once complete SIR responses have been received. Prior to issuing a SIR, the Bureau will generally provide a draft to the recipient party, and at that party's election, engage in dialogue with the party. Such pre-issuance dialogue may assist a party in understanding the information requests, allow a discussion of whether a party maintains information or data in the form requested by the Bureau, identify other sources of information, or help ascertain any factors that may impair the ability of the party to comply with the SIR. Once a SIR is issued, a recipient party is encourgaed to engage in post-issuance dialogue. Such discussions may pertain to prioritizing responses, discussing custodians and search terms for electronic searches, or confirming whether further information is required by the Bureau where the party has produced information on a rolling basis. Guidance on interacting with the Bureau on a transaction involving a SIR can found in the Bureau's Merger Review Process Guidelines (http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03423.html)
B. What merger test does the agency apply (*e.g.,* dominance test or substantial lessening of	As set out in section 92 of the Act, the Competition Tribunal may make an order when it finds that a merger "prevents or lessens, or is likely to prevent or lessen, competition substantially." Section 93 of the Act sets out a non-exhaustive list of

competition test)?	discretionary factors the Competition Tribunal may consider when assessing whether a merger prevents or lessens, or is likely to prevent or lessen, competition substantially under section 92. A list of such factors follows: (a) the extent to which foreign products or foreign competitors provide or are likely to provide effective competition to the businesses of the parties to the merger or proposed merger; (b) whether the business, or a part of the business, of a party to the merger or proposed merger has failed or is likely to fail; (c) the extent to which acceptable substitutes for products supplied by the parties to the merger or proposed merger are or are likely to be available; (d) any barriers to entry into a market, including (i) tariff and non-tariff barriers to international trade, (ii) interprovincial barriers to trade, and (iii) regulatory control over entry, and any effect of the merger or proposed merger on such barriers; (e) the extent to which effective competition remains or would remain in a market that is or would be affected by the merger or proposed merger; (f) any likelihood that the merger or proposed merger will or would result in the removal of a vigorous and effective competitor; (g) the nature and extent of change and innovation in a relevant market; and (h) any other factor that is relevant to competition in a market that is or would be affected by the merger or proposed merger. These factors may be relevant to the Bureau's assessment of market definition or of the competitive effects of a merger, or both. A substantial prevention or lessening of competition results only from mergers that are likely to create maintain or enhance the ability of the merged entity, unilaterally or in coordination with other firms, to exercise market power. A merger may substantially "lessen" competition when it enables the merged firm, unilaterally or in coordination with other firms, to sustain materially higher prices than would exist in the absence of the merger by diminishing existing competition. In addition, competition may be substantially "prevented" when a merger enables the merged firm, unilaterally or in coordination with other firms, to sustain materially higher prices than would exist in the absence of the merger by hindering the development of anticipated future competition. Generally, the prevention or lessening of competition is considered to be "substantial" in two circumstances. First, the price of the relevant product(s) would likely be materially higher in the relevant market than it would be in the absence of the merger. Second, sufficient new entry would not occur rapidly enough to prevent the material price increase or to counteract the effects of any such price increase. Section 96 of the Act provides an efficiency exception to section 92 of the Act. When a merger creates, maintains or enhances market power, section 96 creates a trade-off framework in which efficiency gains that are likely to be brought about by a merger are evaluated against the merger's likely anti-competitive effects. The Bureau, in appropriate cases, will undertake the trade-off analysis for efficiency gains, provided that parties provide

