New Filing Fee for Competition Bureau Merger Reviews

April 27, 2018

On April 25, 2018, the Competition Bureau ("Bureau") announced that the filing fee for merger notifications (including requests for Advance Ruling Certificates ("ARC Requests")) will increase from C$50,000 to C$72,000 effective, May 1, 2018.

The Bureau also announced that going forward, this filing fee will be subject to inflation and will be reviewed annually.

Merger Review by the Bureau

The *Competition Act* ("CA") requires companies to file a pre-merger notification with the Bureau when a proposed transaction meets both the party-size and transaction-size thresholds under the CA. Pre-merger notification thresholds under the CA are discussed in more detail in our February 2018 bulletin. The new filing fee will apply to all pre-merger notifications, including ARC Requests.

Rationale for the Fee Increase

The Bureau cited a number of reasons for the increase in its Draft for Public Consultation (published in October 2017). These reasons included:

- Compound inflation alone since the previous fee increase (in 2003) would place the filing fee at C$65,500.
- The cost of merger reviews have increased due to:
    - heightened requirements for more complex quantification of anti-competitive effects, stemming from the Supreme Court of Canada's decision in *Tervita*;
    - a trend toward more complex mergers;
    - the increased volume of documents and data that accompany a filing; and
    - higher costs associated with hiring economic and industry experts.
- Rising operating and salary costs have made the Bureau's efforts to deliver merger reviews within the limits of current funding unsustainable.
- The increase will align with the Government of Canada's initiative on modernizing service fees in accordance with the 2017 *Service Fees Act*.

- The Bureau is also subject to a 5 per cent budget reduction over the next three years associated with a restructuring within the Department of Innovation, Science and Economic Development to support the Government of Canada's Innovation and Skills Plan announced in 2017.
- Increased revenues will allow the Bureau to hire economic, industry and legal experts more frequently, and to continue to improve document management and review processes.

The Bureau arrived at the amount of C$72,000 based on a costing analysis, as well as a comparative analysis with antitrust regulators in other jurisdictions. In announcing the implementation of its proposal, the Bureau affirmed that the new fee will ensure it has adequate resources to fulfil its mandate and to continue to meet its service standards.

By

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