Competition Bureau Canada    Bureau de la concurrence Canada

**SPEAKING NOTES**

**For**

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## I. Introduction

In Canada, the current merger provisions of the *Competition Act* ("Act") have been in effect for approximately twenty years. During this time, the Competition Bureau ("Bureau") has sought merger remedies in over fifty cases. While most of the merger remedies negotiated by the Bureau have been successful, a number have experienced problems. In several cases, such problems have resulted in the divestiture failing to materialize and the assets ultimately being returned to the merging parties.[1] As a result of these experiences, the Bureau has progressively fine-tuned both the design and implementation of merger remedies. I will outline and discuss, in this paper, some of the more significant areas in which we have refined our approach to merger remedies, as well as the policies and principles that the Bureau employs when working with competition authorities in other jurisdictions.

## II. Implementing Merger Remedies: From Consent Orders to Consent Agreements

In 1986, when the current merger provisions of the *Competition Act* came into force, merger remedies were governed by a formal consent order process whereby, on consent of the Bureau and the merging parties, the Competition Tribunal ("Tribunal") had the jurisdiction to order any action to eliminate an alleged substantial lessening or prevention of competition.[2] As a result of certain difficulties experienced with the Tribunal process on early consent order applications,[3] the Bureau and the business community quickly developed a preference for post-closing undertakings and, where appropriate, pre-closing restructuring (*i.e.,* "fix-it-first" solutions)[4] to remedy competition issues arising from a merger.[5] This undertakings process, however, was not without its flaws. For example, undertakings were neither transparent nor

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[1] For example, in Abitibi/Donahue (2001), the divestiture of a newsprint mill was not completed. In Air Canada/Canadian Airlines (1999), the divestiture of the regional airline of Canadian was not completed. In Chapters/Indigo (2001), the divestiture of various bookstores was not completed.

[2] The standard for achieving an acceptable remedy in either a contested or consent proceeding is set out by the Supreme Court of Canada in *Canada (Director of Investigation and Research) v. Southam Inc*. In this case, the Court concluded that "the appropriate remedy for a substantial lessening of competition is to restore competition to the point at which it can no longer be said to be substantially less than it was before the merger." See: *Canada (Director of Investigation & Research, Competition Act) v. Southam Inc.,* [1997] 1 S.C.R. 748 at 85.

[3] For example, the Tribunal rejected the first consent order application submitted by the Director and the merging parties in *Canada (Director of Investigation and Research) v. Palm Dairies Ltd.* (1986), 12 C.P.R. (3d) 540 (Comp. Trib.). The case of *Canada (Director of Investigation and Research) v. Imperial Oil Ltd.* (1990), 31 C.P.R. (3d) 277 (Comp. Trib.) required an extensive hearing and several attempts to design a draft order that the Tribunal found acceptable.

[4] A "fix-it-first" solution occurs when: the vendor is able to divest the relevant assets to an approved buyer prior to, or simultaneously with, the closing of the merger; or there is a purchase and sale agreement in place, which identifies an approved buyer for a specific set of assets, and the divestiture is executed simultaneously with the merger. The Bureau strongly prefers fix-it-first solutions, as such solutions: alleviate concerns about whether the remedy package will be marketable; ensure that the assets in question do not deteriorate; and restore competition in the relevant markets as expeditiously as possible.

[5] This shift to preferring undertakings came about in 1991.

recognized in the *Competition Act*. As a result, enforceability was a concern. Accordingly, the Bureau eventually reverted to a formal Tribunal consent order process, and only occasionally negotiated post-closing undertakings.[6]

In 2002, the law changed to allow for a consent agreement registration process. Specifically, the Bureau and the merging parties can negotiate a consent agreement on their own (*i.e.,* absent Tribunal oversight), which they can register with the Tribunal.[7] Once registered, a consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal. Importantly, consent agreements are considerably more transparent than undertakings. For example, while an undertaking is no more than a private agreement, a consent agreement, once registered, is accompanied by a public version, which is made available on the Tribunal website. Furthermore, in many cases, the Bureau publishes a technical backgrounder, outlining the analysis that gave rise to the remedy.

While the consent agreement registration process has many advantages with respect to implementation, the success of this approach, in any given case, depends on the consent agreement containing terms and conditions that are both effective and enforceable. To this end, the Bureau very recently published a Merger Remedies Bulletin[8] ("Remedies Bulletin") to provide guidance on the general principles, terms, and conditions that the Bureau applies to the design of merger remedies. In the balance of this paper, I will outline and discuss the elements of, and recent changes to, some of the more important principles, terms, and conditions that the Bureau applies when it designs merger remedies. I will conclude with a discussion of the principles and policies employed by the Bureau when working with competition authorities in other jurisdictions.