	evidence substantiating their case in a timely manner. For further information about the anti-competitive threshold applied by the Bureau in merger cases, as well as the consideration of efficiencies, see the Merger Enforcement Guidelines, http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03420.html
C. What theories of harm does the agency consider in practice?	Generally, theories of harm that may be considered by the Bureau vary from case-to-case and depend on the specific facts relating to the merger being reviewed. The Bureau's Merger Enforcement Guidelines outline an analytical framework for the assessment of whether a merger prevents or lessens, or is likely to prevent or lessen, competition substantially. In general, when evaluating the competitive effects of a merger, the Bureau's primary concerns are price and output. The Bureau also assesses the effects of the merger on other dimensions of competition, such as quality, product choice, service, innovation and advertising. When examining the market power of sellers, the Bureau considers the ability of a firm or group of firms to profitably maintain prices above the competitive level for a significant period of time. When examining the market power of buyers, the Bureau considers the ability of a single firm (monopsony power) or a group of firms (oligopsony power) to profitably depress prices paid to sellers to a level that is below the competitive price for a significant period of time. The Bureau's assessment of competitive effects generally falls under the broad categories of unilateral effects and coordinated effects. A unilateral exercise of market power occurs when the merged firm can profitably sustain a material price increase without effective discipline from competitive responses by rivals. A merger may also prevent or lessen competition substantially when it facilitates or encourages coordinated behaviour among firms after the merger. The Bureau's analysis of these coordinated effects entails determining how the merger is likely to change the competitive dynamic in the market such that coordination is substantially more likely or effective. Unilateral effects and coordinated effects analyses can also apply to non-horizontal mergers. The two main types of non-horizontal mergers are vertical mergers and conglomerate mergers. A vertical merger is a merger between firms that produce products at different levels of a supply chain. A conglomerate merger is a merger between parties whose products do not actually or potentially compete and are not vertically related, but may be complementary of often purchased together. Under a unilateral effects analysis, a non-horizontal merger may harm competition if the merged firm is able to limit or eliminate rival firms' access to inputs or markets, thereby reducing or eliminating rival firms' ability or incentive to compete. Under a coordinated effects analysis, the Bureau considers whether a non-horizontal merger increases the likelihood of coordinated interaction among firms in either upstream or downstream markets.
D. What are the key stages in the substantive analysis? Does this differ	In determining whether a merger is likely to create, maintain or enhance market power, the Bureau must examine the competitive effects of the merger. This exercise generally involves defining

depending on the type of transaction (*e.g.,* joint venture)?	the relevant markets and assessing the competitive effects of the merger in those markets. Market definition is not necessarily the initial step, or a required step, but generally is undertaken. The same evidence may be relevant and contribute to both the definition of relevant markets and the assessment of competitive effects. Merger review is often an iterative process in which evidence respecting the relevant market and market shares is considered alongside other evidence of competitive effects, with the analysis of each informing and complementing the other. Section 93 of the Act sets out a non-exhaustive list of discretionary factors that the Competition Tribunal may consider when determining whether a merger prevents or lessens competition substantially, or is likely to do so. These factors, which are largely qualitative, may be relevant to the Bureau's assessment of market definition or of the competitive effects of a merger, or both. See response to Question 14.C above summarizing the Bureau's approach to assessing competitive effects. Market definition: When the Bureau assesses relevant markets, it does so from two perspectives: the product dimension and the geographic dimension. In some cases, it may be clear that a merger will not create, preserve or enhance market power under any plausible market definition. Alternatively, it may be clear that anti-competitive effects would result under all plausible market definitions. In both such circumstances, the Bureau need not reach a firm conclusion on the precise metes and bounds of the relevant market(s). Market shares: Consistent with section 92(2) of the Act, information that demonstrates that market share or concentration is likely to be high is not, in and of itself, sufficient to justify a conclusion that a merger is likely to prevent or lessen competition substantially. However, information about market share and concentration can inform the analysis of competitive effects when it reflects the market position of the merged firm relative to that of its rivals. The Bureau has established certain market share thresholds to identify and distinguish mergers that are unlikely to have anti-competitive consequences from those that require a more detailed analysis. These thresholds may be considered after the Bureau has assessed the likely product and geographic market(s). The Bureau generally will not challenge a merger on the basis of unilateral effects when the post-merger market share of the merged entity would be less than 35%. In addition, the Bureau generally will not challenge a merger of the basis of coordinated effects when, (i) the post-merger market share accounted for by the four largest firms in the market would be less than 65%, or (ii) the post-merger market share of the merged firm would be less than 10%. Effective remaining competition: In the absence of high post-merger market share and concentration, effective competition in the relevant market is generally likely to constrain the creation, maintenance or enhancement of market power by reason of the merger. When it is clear that the level of effective competition that is to remain in the relevant market is not likely to be reduced as a result of the merger, this alone generally justifies a conclusion not to challenge the merger. Entry: A key component of the Bureau's analysis of competitive effects is whether timely entry by potential competitors would

