

MAY 3, 2018

Canadian *Competition Act* Amended to Harmonize Treatment of Corporations and Non-Corporate Entities

Authors: [John Bodrug](#) and [Jim Dinning](#)

Years after first being proposed, amendments to the Canadian *Competition Act* (Act) harmonizing the application of the “affiliate” rules to corporate and non-corporate entities, including partnerships and trusts, were proclaimed in force on May 1, 2018. Although technical in nature, these amendments can have a significant impact on how non-corporate entities are treated under the Act.

Affiliate Exemptions

Agreements and transactions between affiliates under common control are, for good reason, exempt from a number of provisions of the Act, including the conspiracy, bid rigging, price maintenance and merger notification provisions. It is generally accepted that many types of agreements or mergers only between entities under common control should not be subject to certain prohibitions under the Act because these entities are not expected to compete with one another. Rather, they are expected to coordinate their activities as efficiently as possible.

Although the prior definition of an “affiliate” under the Act addressed corporations under common control, it did not, for example, apply at all to trusts and did not apply fully to partnerships. Although Competition Bureau (Bureau) guidelines stated that the Bureau would consider whether other types of entities are under common control in deciding whether to refer an agreement for prosecution under the conspiracy provisions, such guidelines are not binding on the Bureau or a court.

Pre-Merger Notification Thresholds

The Act requires that mergers, acquisitions and certain other forms of business combinations that meet certain prescribed financial thresholds be notified to the Bureau before they can be completed.

The pre-merger notification thresholds require that assets and revenues of the merging parties’ affiliates be included in certain calculations. Previously, because the affiliate rules did not fully apply to non-corporate entities, in some circumstances parties could exclude the assets and revenues of certain related entities from these threshold calculations. This threshold analysis has been simplified by the amendments to the Act, but the broadening of the concept of affiliates means that parties may now have to make pre-merger notifications in certain circumstances in which a notification would not previously have been required.

Implications

In summary, the amendments (1) provide corporations and other entities with greater comfort that certain types of arrangements with their non-corporate affiliates will be exempt from the conspiracy and other provisions of the Act and (2) may affect the assessment whether certain types of transaction structures will be subject to mandatory pre-merger notification.

Key Contacts: [John Bodrug](#) and [Jim Dinning](#)

This information and comments herein are for the general information of the reader and are not intended as advice or opinions to be relied upon in relation to any particular circumstances. For particular applications of the law to specific situations the reader should seek professional advice.