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[6] While there were no consent orders between 1991 and 1996 (due to the use of undertakings), the Bureau went back to the consent order process in 1997.

[7] See section 105 of the *Competition Act*: "105. (1) The Commissioner and a person in respect of whom the Commissioner has applied or may apply for an order under this Part, other than an interim order under section 103.3 or a temporary order under section 104.1, may sign a consent agreement; (2) The consent agreement shall be based on terms that could be the subject of an order of the Tribunal against that person; (3) The consent agreement may be filed with the Tribunal for immediate registration; (4) Upon registration of the consent agreement, the proceedings, if any, are terminated, and the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal."

Note that, once a consent agreement is registered, there is a limited right of intervention. Section 106(2) of the Act states: "A person directly affected by a consent agreement, other than a party to that agreement, may apply to the Tribunal within 60 days after the registration of the agreement to have one or more of its terms rescinded or varied. The Tribunal may grant the application if it finds that the person has established that the terms could not be the subject of an order of the Tribunal."

[8] Competition Bureau, *Information Bulletin on Merger Remedies in Canada* (Government of Canada: Ottawa, 2006) Online: <http://www.competitionbureau.gc.ca/PDFs/Mergers_Remedies_PDF_EN1.pdf> [Hereinafter "*Remedies Bulletin*"]

## III. Designing Merger Remedies: Principles, Terms, and Conditions[9]

One of the most fundamental principles acknowledged in the Bureau's Remedies Bulletin is that the terms and conditions of merger remedies will be tailored to the particular facts of the case at hand, and reflect the Bureau's ongoing experience regarding the efficacy of previous remedies.[10] Reflecting the Bureau's past experience, the Remedies Bulletin highlights several important areas where the design, and thus effectiveness, of merger remedies have been fine-tuned. Most notable among these are the provisions dealing with structural versus behavioural remedies, the viability of the assets chosen for divestiture, timely divestiture periods, no minimum price and crown jewel provisions, and the role of the divestiture trustee. I will discuss each in turn.

### i) Structural vs. Behavioural Remedies[11]

Consistent with international practice, the Bureau has a strong preference for structural merger remedies[12] (*i.e.,* divestitures) and will seldom accept standalone behavioural remedies. As

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[9] Note that the principles, terms, and conditions outlined in this section are identical to those found in the recently published Remedies Bulletin.

[10] *Remedies Bulletin*, at Preface.

[11] In general, a structural remedy addresses the anti-competitive effects arising from a merger by directly intervening in the competitive structure of the market. Divestitures are the most common form of structural remedy. In some cases, a divestiture (or licensing) of intellectual property, so long as no ongoing monitoring and enforcement is required, may also be considered a structural remedy. A behavioural remedy, on the other hand, addresses the anti-competitive harms stemming from a merger by modifying or constraining the behaviour of the merging firms. Behavioural remedies are normally ongoing and frequently require a substantial amount of monitoring and enforcement.

Note that quasi-structural remedies are a sub-category of structural remedies in that they effect structural change. Quasi-structural remedies are meant to reduce barriers to entry, provide access to necessary infrastructure or key technology, and otherwise facilitate entry or expansion into the relevant market. Examples of quasi-structural remedies, under certain circumstances, include: licensing intellectual property; removing anti-competitive contract terms, such as non-competition clauses and restrictive covenants; granting non-discriminatory access rights to networks, especially when horizontal overlap is coupled with both vertical integration and a risk of foreclosure of inputs; or supporting the removal or reduction of quotas, tariffs, or other impediments imposed by regulatory bodies or industry groups, which may be achieved with the help of the merged entity.

[12] Competition authorities (*e.g.,* in particular, the U.S. DOJ, the UK, and the EC) and courts generally prefer structural remedies (*i.e.,* divestitures) to standalone behavioural remedies.

