Chapter XX

CANADA

Dany H Assaf, Rebecca Moskowitz and Marina Chernenko[1]

I INTRODUCTION

2014 was an interesting year for merger enforcement in Canada, with significantly higher merger activity. This chapter provides an overview of the merger control regime and insights into the year ahead, and highlights noteworthy developments.

Over the past year, four major themes emerged in the Competition Bureau's (Bureau) review of key transactions. First, the Bureau employed creative behavioural remedies to address competition concerns, signalling more flexibility in its approach to remedies. Second, the Bureau increasingly obtained information from third parties through compulsory Section 11 court disclosure orders. Third, the Bureau took enforcement action in three non-notifiable mergers following complaints from stakeholders, highlighting the importance of considering competition issues in all transactions regardless of their size. Fourth, the Bureau continued to pursue new avenues of international cooperation and made significant inroads in its coordination efforts with the United States.

Retail mergers were particularly active, with the Bureau reviewing the merger of Burger King Worldwide, Inc and Tim Hortons Inc, Canadian Tire Corporation Limited (Canadian Tire) and Pro Hockey Life Sporting Goods Inc (Pro Hockey Life), and Loblaw Corporation Limited (Loblaw) and Shoppers Drug Mart Corporation (Shoppers). Other key sectors reviewed by the Bureau included media, manufacturing, telecommunications, pharmaceutical and water heaters. The most notable mergers include the following:

a On 14 July 2013, Canada's largest grocery chain, Loblaw, announced its plan to acquire all of the outstanding common shares of Shoppers, Canada's largest drugstore chain. On 21 March 2014, the Bureau concluded a consent agreement with Loblaw after an extensive review, requiring divestitures in 27 local markets and prohibiting certain contracting practices.

1 Dany H Assaf is practice co-chair and Rebecca Moskowitz and Marina Chernenko are associates at Torys LLP.

b On 12 August 2013, Canadian Tire completed its acquisition of Pro Hockey Life through its wholly-owned affiliate, FGL Sports Ltd, pursuant to an agreement announced on 28 November 2012 and following the Bureau's use of Section 11 orders to compel testimony and evidence from third-party hockey equipment providers.

c On 4 September 2013, Louisiana-Pacific Corporation (LP) entered into an agreement to acquire all outstanding common shares of Ainsworth Lumber Co Ltd (Ainsworth) and, through extensive cooperation with the United States Department of Justice (US DOJ), the Bureau determined that consumers in the province of British Columbia (BC) paid more for orient strand board product than consumers in other North American markets. The parties abandoned the transaction due to competition concerns.

d On 17 January 2014, Garda World Securities Corporation (GardaWorld) completed its acquisition of G4S Cash Solutions (Canada) Ltd (G4S) pursuant to an agreement announced on 28 August 2013 and following the Bureau's use of a Section 11 order that compelled information from Brinks Canada, the only other significant competitor in the relevant market.

e On 4 April 2014, Bell Aliant Regional Communications Inc (Bell Aliant) announced its proposed non-notifiable acquisition of ON Tel Inc (Ontera), which came to the Bureau's attention via several complainants. After an extensive investigation and market testing, the Bureau required Bell Aliant to lease strands of its fibre optic telecommunication transmission lines to a third party.

f On 28 May 2014, the Bureau reached a consent agreement with Transcontinental Inc (Transcontinental) regarding its proposed acquisition of Quebecor Media Inc's (Quebecor) 74 community newspapers in Quebec, as well as regional offices and pre-press hubs, which tested the parties' arguments regarding the financial distress of many of the newspapers.

g On 17 November 2014, the Bureau approved Reliance Comfort Limited Partnership's (Reliance) acquisition of National Energy Corporation (National) after an extensive review, which included the issuance of a supplementary information request (SIR). Prior to the merger, Reliance and National were two of the top three water heater rental providers in Ontario and were each involved in ongoing proceedings with the Bureau relating to contraventions of the civil provisions of the Competition Act (CA). The consent agreement signed with Reliance on 4 November 2014 provided the Bureau with a remedy to address its concerns about barriers to entry and competitor expansion into the market.

