

Canada

New merger guidelines update the Bureau's approach to merger analyses; the Bureau continues to scrutinise efficiency defence and Canada-US enforcement cooperation gets closer

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New merger enforcement guidelines released and efficiency defence continues to be scrutinised

On 21 September, the Competition Bureau released its revised Merger Enforcement Guidelines (MEGs) which are intended to reflect the years of merger review experience the Bureau has acquired since it released its original merger guidelines in 1991. While the new MEGs do not depart radically from the 1991 MEGs, they do clarify the Bureau's approach to a number of

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key areas of merger review, including the treatment of unilateral and coordinated effects, when the Bureau will find a merger is likely to result in a removal of future competition, and examples of how "raising rivals' costs" and "portfolio effects" theories could be utilised. The new MEGs also reassert an expansive interpretation of the Bureau's jurisdiction to examine the acquisition of a "significant interest" short of control and confirm the Bureau's adherence to the hypothetical monopolist methodology for the definition of relevant markets. They also establish strict standards for entry arguments and demonstrate a continued hostility towards efficiency arguments. Overall, the new guidelines suggest that the Bureau will operate a vigilant and sophisticated merger review regime. See <http://strategis.ic.gc.ca> for the complete text of the new MEGs.

On the same date, the Bureau announced that it had launched a round of consultations on the role of efficiencies in merger review and had retained a private firm to conduct the consultations on the Bureau's behalf. The process requires written comments by 21 December with an anticipated release of a summary of comments received in late January 2005. Subsequently, consultation meetings will be held in January in Toronto, Montreal and Vancouver and the Bureau anticipates having a final consultation report by April 2005. The consultation paper is available at <http://www.primestrategies.ca>, together with details on how to contribute to the consultation process.

Enhanced competition law cooperation between Canada and the United States

On 5 October the Bureau announced that Canada and the United States have signed an agreement to enhance cooperation on competition law enforcement. The agreement augments the 1995 memorandum of understanding between Canada and the United States (which set out a framework for notification, coordination and cooperation on enforcement activities, exchange of information, avoidance of conflict and positive comity) in that it sets out with more specificity the circumstances and procedures for making positive comity requests. The new agreement is available at <http://strategis.ic.gc.ca>.