In *Canada (Commissioner of Competition) v. Canadian Waste Services Holdings Inc.* (October 3, 2001), CT-2000/002, the Tribunal stated at 110, "once there has been a finding that a merger is likely to substantially prevent or lessen competition, a remedy that permanently constrains that market power should be preferred over behavioural remedies that last over a limited period of time and require continuous monitoring of performance. This is not to say that, in cases where both the respondents and the Commissioner consent, behavioural remedies cannot be effective. However, the Tribunal notes that enforcing the remedy proposed by the respondents would have the potential of being cumbersome and time-consuming and that monitoring such order would involve the Commissioner in commercial conduct more than would the administration of the divestiture order." Also see paragraph 111 where the

the anti-competitive effects arising from a merger result from a structural change to the market, structural remedies are the most direct and effective way in which to remedy such effects. It is difficult to design a standalone behavioural remedy that will adequately replicate the outcomes of a competitive market and, even if such a remedy can be designed in clear and workable terms, it is likely to be less effective and more difficult to enforce than a structural remedy. Rather than providing a permanent solution to a competition problem, standalone behavioural remedies usually impose an ongoing burden on both the Bureau and market participants. For example, behavioural remedies impose a burden on the Bureau, as the costs associated with monitoring the activities of the merged entity are often high and such monitoring requires a range of expertise that the Bureau might not be able to commit. With respect to market participants, standalone behavioural remedies may prevent the merged entity itself, as well as other market participants, from efficiently responding to changing market conditions and may inhibit pro-competitive behaviour. As well, since it is often difficult to gauge how long it will take for new entry or expansion to be established in the relevant market, it is difficult to determine the appropriate duration of a standalone behavioural remedy.

Overall, structural remedies are typically more effective than behavioural remedies, as their terms are clearer, more certain, less costly to administer, and readily enforceable. Nonetheless, standalone behavioural remedies may be acceptable when they are sufficient to eliminate the substantial lessening or prevention of competition arising from a merger, there is no appropriate structural remedy, they require either no or minimal future monitoring by the Bureau, and they are enforceable by either the Bureau or the Tribunal. The Bureau has seldom applied standalone behavioural remedies in the past, as the circumstances in which such remedies are appropriate arise infrequently.

Despite our preference for structural remedies, the Bureau will sometimes employ a combination of behavioural and structural remedies. For example, certain behavioural terms, when they supplement or complement a core structural remedy, may be effective, particularly if used during a transition or bridging period until a competitive market structure develops. For example, behavioural terms, which allow for access to necessary inputs, or otherwise allow a purchaser and/or other industry participants to commence operations effectively and as quickly as possible, are often a desirable addition to a structural remedy.

### ii) Viability of the Assets Chosen for Divestiture

With respect to the viability of the assets chosen for divestiture, the Remedies Bulletin makes it clear that, instead of choosing assets from a mixture of those from both merging parties, the Bureau prefers a divestiture of a standalone operating business[13] from one merging party

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Tribunal notes that divestitures are described by the U.S. Supreme Court as "simple, relatively easy to administer, and sure."

[13] Ideally, such a standalone operating business would be one that has proven to be a competitive force in the marketplace.

(normally the target company being acquired in the merger) to one buyer.[14] To borrow some terms of art from our friends in the U.S., the former approach is known as a "mix and match" approach, while the latter is called a "clean sweep". A clean sweep approach reduces the uncertainty associated with both asset integration and the viability of the divestiture package, and limits the detrimental effects that could arise from the acquiring party obtaining confidential information about the assets to be divested. Owing to the increased likelihood of a successful remedy associated with a clean sweep, this approach is preferred in most other jurisdictions.[15] Where any doubts about the viability of the assets chosen for divestiture remain, the Bureau will often consult directly with the market ("market testing") and, in certain circumstances, retain an industry expert.

**iii) Timely Divestiture Periods**

The Bureau typically agrees to provide the vendor with an initial fixed period of time ("initial sale period") to sell the remedy package at the best price and terms that the vendor can negotiate with potential buyers. While a departure from previous practice, based on both the Bureau's past experience in Canada and the experience of competition authorities in other jurisdictions,[16] the Bureau has determined that three to six months is an appropriate initial sale period in which to complete the divestiture. Imposing and enforcing timely deadlines to the divestiture process improves the effectiveness of a remedy; that is, the shorter the divestiture period, the less likely such factors as the deterioration of assets, the loss of customers and/or key personnel, or changing market conditions, will undermine the effectiveness of the divestiture. Furthermore, there is no evidence that a longer initial sale period will attract more buyers. The Bureau may grant a short extension of the initial sale period in exceptional circumstances, which will be determined on a case-by-case basis. The Bureau will typically agree to keep the actual time allotted for the initial sale period confidential.[17]

If the vendor cannot sell the assets within the initial sale period, a trustee appointed by the Bureau is then given a pre-determined period of time ("trustee period") in which to complete the divestiture. The trustee period is between three and six months,[18] but may be extended in

[14] While the latter approach (*i.e.,* "clean sweep") is ideal, the Bureau has routinely utilized the former approach (*i.e.,* "mix and match") in the past.