h On 26 November 2014, the Bureau announced that it had concluded a consent agreement with Medtronic Inc (Medtronic) and Covidien plc (Covidien) permitting the proposed acquisition of all of Covidien's shares by Medtronic following the divestiture of Covidien's drug-coated balloon catheter business. In reaching this agreement, the Bureau worked extensively with the United States Federal Trade Commission and approved a proposed purchaser before the agreement was signed.

In addition, a precedent-setting case was decided by Canada's highest court, establishing the test for prevention of competition and the efficiencies defence. These developments are all discussed in further detail below.

II YEAR IN REVIEW

In 2014, the Bureau reviewed a total of 233 mergers.[2] Approximately 45 per cent of the reviews resulted in the issuance of a no-action letter (NAL) and approximately 54 per cent of the reviews received an advance ruling certificate (ARC), both of which are brief notices to the parties that their deal may proceed as planned. In the case of a NAL, the Commissioner of Competition (Commissioner)[3] retains the right to challenge the merger within one year of closing. In the case of an ARC, the Commissioner may challenge the merger if it is not substantially completed with one year after the ARC is issued or new information arises that differs substantively from the information provided in the ARC. These numbers are up from the previous year; in 2013, the Bureau reviewed 215 mergers, approximately 54 per cent of which resulted in a NAL and approximately 45 per cent of which received an ARC. The Bureau cleared mergers through consent agreements in three cases in 2014, compared with two cases in the previous year.

The major merger control developments and themes that emerged in 2014 are discussed in further detail below.

i Use of behavioural remedies

Historically, the Bureau has preferred structural to behavioural remedies. In 2014, however, the Bureau increased its use of behavioural remedies as a means of resolving market concerns, particularly where structural remedies are either insufficient or inefficient. For example, the Commissioner imposed a combination of structural and behavioural remedies in Loblaw's acquisition of Shoppers, requiring both divestitures and prohibitions on certain contracting practices. The Commissioner also issued a qualified NAL to GardaWorld in its acquisition of cash solutions service provider, G4S, which required GardaWorld to alter some of its contracting practices and reiterated the Commissioner's intention to monitor the post-transaction dynamics of the industry. In addition, the Bureau obtained a commitment from TELUS Health to change certain contracting practices for five years, such as not including terms that make it difficult for pharmacists to switch service providers.

ii Third-party information

The Bureau regularly obtains information on an informal basis from competitors, market participants and other stakeholders when investigating the potential anti-competitive effects of a merger. However, voluntary disclosure is not always possible due to

2 Figures in this paragraph are based on the concluded mergers report by the Competition Bureau in the Monthly Report of Concluded Merger Reviews: www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02435.html.

3 The current Commissioner of Competition is John Pecman.

confidentiality and other concerns raised by third parties. Under these circumstances, Section 11 of the CA gives the Commissioner the power to compel production of documents and information from third parties through a court order.

In 2014, the Bureau used Section 11 orders to compel information and documents in its review of numerous mergers, including from hockey equipment suppliers in Canadian Tire's acquisition of Pro Hockey Life and from Brinks Canada, a key competitor in GardaWorld's acquisition of G4S. The Bureau has indicated its intention to use Section 11 to obtain information from parties to a transaction where:

a the transaction is non-notifiable (and therefore the information is not otherwise available to the Bureau);

b information provided to the Bureau through the SIR process is 'stale' and the Bureau requires fresh information (although these are less common as review times are now shorter);

c information is required post-closing; and

d in hostile transactions where a target has no incentive to provide information on a voluntary basis or to cooperate with the review.

iii Non-notifiable mergers

In 2014, the Bureau took enforcement action in three non-notifiable mergers. On 4 April 2014, Bell Aliant announced its proposed acquisition of Ontera. The transaction was a non-notifiable merger but was brought to the Bureau's attention by several complainants. Following an investigation, the Bureau determined that the transaction was likely to substantially lessen or prevent competition, or both, in the sale of wireline telecommunications services in up to 16 communities throughout Northern Ontario. The Bureau raised its concerns with the parties, and Bell Aliant agreed to provide Bragg Communications Inc (Eastlink), a third-party telecommunications provider, with a 20-year lease of between two and four strands of fibre on Ontera's backhaul network.

