

Cassels

Cassels on Competition: April 2022

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In this edition: The Competition Bureau's Annual Plan, Budget announcement regarding amendments to the *Competition Act*, the GFL Environmental merger litigation settles, and more...

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News You Need to Know

- The Competition Bureau has released its 2022-2023 Annual Plan: Competition, recovery and growth. The Bureau's priorities for the upcoming year include: (i) targeting anti-competitive conduct related to supply chain issues and deceptive claims about COVID-19; (ii) establishing a new digital and data analytics team to enhance its enforcement capabilities; (iii) enhancing its litigation readiness for not only fully-contested proceedings, but also for seeking court orders, such as injunctions, pending a full hearing or decision from the Competition Tribunal; (iv) focusing enforcement in key sectors, such as digital services, health, construction and infrastructure, telecommunications and natural resources & agri-food; and (v) supporting the Government of Canada's review and update of the *Competition Act*.
- In its April 2022 budget, the federal government confirmed its intention to introduce legislative amendments to the *Competition Act* "as a preliminary phase in modernizing [Canada's] competition regime." The budget is short on details but indicates that the initial modernization phase will include amendments aimed at "fixing loopholes; tackling practices harmful to workers [i.e., no-poach and wage fixing agreements] and consumers; modernizing access to justice and penalties; and adapting the law to today's digital reality."

Bureau Business

- The Competition Bureau has concluded its investigation into alleged anti-competitive conduct by certain wholesalers and manufacturers of crop inputs in western Canada. The investigation centered on whether certain wholesalers and manufacturers of crop inputs engaged in conduct whereby they worked together, or on their own, to disadvantage, restrict or block the supply of crop inputs to Farmers Business Network Canada (FBN), contrary to the civilly reviewable competitor

collaborations provision in section 90.1 of the *Competition Act* or the abuse of dominance provision in section 79. The evidence gathered by the Bureau failed to meet the thresholds to establish a violation of either provision. More particularly, the evidence failed to establish that competitors had an agreement or arrangement in relation to FBN or that dominant firms acted with anti-competitive intent toward FBN and that competition was substantially lessened or prevented in the markets for crop inputs in western Canada.

- The Competition Bureau has settled its litigation against GFL Environmental Inc. arising from GFL's purchase of Terrapure Environmental Ltd. The acquisition was challenged by the Bureau in November 2021 based on concerns that it would lessen competition in markets for industrial waste services and oil recycling services in western Canada. Following a mediation, GFL agreed to sell seven of its industrial waste and oil recycling services facilities in British Columbia, Alberta, and Saskatchewan.

Update on Rogers/Shaw Merger

- The Rogers/Shaw deal has received conditional approval from the CRTC. The C\$26 billion takeover of Shaw still requires approval from the Competition Bureau and the Department of Innovation, Science and Economic Development.

Back to Basics

- The *Competition Act* requires that parties to proposed merger transactions which exceed prescribed thresholds (which vary, in part, depending on the type of transaction) notify the Competition Bureau in advance of closing and observe a 30-day waiting period or obtain a waiver. *For asset acquisitions*, both of the following thresholds have to be met: (a) the value of the assets in Canada to be acquired or the value of the gross revenues from sales in or from Canada generated from those assets exceeds C\$93 million; and (b) the aggregate value of the assets in Canada or the gross revenues from sales in, from or into Canada of the parties to the transaction and their respective affiliates exceeds C\$400 million.