



Pre-Merger Notification Interpretation Guideline Number 8

"Substantially Completed" and "Completed" (Sections
103 and 119 of the Act)

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Enforcement guidelines

June 20, 2011

Notice

This publication replaces the following Competition Bureau publication:

Enforcement Guidelines — 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

Under Part VIII of the Act, where the Commissioner is satisfied by a party or parties to a proposed transaction that the Commissioner would not have sufficient grounds on which to apply to the Competition Tribunal under section 92 of the Act, the Commissioner may, pursuant to section 102 of the Act, issue an Advance Ruling Certificate ("ARC"). Section 103 of the Act provides that the Commissioner shall not apply to the Tribunal under section 92 if the transaction to which the ARC relates is substantially completed within one year after the certificate is issued and if the set of facts on which the certificate is issued remains substantially the same.

Section 119 of the Act provides that a notice under section 114 of the Act is valid for one year from the date on which the notice is given and the prescribed information is supplied to the Commissioner. Where a proposed transaction is not completed within one year or such longer period as the Commissioner may specify in any particular case, another notice will be required if the parties wish to complete the proposed transaction.

Policy

For purposes of section 103 of the Act, a transaction is "substantially completed" when:

1. in an acquisition of assets, title to all of the assets has passed from the vendor(s) to the purchaser(s);
2. in an acquisition of shares, the shares have been transferred from the vendor(s) to the purchaser(s);
3. in an amalgamation, the amalgamation has become effective according to the statute under which the amalgamation was completed;

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4. in a combination, title to all of the assets to be contributed to the combination has passed from the contributor(s) to the combination; and
 5. in an acquisition of an interest in a combination, title to that interest has passed from the vendor(s) to the purchaser(s). After closing there may remain some ancillary details of a minor or routine nature to be completed, such as filings for registrations. Once they have been attended to, the transaction will be finally completed.

Under section 119 of the Act, the Commissioner may choose to extend the one-year period for completing a transaction. Any extensions granted will be for a limited range of circumstances and for a limited period of time. For example, an extension of up to several months may be granted where unforeseen reasons cause a delay, or where the proposed transaction requires the regulatory approval of either administrative tribunals or other agencies and it is not reasonably possible to obtain the approvals within the one-year period. Requests for extension of the one-year period should be made as soon as the parties become aware that there may be some difficulty in closing the transaction within the statutory period.

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.