In a separate transaction involving Eastlink, the company's proposed acquisition of Bruce Telecom was reviewed by the Bureau as a result of stakeholder complaints. The proposed merger was ultimately abandoned.

Finally, the Bureau also investigated TELUS Health's non-notifiable acquisition of XD^3 Solutions (XD^3), ultimately imposing a behavioural remedy. These transactions demonstrate the need to consider and address competition concerns regardless of the size of the transaction, especially where customer or significant competitor complaints (or both) are likely.

iv International cooperation

The Commissioner has repeatedly emphasised his goal of creating a 'Bureau without borders' to facilitate the sharing of expertise. In 2014, the Bureau undertook three major initiatives in support of its commitment to international cooperation. First, the Bureau published a paper titled 'Best Practices on Cooperation in Merger Investigations', which was prepared through the Canada–US Merger Working Group. In July 2014, for the first time, the US District Court of Maryland ordered a company located in the United

States, Aegis Mobile LLC, to produce documents to the United States Federal Trade Commission (US FTC) on behalf of the Bureau.[4]

Second, the Bureau signed a memorandum of understanding (MOU) with the Competition Commission of India, making India the 11th foreign competition authority with which Canada has a cooperation instrument. Similar discussions were being pursued with the Chinese competition authorities and, in 2015, they resulted in MOUs with China's State Administration for Industry and Commerce and the Ministry of Commerce of the People's Republic of China. Third, the Bureau launched a new web portal that provides information on the Bureau's efforts to address international anti-competitive conduct.

Several key mergers involved international cooperation in the past year. For example, the Bureau worked extensively with the US FTC in Medtronic's acquisition of Covidien to develop a remedy that addressed the competition concerns in both countries, including the Bureau's approval of an up-front buyer. This approval ensured a timely divestiture and avoided the need for a hold-separate provision in the consent agreement. In LP's proposed acquisition of all outstanding common shares of Ainsworth, the Bureau cooperated with the US DOJ in determining that consumers in the province of BC paid more for orient strand board product than consumers in other North American markets. These mergers are practical examples of the Bureau's prioritisation of international cooperation.

v Increased transparency

The Commissioner again reiterated the Bureau's commitment to transparency, noting the importance of increasing dialogue with parties under investigation. The Bureau issued 18 position statements in 2014, compared with 13 in 2013, which summarise the Bureau's findings in key mergers and provide stakeholders with valuable guidance on the Bureau's approach to merger review.

The Bureau also issued two pre-merger notification (PMN) interpretation guidelines. One deals with the requirement to submit a new PMN, ARC application, or both, when a proposed transaction is subsequently amended. The second addresses the Bureau's approach to duplication when calculating assets and sales between affiliates. The Bureau also released a bulletin describing when and how it communicates with parties under investigation and with industry participants, complainants and the general public, and introduced quarterly reports that present statistics and information regarding the Bureau's activities.

The Bureau also released a document outlining the common economic tools it uses in analysing retail mergers. The Bureau identified qualitative evidence of substitutability across stores, including any consumer switching studies that the parties may have commissioned during the normal course of business, as a useful tool in reviews. In recent retail merger investigations, the Bureau has defined the relevant geographic market to be as small as a one-kilometre radius circle around a retail location (or as large as an

4 Although this information was for a different civil matter than mergers, it is indicative of the trend towards more cooperation between international competition agencies.

entire metropolitan area). The Bureau will also consider non-price effects such as impacts on innovation, service, quality, product variety, store formats or hours of operation. Overall, the Bureau's ongoing release of these documents demonstrates its commitment to enhancing the transparency and predictability of Canada's merger review regime.

