

Competition Report: January 2022

January 19, 2022

The latest in the world of competition law, including the news you need to know, reports from the Competition Bureau, *Investment Canada Act* updates, merger activity, and more. Brought to you by the Competition & Foreign Investment Group at Cassels. We're here to help.

News You Need to Know

- The Ontario Superior Court has partly certified the class action in *David v. Loblaws* against producers of packaged bread. The action was certified against producers, but the Court refused to certify against the parent corporation, maintaining the principle of corporate separateness. Still, the case represents the largest price-fixing action in Canadian history.
 - Keurig Canada Inc. reached an agreement with the Competition Bureau to pay \$3 million in penalties over misleading claims regarding the recyclability of their single use coffee pods. The Bureau found that outside of BC the pods are not widely accepted by municipalities for recycling. In addition to the \$3 million fine Keurig has agreed to pay \$850,000 for the bureau's costs, make a \$8 million charitable donation to a Canadian charity focused on environmental causes, change recyclability claims, issue public corrective notices, and enhance its corporate compliance programs.
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Bureau Business

- On December 1, 2021, the Commissioner of Competition announced the appointment of Dr. Lilla D. Csorgo as the Competition Bureau's new T.D. MacDonald Chair in Industrial Economics. Dr. Csorgo will act as the Bureau's Chief Economist for a one-year term.
- On January 10, 2022, the Competition Bureau and Health Canada's Health Products and Food Branch (HPFB) issued a joint notice to stakeholders highlighting the importance of their continued collaboration to support Canadians' access to safe, effective and affordable medicines. The Bureau and HPFB are committing to increased collaboration. Companies operating in the pharmaceutical sector should expect increased scrutiny in a variety of areas including merger reviews.
- 2021 saw a surge of investment activity and the Canadian Competition Bureau has signaled that this year it intends to take a more aggressive approach to merger review. In a speech last fall to the

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National Competition Law Section of the Canadian Bar Association, the Commissioner of Competition stressed that “Canada needs more competition” and that he views effective and rigorous merger review as a critical tool for realizing that objective. Heightened scrutiny should be anticipated for transactions in sectors which the Bureau views as important to the lives of ordinary Canadians, including (but by no means limited to) digital services, telecommunications, health care and infrastructure.

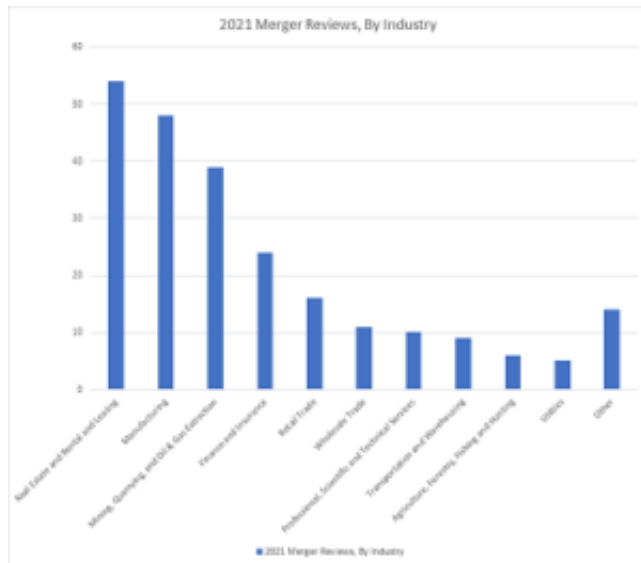
ICA Update

- The Investment Review Division has released the thresholds for 2022 reviews under the *Investment Canada Act*. Official amounts will be published in February 2022 but are expected to be as follows:
 - \$1.141 billion in enterprise value for direct investments by WTO investors
 - \$1.711 billion in enterprise value for direct investments by trade agreement investors
 - \$454 million in asset value for investments by state owned enterprises.
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Merger Breakdown

- On November 18, 2021, the Competition Bureau entered into a consent agreement with Karta Halten B.V. (Paper Excellence) and its affiliates, relating to the company’s proposed acquisition of Domtar Corporation. Following its review of the proposed transaction, the Bureau concluded that the transaction was likely to result in a substantial lessening of competition in the purchase of wood fibre from the Thompson/Okanagan region of British Columbia (BC) where Paper Excellence currently owns a high concentration of pulp mills. To resolve these concerns, Paper Excellence has agreed to sell Domtar’s pulp mill in Kamloops, BC, to an independent purchaser.

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Back to Basics

- All acquisitions of control of Canadian businesses by non-Canadians are subject to the ICA. For the purposes of the ICA, a non-Canadian includes any entity that is not controlled or beneficially owned by non-Canadians. Any non-Canadian that acquires control of a Canadian business must file either a post-closing notification or a pre-closing application for review.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.