[15] For example, the U.S. DOJ, U.S. FTC, UK, and EC all prefer the divestiture of an existing business entity with a demonstrated ability to compete in the relevant market.

[16] The U.S. FTC gives the vendor six months after the consent agreement is signed, while the U.S. DOJ gives two to three months for the vendor to locate a purchaser on its own. The UK and EC also prefer relatively short initial sale periods.

[17] The actual time period allotted for the initial sale period will normally be confidential so as to avoid giving buyers inappropriate leverage in negotiations.

[18] Three to six months for the trustee period has been the Bureau's practice for some time now.

exceptional circumstances, as determined by the Bureau on a case-by-case basis. The duration of the trustee period is made public at the outset of the trustee period.

### iv) No Minimum Price and Crown Jewel Provisions

To increase the likelihood that the divestiture will be effected during the trustee period, the Remedies Bulletin clarifies that the trustee's primary obligation is to divest the remedy package to a qualified buyer at no minimum price.[19] While the use of no minimum price provisions has been the Bureau's practice for some time, such provisions are now a matter of policy. This is consistent with the approach taken by the Bureau's foreign counterparts, where no minimum price provisions are standard practice.[20] The existence of a no minimum price provision is normally confidential during the initial sale period, but made public at the commencement of the trustee sale period.

Also activated by the trustee period, and providing the Bureau with some confidence that a viable remedy will still be effected, an additional asset package (commonly referred to as a "crown jewel") may be required upfront as part of the remedy. Importantly, while crown jewel provisions are meant to provide the vendor with an incentive for timely completion of the initial divestiture package, such provisions are not intended to be punitive. To this end, the assets that comprise the crown jewel will, as much as possible, relate to the competitive harm.[21] While the Bureau determines whether to use crown jewel provisions on a case-by-case basis, their use is becoming more frequent.[22] The existence of a crown jewel provision is normally kept confidential during the initial sale period, but made public at the commencement of the trustee sale period.

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[19] Note that the term "no minimum price" also includes those uncommon situations whereby the vendor will have to compensate (*i.e.,* make payment to) the buyer. For example, in cases where the asset(s) to be divested cannot be separated from certain liabilities, the vendor will have to compensate the buyer for any costs associated with such liabilities. Similarly, in cases where the costs associated with such liabilities are uncertain, the vendor may need to indemnify the buyer.

[20] In particular, the U.S. DOJ, UK, and EC regularly use no minimum price provisions.

[21] In other words, a crown jewel is essentially a mechanism for correcting an unsuccessful remedy by making the remedy more viable. When determining the contents of a crown jewel, the *Southam* standard will apply: "the appropriate remedy for a substantial lessening of competition is to restore competition to the point at which it can no longer be said to be substantially less than it was before the merger… [however,] If the choice is between a remedy that goes farther than is strictly necessary to restore competition to an acceptable level and a remedy that does not go far enough even to reach the acceptable level, then surely the former option must be preferred. At the very least, a remedy must be effective. If the least intrusive of the possible effective remedies overshoots the mark, that is perhaps unfortunate, but from a legal point of view, such a remedy is not defective." See: *Canada (Director of Investigation & Research, Competition Act) v. Southam Inc.,* [1997] 1 S.C.R. 748 at 85 and 89.

[22] Note that, while foreign jurisdictions are mixed on the issue of crown jewel provisions, most seem to be open to the idea, depending on the circumstances (*e.g.,* the U.S. FTC, UK and the EC).

## v) Trustee Provisions

Another important element of successful merger remedies, which the Bureau has recently fine-tuned, is our approach to the role and function of the divestiture trustee. When the sale of the assets to be divested is not completed in the initial sale period, and in the manner contemplated by the consent agreement, the Bureau will appoint a trustee to divest the assets. The inclusion of trustee provisions provides some assurance that the assets will be divested in a timely and effective manner.