III THE MERGER CONTROL REGIME

The Bureau, headed by the Commissioner, is an independent government agency responsible for the enforcement of the CA. All mergers, whether notifiable or not, are reviewable by the Commissioner to determine their competitive impact, but only those that exceed the thresholds require notification to the Commissioner. These thresholds include a 'size-of-parties' test and a 'size-of-transaction' test, both of which must be satisfied to trigger the PMN requirement, as well as a third test that applies in respect of a proposed acquisition of any of the assets in Canada of an operating business or in respect of an acquisition of voting shares.

If exceeded, the parties to the transaction must then adhere to the PMN framework set out in the CA, which requires parties to notify the Commissioner prior to completing the merger, to provide specified information and to wait a specified period of time before completing the transaction. In addition, there are non-binding policies that the Bureau generally follows, such as merger review timelines, and certain practices that parties are encouraged to follow, such as cooperation and transparency.

i Thresholds

Section 109 of the CA sets out the 'size-of-parties' test, which requires that the aggregate Canadian assets of the parties to the transaction (together with their affiliates) exceed C$400 million or that the aggregate Canadian turnover of the parties exceed C$400 million. Section 110 of the CA sets out the 'size-of-transaction' test, which changes yearly and which, in 2015, requires the Canadian assets or revenues, or both, of the target (together with its affiliates) to exceed C$86 million. Section 110 of the CA also sets out the third component of the test that triggers the PMN requirement, and it describes the acquisition event, generally, as the acquisition of assets, or the acquisition of 20 per cent of the voting shares of a publicly traded company or 35 per cent of the voting shares of a privately held company (or more than 50 per cent if the acquiror already owns between 20 and 50 per cent).

Irrespective of whether a transaction triggers the requirement to notify or if the Commissioner has issued a NAL, the Commissioner retains the statutory authority to challenge a merger. In the case of a non-notifiable transaction or where a NAL has been issued under Section 114 of the CA, Section 97 of the CA provides that the Commissioner may bring a challenge within one year after the transaction has been substantially completed if it raises competition concerns. In the case of an ARC, Section 103 of the CA provides that the Commissioner may not challenge a merger based on the same facts if the merger is substantially completed with one year after the ARC is issued.

ii Exemptions

Section 111 provides for several narrow exemptions from the PMN requirement, the applicability of which must be assessed on a case-by-case basis. Parties can be exempted from the PMN requirement if the Commissioner issues an ARC pursuant to Section 102 of the CA or where, for example, the parties to the transaction are all affiliates. A number of other exemptions to the requirement to notify are also provided for in the CA, including certain types of joint ventures and acquisitions of:

a real property or goods in the ordinary course of business;
b shares or interests for the purpose of underwriting;
c receivables (or an acquisition forming a part of any debt work-out); and
d Canadian resource property.

iii PMN forms and ARC applications

Subsection 114(1) of the CA provides that parties to a notifiable transaction are required to notify the Commissioner and supply the prescribed information set out in Section 16 of the Regulations and reflected in the Bureau's template form (PMN form). For a PMN form to be complete, each party is required to certify under oath or solemn affirmation that the information it has supplied is correct and complete in all material respects pursuant to Section 118 of the CA, and explain if information cannot be supplied.