	likely occur on a sufficient scale and with sufficient scope to constrain a material price increase in the relevant market. In the absence of impediments to entry, a merged firm's attempt to exercise market power, either unilaterally or through coordinated behaviour with its rivals, is likely to be thwarted by entry of firms that are already in the relevant market and can profitably expand production or sales; are not in the relevant market but operate in other product or geographic markets and can profitably switch production or sales into the relevant market; or can profitably begin production or sales into the relevant market *de novo*. When viable entry is likely, timely and sufficient in scale and scope, an attempt to increase prices is not likely to be sustainable as buyers of the product in question are able to turn to the new entrant as an alternative source of supply. Countervailing power: When determining whether a merger is likely to result in a material price increase, the Bureau assesses whether buyers are able to constrain the ability of a seller to exercise market power. The Bureau may consider multiple factors that may represent indicia of countervailing power. Monopsony power: A merger of competing buyers may create or enhance the ability of the merged firm, unilaterally or in coordination with other firms, to exercise monopsony power. The Bureau is generally concerned with monopsony power when a buyer holds market power in the relevant purchasing market, such that it has the ability to decrease the price of a relevant product below competitive levels with a corresponding reduction in the overall quantity of the input produced or supplied in a relevant market, or a corresponding reduction in any other dimension of competition. Minority interests and interlocking directorates: A minority interest or interlocking directorate may be ancillary to a merger that the Bureau is otherwise reviewing and may impact competition by affecting the pricing or other competitive incentives of the target, the acquirer, or both. When assessing the target's pricing or other competitive incentives, the Bureau first considers whether, by virtue of its ability to materially influence the economic behaviour of the target business, the acquirer or interlocked director may induce the target business to compete less aggressively. Second, the Bureau considers whether the transaction provides the acquirer or the firm with the interlocked director access to confidential information about the target business. Efficiency exception: See response to Question 4.B above Failing firms and exiting assets: Among the factors that are relevant to an analysis of a merger and its effects on competition, section 93(b) lists "whether the business, or a part of the business, of a party to the merger or proposed merger has failed or is likely to fail." Probable business failure does not provide a defence for a merger that is likely to prevent or lessen competition substantially. Rather, the loss of the actual or future competitive influence of a failing firm is not attributed to the merger if imminent failure is probable and, in the absence of a merger, the assets of the firm are likely to exit the relevant market. The Bureau's framework for assessing mergers that may involve a failing firm is set out in the *Merger Enforcement*

	Guidelines. For further information, see the Merger Enforcement Guidelines, http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03420.html Joint ventures that fall within the Act's defintion of a "merger" are generally reviewed in the same manner as non-joint venture transactions. Other provisions of the Act may apply when considering a joint venture, including the criminal conspiracy provision (section 45) and a civil provision to review agreements or arrangements between potential or actual competiitors (section 90.1) . Pursuant to section 95 of the Act, the formation of an unincorporated combination is exempt from the substantive merger review provisions (section 92) if it is undertaken for a specific project or program of research and development, and certain criteria are met.
E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?	Non-competition issues are not considered. The Bureau will consider efficiencies as section 96 of the Act provides that the Competition Tribunal shall not make an order under section 92 against a merger if efficiency gains that are likely to be brought about by a merger will be greater than and offset the merger's likely anti-competitive effects. The factors the Tribunal may consider include matters not directly related to competition in Canada, such as efficiency gains resulting in a significant increase in the real value of exports, or a significant substitution of domestic products for imported products. As noted in the response to Question 4.B above, the Bureau, in appropriate cases, will undertake a trade-off analysis for efficiency gains after it has determined that the merger is likely to prevent or lessen competition substantially. Under section 94 of the Act, the Competition Tribunal may be prohibited from making an order with respect to a merger involving banks, trust companies or insurance companies under the substantive merger control provision of the Act (section 92) if the Minister of Finance certifies the names of the parties and that the merger is in the public interest. The Competition Tribunal may be similarly prohibited where a merger has been approved under the *Canada Transportation Act* and the Minister of Transportation has certified the names of the parties. The existence section 94 does not mean that the Bureau does not review mergers in the financial or transportation sectors. Rather, in circumstances where the applicable Minister has the authority to review a merger and decides to take the specific actions that make section 94 apply – for example, by undertaking a review applying public interest criteria – the Commissioner of Competition may not have the ability to challenge a merger under section 92 of the Act. Even in such limited cases, however, the Commissioner's views on the merger's effect on competition are usually sought by the relevant Minister.
F. What are the possible outcomes of the review (*e.g.,* unconditional/conditional clearance, prohibition,	The following are possible outcomes of a review: • Issuance of an ARC or No-Action Letter – see response to Question 6.B above. • The Commissioner may bring an application before the Competition Tribunal for an order to remedy the

