



# Hostile Transactions Interpretation Guideline Number 1

Bureau Policy on Disclosure of Information

This publication is not a legal document. It is intended to provide general information and is provided for convenience. To learn more, please refer to the full text of the Acts or contact the Competition Bureau.

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## Enforcement guidelines

July 21, 2011

Notice

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

Enforcement Guidelines — [Hostile Transactions: Bureau Policy on Disclosure of Information](#)

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](#).

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## Policy

Generally, in providing information, including in the context of a hostile transaction, the Bureau is guided by section 29 of the *Competition Act* (the "Act") and the enforcement policy and practice articulated in the Bureau's Information Bulletin on the Communication of Confidential Information Under the *Competition Act* (the "Bulletin"). Section 29 protects information provided to or obtained by the Bureau, including the identity of any persons who have provided it, subject to certain exceptions. In particular, this section provides for the communication of information in four circumstances: to a Canadian law enforcement agency; for the purposes of the administration or enforcement of the Act; where information has been made public; or when authorized by the person who provided the information. Please consult the Bulletin for further details on the scope and application of section 29 of the Act.

The Act places limited obligations on the Bureau to disclose information to the parties to a hostile transaction. Subsection 114(3) of the Act requires the Bureau to immediately advise a target of the date upon which the Bureau receives a filing from a bidder.

With respect to a non-hostile transaction, the Bureau is generally willing to provide updates, where appropriate, on the progress of its review, speaking with counsel for both parties, separately or together (as requested by the purchasing party). Typically, in such situations, the Bureau provides its complexity designation, the anticipated timing of its review, the date upon which the other party has certified completeness of any SIR response, the Bureau's preliminary and final views on market definitions and relevant section 93 factors, as developed, and its preliminary and final conclusions regarding a potential prevention or lessening of competition (collectively, "Pertinent Information"). Having considered the sensitivities involved in sharing information with both parties in a hostile transaction, the Bureau has determined that, where it shares Pertinent Information with one party, it

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will strive to disclose such Pertinent Information equitably to the other party, subject, in all cases, to restrictions on the disclosure of confidential information defined by section 29 of the Act.

The Bureau acknowledges that hostile transactions can give rise to particularly complex considerations that may impact the straightforward application of the foregoing policy on disclosure of Pertinent Information, including, for example, in circumstances involving multiple competing bids. Accordingly, the Bureau will be mindful of such considerations in determining, on a case-by-case basis, how the policy is applied.

**For further information, please contact:**

**Merger Notification Unit**

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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.