In straightforward transactions, the merger parties can request an exemption from filing the PMN form by applying for an ARC, which is a letter describing the transaction and the parties and explaining why there are no substantive competition law concerns. Most ARC applications are processed within the Bureau's two week 'non-complex' service standard period. Parties can close with relative comfort by receiving either an ARC (typically, for non-complex matters) or a NAL (typically, for complex matters).

iv Filing fee and non-compliance

Section 65(2) of the CA imposes a C$50,000 fee for an ARC application and a PMN (the fee is the same whether one or both are filed). Failure to comply with the PMN requirement 'without good and sufficient cause' is a criminal offence that carries a C$50,000 fine. Parties would also be in contravention of Section 123 of the CA, which prohibits completing a merger before the expiry of the applicable statutory waiting period. The Commissioner could respond to such breach by seeking an order to prohibit the implementation of a merger or requiring the dissolution of a completed merger, as well as imposing a monetary fine of up to C$10,000 for each day that the parties are in breach of the waiting period.

v Non-notifiable mergers

A merger can be reviewed by the Bureau under Part VIII of the CA even if it is not notifiable under Part IX of the CA. The Bureau monitors non-notifiable transactions to ensure compliance with substantive competition laws. Non-notifiable mergers that are reviewed are detected mainly through complaints from market stakeholders (e.g., customers, suppliers and competitors) or market monitoring (e.g., media sources and mergers and acquisitions databases). Under Section 9 of the CA, the Bureau can

be compelled to conduct an inquiry into a merger if six Canadian residents initiate a complaint, although the Commissioner retains the discretion to decide whether to commence a challenge before the Competition Tribunal (Tribunal). Additionally, parties themselves may voluntarily notify the Bureau by way of an ARC request to have written confirmation that the Commissioner will not take action with respect to an upcoming merger.

vi Statutory waiting period

Under Part IX of the CA, once parties to a proposed transaction have submitted completed PMN filings, an initial statutory 30-day waiting period commences during which time the parties are prohibited from closing. The Commissioner has discretion to effectively terminate the waiting period early if he does not intend to make an application to the Tribunal by issuing an ARC or NAL.

Conversely, the waiting period can be extended where the Bureau requires more information to review the proposed transaction. In such circumstances, the Bureau issues a SIR under Section 114(2) of the CA. The waiting period is suspended upon the issuance of a SIR, and a new 30-day waiting period commences from the date the SIR is certified complete. The Commissioner can seek to prevent a transaction from closing by applying to the Tribunal for an order to that effect, if he chooses to challenge it.

vii Cooperation and collaboration

Regular and open dialogue and cooperation with the Bureau can help expedite the merger review process. Voluntarily providing additional information that is requested, supplying competitive analyses and working proactively with the Bureau to resolve any potential concerns will generally provide for a more efficient review. For example, in transactions involving purchasers that are private equity funds, counsel can expedite the process by confirming whether the fund holds an interest of 10 per cent or more in a competing business. In complex matters, parties may agree to an additional 30-day waiting period upfront to give the Bureau case team additional time, particularly in a document-heavy file. This will assist the Bureau case team and potentially avoid a SIR issuance.

viii Merger review policies

Once a filing is received, the Bureau designates the case as 'non-complex' or 'complex'. Over the past two years, approximately 78 per cent of mergers were designated 'non-complex' while the remaining approximately 22 per cent were deemed complex.[5] In non-complex cases, the Bureau aims to complete its review within 14 days of receiving the filing and provide an ARC or NAL that effectively terminates or waives the waiting period. For complex cases, the period is 45 days. However, where a SIR is issued, the service standard is an additional 30 days from the date on which the Commissioner has received a complete response to the SIR from all recipients. This results in overall review periods in the range of four months or longer where SIRs have been issued.

5 Competition Bureau, 'Quarterly Report for the period ending December 31, 2014': www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03784.html.