etc.)?	substantial prevention or lessening of competiiton that is likely to be brought about by a merger. For a proposed merger, the Tribunal may make an order directed against any person, ○ ordering the person not to proceed with the whole or part of a merger; or ○ in addition to, or in lieu of, ordering the person not to proceed with part of a merger, ▪ prohibiting the person from doing any act or thing that the Tribunal determines is necessary to ensure that the merger does not prevent or lessen competition substantially; and/or ▪ with the consent of the person and the Commissioner, ordering the person to take any other action. For a completed merger, the Tribunal may make an order directed against any person to, ○ dissolve the merger; ○ dispose of assets or shares; or ○ in addition to, or in lieu of, ordering dissolution of the merger or disposition of assets or shares, with the consent of the person and the Commissioner, ordering the person to take any other action. • Parties may enter into a consent agreement with the Commissioner of Competition to resolve competition concerns on a negotiated basis. The consent agreement shall be on terms that could be the subject of an order of the Tribunal against a merging party. A consent agreement may be registered with the Competition Tribunal, which gives it the same force and effect of an order of the Tribunal. • Where appropriate, the Bureau may determine that action taken in a foreign jurisdiction is sufficient to resolve any Canadian competition concerns. For example, the Bureau may rely on the remedies initiated through formal proceedings by foreign jurisdictions when the asset(s) that are subject to divestiture, and/or conduct that must be carried out as part of a behavioural remedy, are primarily located outside of Canada. • Parties may abondoned the whole or part of their proposed transaction due to competition concerns that the Bureau has identified (or for other reasons).
G. What types of remedies does the agency accept in practice? How is the process initiated and conducted in practice?	In either a contested proceeding or for a consent agreement, a remedy for a substantial lessening of competition must restore competition to the point at which it can no longer be said to be substantially less than it was before the merger. While the Bureau will consider both structural and behavioural remedies, structural remedies are typically more effective because the terms of such remedies are more clear and certain, less costly to administer, and readily enforceable. Most structural remedies involve a divestiture of asset(s) rather than an outright prohibition or dissolution of the merger. Once the

	Bureau identifies the scope of remedies necessary to address competition concerns, the Bureau will normally require the merging parties to "hold separate" those asset(s) that could be the subject of a Competition Tribunal order, until the divestiture is completed. Hold-separate provisions preserve the Bureau's ability to achieve an effective remedy *pending its implementation.* In certain circumstances, an effective remedy may require the merging parties to take some action, in addition to or other than a divestiture, to remedy competition concerns. Such "quasi-structural" remedies include actions that reduce barriers to entry, provide access to necessary infrastructure or key technology, or otherwise facilitate entry or expansion. A combination remedy refers to a structural divestiture combined with other relief that is behavioural in nature. Certain behavioural terms may help ensure an effective remedy is ultimately implemented when they supplement or complement the core structural remedy. Standalone behavioural remedies are seldom accepted by the Bureau. Such remedies often do not adequately replicate the outcomes of a competitive market, and are more difficult to enforce than a structural remedy. Moreover, a standalone behavioural remedy usually imposes an ongoing burden on the Bureau and market participants, including the merged entity, rather than providing a permanent solution to a competition problem. Remedies may be proposed by either the Bureau or the merging parties. Merging parties are strongly encouraged to remedy competition issues arising from a merger by resolving them before closing the merger through a "fix-it-first" solution. A "fix-it-first" solution occurs when the vendor is able to divest the relevant asset(s) to an approved buyer prior to, or simultaneously with, the closing of the merger; or there is a purchase and sale agreement in place, which identifies an approved buyer for a specific set of assets, and the divestiture is executed simultaneously with the merger. Prior to agreeing to a remedy proposal, the Bureau may seek information from the marketplace. Such "market testing" is particularly important in those situations where the marketability, viability, and ultimately the effectiveness of a divestiture package in eliminating the substantial lessening or prevention of competition arising from a merger, are uncertain or in doubt. Market testing may include seeking information from industry participants such as competitors, customers and suppliers, as well as from industry experts After a consent agreement has been registered with the Competition Tribunal, the Bureau aims to be as transparent as possible with respect to its terms. However, at the request of the vendor, the Bureau may agree to let certain provisions of a negotiated settlement requiring divestitures remain confidential during the initial sale period only. Once the trustee period begins (discussed below), most terms will be made public, including the time period in which the divestiture must occur, all crown jewel provisions, and the fact that the divestiture package must be sold at no minimum price. Full disclosure of the terms of a consent agreement will occur in multi-jurisdictional cases, where remedies are coordinated with other agencies, to the extent that terms are made public in the other jurisdictions; or upon completion of the