During the trustee period, the trustee has the authority to control the divestiture process, subject to oversight and approval by the Bureau only. To this end, the vendor will not normally be included in the trustee divestiture process, including negotiations. Furthermore, the vendor is precluded from contacting prospective purchasers, unless otherwise approved by the Bureau. To facilitate the divestiture, the trustee has full and complete access to the personnel, books, records, facilities related to the assets in question, and any other information deemed relevant by the trustee to effect the divestiture.

To effect the divestiture, the trustee is required to use commercially reasonable efforts to negotiate the most favourable terms and conditions[23] available at that time and, if necessary, may sell the assets at no minimum price. Importantly, the trustee's opinion of what constitutes "most favourable" terms and conditions is subject to approval by the Bureau only, and the vendor's right to challenge such terms and conditions of the divestiture is limited to situations where the trustee commits malfeasance, or gross negligence, or acts in bad faith.

If, at the end of the trustee period, the trustee has submitted a divestiture plan or believes that the divestiture can be accomplished within a short period of time, the trustee period may be extended at the Bureau's discretion. In the event that the assets to be divested have not been divested within the trustee period (including any extensions to this period), the Bureau may apply to the Tribunal to effect the divestiture.[24] Depending on the particular circumstances of the case, the Bureau may recommend to the Tribunal that other assets be added, or steps be taken, in addition to those required in the divestiture package, to effect the divestiture.

[23] "Terms and conditions" includes, among other things, the sale price of the assets to be divested.

In certain circumstances, it may be necessary for the vendor to provide, or to add to, transitional means of support to the purchaser (*e.g.,* supply arrangements and other forms of technical assistance) so that the assets to be divested remain viable. Such transitional means of support, when deemed reasonable and necessary, will be in the discretion of the trustee to negotiate and conclude once the trustee period begins. Such discretion by the trustee is subject to the oversight and approval of the Bureau only.

[24] "The divestiture" implies both the initial divestiture package, as well as any subsequent crown jewel assets.

## IV. Working With Competition Authorities in Other Jurisdictions

In this last section, I discuss the principles and policies we employ when working with competition authorities in other jurisdictions.

The increasing number of global mergers has enhanced the need for communication, cooperation, and coordination among competition authorities in different jurisdictions.[25] To this end, the Bureau routinely communicates informally with its foreign counterparts to generate comprehensive and informed analyses and decisions. The Bureau also relies upon and follows a number of formal state-to-state and agency-to-agency cooperation agreements,[26] which facilitate the exchange of information and the progress of our investigations.[27] Importantly, communication and cooperation facilitate the coordination of effective remedies.

The Bureau generally coordinates with other competition authorities on remedies when a worldwide or multi-jurisdictional merger is likely to have anti-competitive effects in Canada that are similar, or related, to those that are likely to result in other jurisdictions. Coordination can involve communicating, as developments occur within jurisdictions, participating in joint discussions with the merging parties, and fashioning remedies in Canada that are parallel to those of other jurisdictions. The coordination of remedies is of particular importance for the Bureau, since it increases the likelihood that remedies will be consistently applied across jurisdictions. The greater the extent to which competition issues identified in Canada are similar to those in other jurisdictions, the greater the likelihood that coordinated remedies will be effective.

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[25] For a more in depth discussion regarding the Bureau's approach to working with competition authorities in other jurisdictions, see: Sheridan Scott, "Canadian Perspectives on the Role of Comity in Competition Law Enforcement in a Globalized World To Defer or Not To Defer? Is that the question?" (Presented to the American Bar Association's Section of Antitrust Law, Washington, DC, 2006 Spring Meeting) (Ottawa: Competition Bureau, 2006) Online: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2049&lg=e >

Also see: Sheridan Scott**,** "C" is for Competition: How we get things done in a globalized business world" (Presented to the Insight Conference**,** Montreal, Quebec**,** June 17, 2005) (Ottawa: Competition Bureau, 2005) Online: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1867&lg=e>

[26] The Bureau's current cooperation agreements can be found at: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=141&lg=e>

[27] When the Bureau requires confidential information from its foreign counterparts, such cooperation is facilitated by the provision of waivers by the merging and/or affected third parties to the antitrust authorities in foreign jurisdictions. Such waivers allow for the exchange of confidential information from foreign competition agencies to the Bureau, which would otherwise be prohibited by law in the respective foreign jurisdictions.

It should be noted that, when foreign competition agencies require confidential information from the Bureau, such cooperation is subject to the confidentiality provisions of the Act. The confidentiality provisions are found in section 29 of the Act, which permits the Bureau to disclose information, where deemed appropriate, for the purposes of the administration or enforcement of the Act.

