Information Sharing in Canadian Competition and Foreign Investment Reviews

April 19, 2018

The Competition Bureau ("Bureau") and the Investment Review Division ("IRD") of Innovation, Science and Economic Development Canada have jointly issued a note that sets out the framework for co-operation between them when they are conducting parallel reviews of the same transaction. Although their reviews are conducted separately, and co-operation between the Bureau and IRD has long been the norm, this framework provides parties undergoing such reviews with an understanding of what relevant information the Bureau and IRD will share throughout the review processes, including submissions received from the parties, conclusions, and proposed remedies.

Competition Review in Canada

The Bureau administers and enforces the *Competition Act*, which regulates anti-competitive conduct in the Canadian markets. Deals must be notified to the Bureau if they meet both the party-size and transaction-size notification thresholds under the *Competition Act.* If a deal is notifiable, the Bureau reviews the proposed transaction and assesses its potential impact on competition in Canada. Based on the findings, the Bureau can extend its review with supplementary requests for information, negotiate with the parties to implement remedies such as divestiture of certain assets, or challenge the transaction.

Foreign Investment Review in Canada

IRD administers and enforces the *Investment Canada Act*, which provides for the review of significant investments in Canada by non-Canadians. It reviews transactions that involve a non-Canadian investor and meet the transaction-size thresholds set out in the *Investment Canada Act* to ensure that they result in net benefit to Canada. This review involves a net benefit analysis based on a variety of factors including, but not limited to, the effect of the investment on economic activities in Canada, its effect on competition within any industry, and its compatibility with national policies. The Minister of Innovation, Science and Economic Development Canada can prohibit the foreign investment upon advice from IRD that a transaction is not beneficial to Canada's interests.

Pre-merger notification thresholds under both the *Competition Act* and the *Investment Canada Act* are discussed in more detail in our February 2018 bulletin. These reviews are independent processes that apply different laws, but they can overlap when the same transaction triggers reviews under both the *Competition Act* and the *Investment Canada Act*. In particular, IRD's net benefit analysis requires an assessment of impact on competition, similar to the Bureau's analysis. Both organizations can maximize efficiency in general by sharing information about timeframes, common analyses, and the remedies considered. Not surprisingly, the note sheds light on IRD's general practice of soliciting the Bureau's views during the course of its foreign investment review, which is generally expressed to parties while undergoing parallel review processes. The note also clarifies that IRD will generally refrain from making a decision on foreign investment without considering a complete analysis from the Bureau, which has also been standard IRD practice, but has not previously been set out in writing for parties' information in advance of commencing a review.

Scope of Information Sharing

The note provides that the Bureau and IRD will cooperate during parallel reviews in the following ways:

- Participating in knowledge transfer sessions in areas of mutual interest;
- Designating liaison officers for review of the same transaction;
- Exchanging information on timing and other procedural matters;
- Sharing submissions provided by the parties;
- Sharing analytical findings and conclusions related to the effects of the transaction on competition; and
- Communicating proposed remedies or possible undertakings.

The confidentiality of the shared information will remain intact. No information will be shared by the Bureau or IRD if doing so would be inconsistent with obligations under any relevant law or policy, and each organization will only comply with requests for disclosure from third parties upon notice and consent, as are their present policies and statutory obligations.

By

Rae Deulrae Min, Denes A. Rothschild

Expertise

Competition/Antitrust and Foreign Investment

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.