	divestiture(s) in a negotiated settlement. Subsection 106(2) of the *Competition Act* allows persons that are not party to a registered consent agreement, but that are "directly affected" by the agreement, to apply to the Competition Tribunal for an order to rescind or vary the agreement. Such persons must bring an application within 60 days of the agreement's registration, and must establish that the terms of the agreement could not be the subject of an order of the Tribunal. Normally, it is necessary to immediately appoint an independent manager ("hold-separate manager") to operate the asset(s) to be divested until the divestiture is complete. The hold-separate manager will be responsible for the day-to-day management of the asset(s) to be divested and, if necessary, will report directly to an independent monitor. The Bureau will normally require the appointment of an independent third party to monitor compliance with the consent agreement ("monitor"). The monitor will ensure that the vendor uses its best efforts to fulfill its obligations under the consent agreement. The monitor will report, in writing, to the Bureau, as set out in the consent agreement. The hold-separate manager and monitor are appointed by the Bureau. In addition to approving the remedy package, the Bureau must approve the buyer of the divested asset(s), so as to ensure that such asset(s) will be operated by a vigorous competitor, and that the divestiture itself will not result in a substantial lessening or prevention of competition. When the sale of the asset(s) to be divested is not completed during the initial sale period and in the manner contemplated by the consent agreement (or the divestiture order in contested cases), the Bureau will appoint a trustee to divest the asset(s). The trustee period, the duration of which shall be made public at the outset of the trustee period, will be between three and six months. The trustee will be required to report to the Bureau in writing, on a regular basis, all efforts to accomplish the divestiture.

PART 3: CONFIDENTIALITY, TRANSPARENCY AND INTERAGENCY MERGER COOPERATION

15. Confidentiality

A. To what extent, if any, does the agency make public the fact that a pre-merger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?	Pursuant to section 29, the Commissioner is prohibited from revealing if any person has filed and any information contained in a filing. http://www.laws.justice.gc.ca/eng/acts/C-34/page-11.html#docCont Further information regarding the Bureau's confidentiality policies may be found in the Bureau's bulletin on confidentiality entitled Communication of Confidential Information Under the Competition Act. http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03597.html

B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?	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.
C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? **If so, under what circumstances?**	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. 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. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.	Not applicable.
F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?	As a general rule, proceedings and decisions of the Competition Tribunal are public. However, a party or intervenor wishing to file a document containing confidential information should: (i) file the public version of the document marked "Public" with a motion for a confidentiality order under rule 66 of the Competition Tribunal Rules; and (ii) provide the Tribunal Registry with a version of the document marked "confidential" that includes and identifies (in bold capital letters) the confidential information that has been deleted from the public version. There may be cases in which due to time constraints, it will be impractical to bring a motion for a confidentiality order and prepare a public version of confidential material. In such cases, with the prior approval of the presiding judicial member, confidential materials may be filed in confidence without an order or public version on the undertaking that, at the direction of the presiding judicial member once the urgent phase has passed, a confidentiality order and public versions of all confidential material will be added to the file. In the case of consent agreements registered with the Competition Tribunal, the Commissioner typically files both a

	public and a confidential version.

