



# Pre-Merger Notification Interpretation Guideline Number 2

Number of Notices—Multiple Step or Continuous  
Transactions (Section 114 of the Act)

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Cat. No. lu54-35/2-2011E-PDF  
ISBN 978-1-100-18447-0  
60912

2011-06-20

*Aussi offert en français sous le titre Avis d'interprétation no 2 sur les préavis de fusion : Article 114 de la Loi. Nombre d'avis — Transactions en plusieurs étapes ou continues.*



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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

Section 114 of the Act places an obligation on parties to a proposed transaction that exceeds the party-size and transaction-size thresholds to notify the Commissioner of Competition. Section 110 of the Act indicates the types of transactions subject to notification and the applicable thresholds.

A separate notice and the corresponding fee are required for each proposed transaction. Most transactions are fairly straightforward in their structure and in that respect raise no particular pre-merger notification concerns. However, some proposed transactions are structured in a more complex manner and may involve numerous parties, assets or steps. A series of proposed transactions may raise an issue regarding the actual number of transactions being proposed and, as such, the number of notices required.

## Policy

Depending on the facts of any particular case, a series of proposed transactions may be regarded as:

1. one continuous, or multiple step, transaction with several steps for which only one notice and fee is required, or
2. several independent transactions for which several notices and fees may be required.

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Generally, every proposed transaction under section 110 of the Act constitutes a separate proposed transaction for the purposes of notice under section 114 of the Act. However, two or more proposed transactions under section 110 typically will be considered one continuous transaction if all steps in the series of proposed transactions constitute a sufficiently connected sequence of events. To demonstrate a sufficiently connected sequence of events, the legal documents providing for the events must show clearly, comprehensively and unequivocally that each event in the series may proceed only if each previous event in the series has been completed and that the entire series will be completed within one year from the day on which the information prescribed under section 114 has been supplied. However, where the series of events cannot be completed within one year, the parties may apply to the Commissioner for an extension of time under section 119 of the Act. For information on extensions of time under section 119, see [Interpretation Guideline N°.8](#).

A continuous transaction that has been approved by a judicial or regulatory body, such as court-approved "plans of arrangement" under applicable corporations legislation, the *Companies' Creditors Arrangement Act*, or both, may be considered one continuous transaction.

Counsel who intend to characterize a series of proposed transactions as a continuous transaction should:

1. ensure that the transaction description in the notice or in the Advance Ruling Certificate request is as complete and detailed as possible;
2. set out the reasons for characterizing the series of proposed transactions as a continuous transaction, and refer to the specific paragraphs in the legal documents supporting the continuous transaction claim; and
3. include the relevant legal documents.

**For further information, please contact:**

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### **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.