While these are not statutory timelines, the Bureau has generally met its service standard in over 90 per cent of concluded matters.[6] Unless the Commissioner issues a SIR, parties are legally permitted to close their transaction without comfort and at their own risk once the initial 30-day waiting period has expired. In such circumstances, parties would continue to be subject to the risk that their transaction could be challenged by the Commissioner, who maintains the right to seek a court injunction to prevent closing and, within one year following closing, to challenge it under Section 97.

ix SIRs

SIRs are only issued in a minority of matters, as most matters are dealt with through informal information requests, questions and dialogue during the review process. In fiscal 2013/2014, the Bureau issued 10 SIRS, the same number as the previous year. In three-quarters of fiscal 2014/2015, nine SIRs have been issued. The volume of documents produced has ranged from less than 5,000 to over a million.[7] Post-issuance discussions with the Bureau may narrow the scope of the requested information and, for electronic searches, identify and limit the custodians and search terms to what is required for the SIR's satisfaction.

x Merger registry

In 2012, the Bureau introduced a publicly available online merger registry that lists the names of the parties and other information relating to concluded transactions, despite concerns raised by the Canadian Bar Association about publicly identifying merger parties in non-public cases. In exceptional cases, where the publication may result in material harm, parties may request that the information be kept private, and the Bureau may oblige on a case-by-case basis.

xi Merger Enforcement Guidelines (MEGs)

The MEGs provide helpful guidance in determining what information should be provided to the Bureau to assist in its review of a merger. The objective of the MEGs is to set out current Bureau practice as well as its legal and economic thinking.

IV OTHER STRATEGIC CONSIDERATIONS

i Prevention of competition and the efficiencies defence

On 22 January 2015, the Supreme Court of Canada (Supreme Court) provided guidance on the test for prevention of competition and the efficiencies defence in the case of

6 Competition Bureau, 'Remarks by John Pecman, Commissioner of Competition' (21 May 2014): www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03739.html.

7 2014 Mergers Roundtable, SSNIPets Bi-Annual Mergers Committee Newsletter, CBA National Competition Law Section, Summer/Fall 2014 at p. 12 and Competition Bureau, 'Competition Bureau Quarterly Report for the period ending December 31, 2014': www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03784.html.

Commissioner of Competition v. Tervita Corporation.[8] This was the Supreme Court's first decision on the prevention of competition test and its first merger case since 1997. This decision stems from a non-notifiable transaction that was challenged by the Bureau as a result of competitor complaints.

The Supreme Court confirmed that the test for assessing whether a merger prevents (or substantially lessens) competition is to compare the likely competitive effects of the merger to the likely competitive environment 'but for' the merger. The Supreme Court warned, however, that the Commissioner and courts should not 'make future business decisions for companies' and that any such determinations must be grounded in more than speculation. The further into the future the Tribunal must look, the less likely that the Commissioner will be able to meet the necessary standard.

The Supreme Court also provided guidance on the efficiencies defence, requiring that the assessment of the defence be as objective as possible by placing a burden on the Commissioner to quantify all quantifiable effects of a merger. The Supreme Court stated that quantified merger efficiencies must be weighed against those quantified effects and that qualitative efficiencies must then be considered against qualitative effects.[9] Potentially 'small degrees' of net efficiencies are sufficient for the defence to apply.

As a result, the Bureau has signalled that it may revise its merger review information-gathering process to ensure that it has sufficient information to meet the efficiencies test established by the Supreme Court, which could mean increased issuances of Section 11 orders and SIRs.

ii The increasing role of consent agreements

Consent agreements are used to resolve the Bureau's competition concerns in the approximately 3 to 5 per cent of mergers that are challenged by the Bureau.[10] For example, the 2014 acquisition of National by Reliance, both primarily water heater rental providers, was facilitated by a consent agreement with the Bureau. Pre-merger, the companies were recognised as being among the top three industry players, and each was being pursued separately by the Bureau for alleged contraventions of the CA (Reliance for abuse of dominance, and National for false and misleading advertising and deceptive marketing practices). On 17 November 2014, the Bureau cleared Reliance's acquisition of National. In its public statement, the Bureau recognised that the consent agreement signed with Reliance to settle its abuse of dominance case had the additional effect of remedying its market entry barrier concerns and generally strengthening competition and consumer choice in Ontario's residential water heater industry.[11]

---

8 *Tervita Corp. v. Canada (Commissioner of Competition)* 2015 SCC 3.