16. Transparency

A. Does the agency publish an annual report with information about mergers? 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 investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (*e.g.,* for each decision)?	Yes. These press releases may be found on the Bureau 's Media Centre page: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_02766.html
C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.	As a matter of course, the Bureau does not publish decisions. However, the Bureau issues press releases, information notices or position statements for key merger cases that are considered important in terms of impact, profile, enforcement policy or remedies. The above-mentioned position statements are intended to describe the Bureau's analysis in a particular investigation, and the reasons underlying its final conclusions. http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00173.html

17. Interagency Merger Cooperation

A. Is the agency able to exchange information or documents with foreign competition authorities?	Yes. 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.
B. 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	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, the European Union, Japan, Mexico, New Zealand, Republic of Korea, Taiwan, the United Kingdom and the United States. The agreements are publicly available on the Bureau's website at:

agreements publicly available?	http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03763.html#tab2
C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.	The Bureau does not need the consent from the parties to exchange confidential information with other reviewing agencies. 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.

PART 4: SANCTIONS

18. Sanctions/penalties

A. What are the sanctions/penalties for: **(i) failure to file a notification** **(ii) incorrect/misleading information in a notification** **(iii) failure to observe a waiting period/suspension obligation** **(iv) failure to observe or delay in implementation of remedies** **(v) implementation of transaction despite the prohibition from the agency?**	(i) and (ii) : 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. (http://lois-laws.justice.gc.ca/eng/acts/C-34/page-36.html#h-22). 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. (iii) : 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. (iv) and (v): Section 66 of the Act (http://lois-laws.justice.gc.ca/eng/acts/C-34/page-37.html#docCont) provides that contravening an order under Part VIII of the Act is a criminal offence punishable: (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not

	exceeding five years, or to both; or (b) on summary conviction, to a fine not exceeding $25,000 or to imprisonment for a term not exceeding one year, or to both.
B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(v)?	(i), (ii) and (iii) : 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. (iv) and (v): All parties subject to an order from the Competition Tribunal are potentially liable, including officers, directors or agents of the parties.
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.	The Bureau cannot impose these sanctions directly. (i), (ii), (iv) and (v) : In the case of an offence under subsection 65(2) or section 66 of the Act, the Bureau may refer the matter to the Attorney General of Canada for prosecution. (iii) An order under section 123.1 would be issued by a court, on application by the Commissioner.
D. Are there any recent or significant fining decisions?	No.

PART 5: POST-REVIEW MATTERS/JUDICIAL REVIEW

19. Ministerial intervention

A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (*e.g.,* any decision, prohibitions, clearances, remedies)?	No.

B. What are the grounds for such ministerial intervention? Other policy goals? Are they defined? What guidance is available regarding such grounds?	Not applicable.
C. Describe the main elements of the ministerial intervention process and procedures, and indicate any guidance available	Not applicable.

20. Administrative and judicial processes/review

A. Describe the timetable for judicial and administrative review related to merger transactions.	Pursuant to s. 13 of the Competition Tribunal Act (http://www.laws.justice.gc.ca/eng/acts/C-36.4/page-5.html#h-8), 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.
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	Pursuant to rule 66 of the Competition Tribunal Rules, SOR/2008-141, (http://laws-lois.justice.gc.ca/eng/regulations/SOR-2008-141/page-14.html#h-18) the Tribunal may order that a document or information in a document filed by a party or an intervenor be treated as confidential.
C. Are there any limitations on the time during which an appeal may be filed?	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).

21. Additional filings

A. Are any additional filings/clearances required for some types of transactions (*e.g.,* sectoral or securities regulators or national security or foreign	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.

investment review)?	

22. Closing deadlines

A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?	Pursuant to ss. 103 and 119 of the Act (http://lois-laws.justice.gc.ca/eng/acts/C-34/page-62.html#h-41 and http://lois-laws.justice.gc.ca/eng/acts/C-34/page-70.html#docCont 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.

23. Post merger review of transactions

A. 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 time limit on this authority?	Section 97 of the Act (http://lois-laws.justice.gc.ca/eng/acts/C-34/page-60.html#docCont) provides a one year period during which the Commissioner may bring a matter before the Competition Tribunal. Where an ARC has been issued, pursuant to section 103 of the Act (http://lois-laws.justice.gc.ca/eng/acts/C-34/page-62.html#docCont) the matter cannot be challenged solely on the basis of information that is the same or substantially the same as the information on the basis of which the ARC was issued.