



# Pre-Merger Notification Interpretation Guideline Number 11

Pre-Merger Notification Interpretation Guideline  
Number 11: Corporate Spin-Offs

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**For information on the Competition Bureau's activities, please contact:**

Information Centre  
Competition Bureau  
50 Victoria Street  
Gatineau QC K1A 0C9

Tel.: 819-997-4282  
Toll free: 1-800-348-5358  
TTY (for hearing impaired): 1-866-694-8389  
Fax: 819-997-0324  
Website: [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca)

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**Communications and Marketing Branch**

Innovation, Science and Economic Development Canada  
C.D. Howe Building  
235 Queen Street  
Ottawa, ON Canada  
K1A 0H5  
Email: [ISED@Canada.ca](mailto:ISED@Canada.ca)

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## Enforcement guidelines

June 20, 2011

Notice

### **This publication replaces the following Competition Bureau publication:**

Enforcement Guidelines — Notifiable Transactions under Part IX of the *Competition Act* — Interpretation Guidelines, April 25, 2000

This Interpretation Guideline is issued by the Commissioner of Competition ("Commissioner"), who is responsible for the administration and enforcement of the [Competition Act](#) ("Act"). The purpose of this Guideline is to assist parties and their counsel in interpreting and applying the provisions of the Act relating to notifiable transactions. This Guideline sets out the general approach taken by the Competition Bureau ("Bureau") and supersedes all previous statements made by the Commissioner or other Bureau officials. This Guideline is not intended to be a binding statement of how discretion will be exercised in a particular situation and should not be taken as such, nor is it intended to substitute for the advice of legal counsel to the parties, or to restate the law. Guidance regarding a specific proposed transaction may be requested from the Merger Notification Unit<sup>[Footnote 1](#)</sup>.

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## Background

Paragraph 113(a) of the Act provides an exemption from prenotification under Part IX of the Act in cases where all parties to a transaction are affiliates of each other. The definition of affiliates for purposes of the Act is found in subsection 2(2) of the Act.

A spin-off is a form of corporate reorganization that results in a subsidiary or division of a corporation becoming an independent company. In a spin-off, the parent corporation transfers part of its assets to the new independent, while the shares of the independent are distributed to the shareholders of the parent without surrender by them of any stock in the parent.

## Policy

Corporate spin-offs may be treated as acquisitions of assets by the new corporate entity or acquisitions of shares of the new corporate entity and may be subject to prenotification if the party-size and transaction-size thresholds are exceeded, unless the affiliates exemption under paragraph 113(a) of the Act applies.

## Example 1

A corporation (Acorp) is a publicly traded corporation. Bcorp is the major controlling shareholder, holding 51 percent of the shares of Acorp. Ccorp is a minority shareholder with 25 percent. Acorp decides to spin off one of its divisions. For that purpose, Acorp incorporates a new, wholly-owned subsidiary, Dcorp, and transfers all of the assets of the division, valued at \$40 million in the audited financial statements of Acorp, to Dcorp in exchange for shares of Dcorp. Acorp intends to distribute the shares of Dcorp to Acorp's shareholders in equal

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proportions to the shares they hold in Acorp and to list the shares of Dcorp on a recognized stock exchange in Canada. After the reorganization, Bcorp will hold 51 percent of the shares of both Acorp and Dcorp. Accordingly, Bcorp's acquisition of shares in Dcorp will be exempt under paragraph 113(a) of the Act because Bcorp and Dcorp are affiliates. Similarly, Dcorp's acquisition of Acorp's assets will be exempt. However, Ccorp is not affiliated with Dcorp. If Ccorp and Dcorp (together with its affiliates, Acorp and Bcorp) meet the party-size threshold under section 109 of the Act and given that Dcorp meets the transaction-size threshold under subparagraph 110(3)(a)(i) of the Act, Ccorp will be required to give notice of its acquisition of a 25 percent interest in the shares of Dcorp.

## Example 2

A corporation (Acorp) is a widely-held corporation traded on a stock exchange, with no one shareholder holding more than 10 percent of the outstanding shares. Acorp decides to spin off one of its divisions. For that purpose, a new corporation, Bcorp, is established. A person that is unrelated to Acorp or its shareholders initially owns Bcorp. Acorp transfers all of the assets of the division to Bcorp in exchange for substantially all of the outstanding shares of Bcorp. Acorp intends to distribute the shares of Bcorp to its shareholders in equal proportions to the shares they hold in Acorp and to list the shares of Bcorp on a recognized stock exchange in Canada. At the outset, because Acorp does not control Bcorp and they are not under common control, the exemption for affiliates under paragraph 113(a) of the Act does not apply. Accordingly, the transfer of assets from Acorp to Bcorp may be notifiable under subsection 110(2) of the Act. However, the acquisition of shares of Bcorp by the shareholders of Acorp would not be notifiable because none of the shareholders will exceed the 20 percent threshold for publicly traded voting shares under subparagraph 110(3)(b)(i) of the Act.

**For further information, please contact:**

### Merger Notification Unit

Competition Bureau  
Mergers Branch  
50 Victoria Street  
Gatineau, Quebec K1A 0C9

Telephone: 819-997-0615  
Toll-free: 1-800-348-5358  
Fax: 819-994-0998

E-mail: [ic.avisdefusionmergnotification.ic@canada.ca](mailto:ic.avisdefusionmergnotification.ic@canada.ca)

## Footnote

### Footnote 1

For further information, please refer to the [Procedures Guide for Notifiable Transactions and Advance Ruling Certificates Under the \*Competition Act\*](#) at p.14.