9 Ibid. at paragraph 147.

10 Competition Bureau, 'Competition Bureau Quarterly Report for the period ending December 31, 2014': /www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03784.html.

11 Competition Bureau, 'Competition Bureau clears Reliance's acquisition of National'(17 November 2014): www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03841.html.

iii Failing firm analysis

In the recent merger of Transcontinental and Quebecor, the parties argued that many of the newspapers being purchased through the transaction were experiencing serious financial difficultly and, as a result, should not be considered vigorous or effective competitors.[12] In an unusual step, the Bureau decided to use a consent agreement to 'shop' the relevant assets after the merger closed and test whether a viable alternative to the merger existed. Out of 33 newspapers, only 14 newspapers were purchased, 18 newspapers were shut down and one newspaper continued its operations. It is unclear whether the Bureau will use this approach in the future, but it should be considered as a possibility by merging parties.

iv Role of market participants

Market participants play an important role in the Bureau's assessment of a merger and may influence which mergers are reviewed. In conducting an investigation, it is standard practice for the Bureau to contact market participants to obtain information, even in non-complex mergers. In addition, as noted above, the Bureau will obtain a Section 11 order if it requires information or documents from a third party that cannot cooperate due to confidentiality concerns or other legal obligations.

v Cooperation with the Bureau and other competition agencies

The Bureau encourages open and collaborative dialogue with merger parties. This can be seen in many of the mergers reviewed. For example, in TELUS Health's proposed acquisition of XD[3], the Bureau noted in its press release that TELUS Health 'worked cooperatively and constructively with the Bureau to address [its] concerns' and ultimately reached an agreement whereby a behavioural remedy was sufficient to address the Bureau's concerns.[13]

A merger can greatly benefit from conducting an early competition analysis so that, *inter alia*, the parties can notify the appropriate agencies and have them coordinate their reviews, timelines and remedies (in the case of international mergers), and also so that the parties can propose solutions, such as a potential buyer, in the case of mergers requiring divestitures. Parties are encouraged to provide voluntary waivers permitting the sharing of information among competition authoritites in order to improve merger review time frames.[14]

12 Competition Bureau, 'Competition Bureau Approves the Sale of 14 Transcontinental Community Newspapers' (3 September 2014): www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03807.html.

13 Competition Bureau, 'Competition Bureau protects Quebec pharmacists buying pharmacy management solutions' (12 December 2014): www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03863.html.

14 'Cross-National Merger Remedies: Still Safe in Antarctica' (63rd Antitrust Law Spring Meeting, 15 April 2015) (unpublished).

V OUTLOOK AND CONCLUSIONS

On 1 April 2015, the Bureau implemented a new organisational structure designed to better focus resources on complex high priority cases. The restructuring is part of a broader strategic plan that will guide the Bureau's enforcement and competition promotion activities until 2018.[15]

Several mergers are being or have recently been investigated by the Bureau in the early part of 2015. After failing to reach an agreement with the parties, the Bureau is challenging Parkland's acquisition of Pioneer gas stations in 14 communities where the Bureau concluded that the parties' post-merger market share would be between 39 and 100 per cent.[16] This will be an interesting case to follow as it will shed light on the Bureau's current approach to mergers that it finds competitively problematic. In addition, the Bureau recently concluded three transactions by way of consent agreement. In Holcim Ltd's acquisition of LaFarge SA, the Bureau reached an agreement where it has the sole discretion to approve a buyer for assets to be divested and will only do so if it concludes that the buyer, in a global transaction, will provide effective competition in Canada.[17] In BCE and Rogers' acquisition of Glentel, the Bureau reached an agreement whereby the parties, as the two largest players in the telecommunications industry, must install firewalls to prevent the sharing of competitively sensitive information.[18] Finally, in Kingspan Group Limited's proposed acquisition of rival Vicwest Inc, the Bureau required the divestiture of Vicwest's manufacturing facility in Hamilton, Ontario, with the discretion to approve the buyer.[19]

A proposed amendment to the CA was introduced in 2014 and, if enacted, would expand the concept of affiliation to include a broader range of organisations. This will potentially increase the number of transactions for which PMN requirements apply.