Such an integrative and cooperative approach has several advantages. Sharing perspectives, investigative techniques, and enforcement approaches creates a wider and more diverse pool of information from which to draw, increases the likelihood that the analysis will be consistently applied across jurisdictions, streamlines the review and remedy process, reduces somewhat duplicative workloads, avoids frictions between reviewing jurisdictions, reduces uncertainty for businesses, and can lead to more effective resolutions than had we proceeded independently.

To resolve competition concerns in Canada, the Bureau may take either independent action, or determine that action beyond what is taken by foreign jurisdictions is not required. While enforcement decisions are made on a case-by-case basis, the Bureau is more likely to formalize negotiated remedies within Canada when the matter raises Canada-specific issues, when the Canadian impact is particularly significant, when the assets to be divested reside in Canada, or when it is critical to the enforcement of the terms of the settlement.[28] In contrast, the Bureau is more likely to rely on the remedies initiated through formal proceedings by foreign jurisdictions when the assets that are subject to divestiture, and/or the conduct that must be carried out as part of a behavioural remedy, are primarily located outside Canada.[29] When there are competition issues in Canada and we rely on foreign remedies, the actions taken by foreign authorities must resolve our concerns.

When coordinating cross-border remedies, one of our objectives is to prevent conflicts that may arise when remedies are intended to address competition concerns in different jurisdictions. To this end, we will listen to the views of foreign agencies regarding particular remedies and, provided the competition concerns in Canada are adequately addressed, we will make efforts to align ourselves. For example, a cross-border remedy may require us to coordinate with our foreign counterparts to ensure that a single trustee or monitor is appointed to oversee the divestiture of worldwide assets. Having a common trustee or monitor who understands the objectives of the remedies for each jurisdiction can reduce the potential for conflict when determining acceptable buyers for the divested assets.

Overall, the Bureau's approach to the coordination of remedies is essentially a pragmatic one. That is, our approach is more integrative and cooperative, rather than based on "deference." This approach achieves a balance between streamlining the resource-intensive enforcement process and ensuring appropriate resolutions of multi-jurisdictional cases.

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[28] This could arise in circumstances where issues with a multi-jurisdictional merger are the same in Canada as a foreign jurisdiction. In one case, the foreign jurisdiction may conclude that, owing to costs or the size of markets, it should order the sale of a business, including intellectual property rights, on a worldwide basis. In a different case, the foreign authority might conclude that, owing to costs or scale of business, it would be sufficient to simply order the sale of the business, including the intellectual property rights, within its own jurisdiction. In the latter case, Canada would need its own Canada-specific remedy.

[29] Notably, the Act provides for a three-year period during which the Bureau can challenge a transaction. In the event that parties do not carry through with remedies that apply to Canada, but are enforceable only in foreign jurisdictions within that time frame, the Bureau may challenge the transaction at the Tribunal.

## V. Going Forward

As stated in the recently published Remedies Bulletin, "the Bureau is committed to applying a principled yet flexible and *evolving* approach to designing and implementing merger remedies."[30][Emphasis added]. Accordingly, we will continue to fine-tune, where necessary, both the design and implementation of merger remedies. To this end, a Merger Remedies Study is currently underway, with the objective of critically analyzing the effectiveness of past remedies. From this study, we expect to gain valuable insight into the processes, principles, terms, and conditions that we need to improve upon. The results of this study should be ready sometime later next year.

Our commitment to improving the effectiveness of merger remedies necessarily extends to the Bureau's relationships with competition authorities in other jurisdictions. That is, the Bureau is committed to continuing and improving, where desirable, the level of communication, cooperation, and coordination with its foreign counterparts. In so doing, we can maintain and further build upon the inter-agency trust and confidence that is necessary to facilitate information exchanges, investigations and, ultimately, the coordination of effective multi-jurisdictional remedies.

In addition to critically assessing and improving upon the application of merger remedies, the Bureau is committed to its goal of transparency. By being as transparent as possible, our aim is to be as predictable and accountable as possible in our decision-making. To this end, the Bureau will continue to publish public versions of registered consent agreements and, where possible, technical backgrounders, which discuss the analysis that gave rise to a merger remedy. As a new practice, the Bureau will, where possible, make full disclosure of the terms and conditions of those consent agreements associated with completed divestitures.[31]

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[30] *Information Bulletin on Merger Remedies in Canada*, at Preface.

[31] *Information Bulletin on Merger Remedies in Canada*, at para 70.