



Pre-Merger Notification Interpretation Guideline Number 5

Acquisitions of Non-voting Shares and Convertible
Securities (Subsection 110(3) of the Act)

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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^{[Footnote 1](#)}.

Background

Subsection 110(3) of the Act sets out the transaction-size thresholds for the acquisition of voting shares of a corporation.

Policy

The phrase "person or persons", found in subparagraphs 110(3)(b)(i) and 110(3)(b)(ii) of the Act, should be interpreted in the same manner as the expression "person or persons together with their affiliates", found in paragraph 110(3)(b).

Different thresholds exist under paragraph 110(3)(b) of the Act according to whether the voting shares of a corporation are publicly traded. Publicly-traded voting shares include shares which have been listed and posted for trading on any stock exchange in Canada recognized as such by the appropriate provincial securities authority, or which are traded in any other market, including over-the-counter markets, if the prices at which they have been traded are regularly published in a bona fide news, business or financial publication of general and regular circulation.

Acquisitions of non-voting shares of a corporation are not notifiable under Part IX of the Act. Thus, where non-voting shares are being acquired from a third party holding them and reflecting them on its balance sheet as assets, the acquisition is not notifiable.

In the case of an acquisition of convertible securities, such as convertible debentures, convertible non-voting shares, options, warrants and rights, notice of the acquisition need only be given when the securities will be converted to voting shares and if the party-size and transaction-size thresholds have been exceeded.

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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.