All of these developments reflect continuing vigilant enforcement by the Bureau, but in a flexible and transparent environment that should lead to more predictable outcomes for merging parties.

---

15 Jeanne Pratt, Senior Deputy Commissioner of Competition, 'Profile: Jeanne Pratt, A Journey of Discovery', SSNIP Bi-Annual Mergers Committee Newsletter, CBA national Competition Law Section (Spring 2015).

16 Competition Bureau, 'Competition Bureau challenges a merger between gas retailers Parkland and Pioneer' (30 April 2015): www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03917.html.

17 Competition Bureau, 'Holcim/Lafarge merger: Competition Bureau accepts the sale of all of Holcim's operations in Canada' (4 May 2015): www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03919.html.

18 Competition Bureau, 'Competition Bureau statement regarding BCE and Rogers' acquisition of GLENTEL' (14 May 2015): www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03924.html.

19 Competition Bureau, 'Kingspan/Vicwest merger: Competition Bureau requires the sale of Vicwest's manufacturing facility in Hamilton' (19 May 2015): www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03932.html.

DANY H ASSAF

Torys LLP

Dany Assaf is co-chair of the competition and foreign investment review practice at Torys LLP in Toronto, Canada. He is recognised as a leading expert in competition law, including being named as one of the world's 'Top 40 Competition Lawyers Under 40' by *Global Competition Review*.

He has extensive domestic and international advisory experience, and has been involved in many of Canada's highest profile transactions and investigations in all areas of competition law. He has appeared at all levels of court including the Supreme Court of Canada. He provided testimony on proposed amendments to the Competition Act before the Canadian Senate and on the Investment Canada Act to the Canadian Parliamentary Committee on Industry, Science and Technology. He is a former adjunct professor of competition law and co-author of *Competition and Antitrust Law: Canada and The United States* (4th edition) for LexisNexis Butterworths (2014). He served as a private sector adviser to the International Competition Network and is past chair of the Economics Committee of the Canadian Bar Association's Competition Law Section. He holds a BComm (with distinction) from the University of Alberta and an LLB from the University of Toronto.

REBECCA MOSKOWITZ

Torys LLP

Rebecca Moskowitz's practice focuses on all aspects of competition law and foreign investment review. She assists clients on matters under the Competition Act, including complex merger reviews, reviewable trade practices and cartel matters, and on foreign investment matters under the Investment Canada Act. Her experience includes both domestic and complex, multi-jurisdictional competition matters. She also advises clients on compliance with the marketing and advertising aspects of the Competition Act, and on developing and maintaining effective compliance programmes.

She has been published in distinguished journals and other well-regarded publications discussing competition law-related matters. She holds a JD from the University of Western Ontario and a BA (with honours) from the University of Toronto.

MARINA CHERNENKO

Torys LLP

Marina Chernenko's practice focuses on all aspects of competition and antitrust law. She assists clients on matters under the Competition Act and the Investment Canada Act. Her experience includes both domestic and complex, multi-jurisdictional competition matters.

She holds a JD from Osgoode Hall Law School, York University and a BA (with honours) from the University of Toronto.

TORYS LLP
79 Wellington Street West, Suite 3000
Box 270, TD Centre
Toronto, Ontario
M5K 1N2
Canada
Tel: +1 416 865 0040/+1 416 865 7303
Fax: +1 416 865 7380
dassaf@torys.com
rmoskowitz@torys.com
mchernenko@torys.com
www.torys.com