

## Frequently Asked Questions

**4. We are in merger talks with another company that recently acquired one of our two other competitors in this field. At what point does the Competition Bureau decide it should review mergers and acquisitions?**

The *Competition Act* specifies that very large mergers are “notifiable”; parties must provide detailed information to the Competition Bureau so that the merger can be reviewed, before the transaction is closed. Both of the following thresholds must apply for a merger to be notifiable:

- Parties to the transaction and their affiliates have aggregate book value of assets in Canada, or gross revenues from sales in, from or into Canada, over \$400 million, AND
- The acquisition exceeds \$86 million in either assets in Canada or gross revenues from sales in or from Canada.

These are the 2015 thresholds. They are updated annually.

In addition, the Bureau has the authority to review any merger where the parties are competitors or potential competitors and the merger could “substantially lessen or prevent” competition, regardless of whether or not it is notifiable. The *Competition Act* sets out specific factors that will be considered in determining whether a merger will prevent or lessen competition, such as:

- the extent to which foreign products or competitors may provide effective competition to the merged entity;
- whether one of the parties’ business (or part of it) has failed, or is likely to fail, and
- whether acceptable substitutes for the parties’ products/services are likely to be available.

The Bureau’s *Merger Enforcement Guidelines* describe the analysis it undertakes in analyzing a merger or proposed merger; review of the Bureau’s enforcement activity provides additional guidance. In 2011, the Bureau initiated legal proceedings in connection with a small, non-notifiable merger; that litigation continued until the 2015 decision of the Supreme Court of Canada. Parties should seek advice before acquiring competitors, regardless of transaction or party size.

For specific legal advice on the application of the merger provisions of the *Competition Act*, contact Carol Anne O’Brien at [caob@caobrienlaw.com](mailto:caob@caobrienlaw.com) or (416) 640-7270.