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Cassels on Competition: August 2022

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In this edition: Recent amendments to the National Security Review of Investments Regulations, Competition Bureau to host Competition and Green Growth Summit, an update on recent consent agreements, and more...

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News You Need to Know

- The Competition Bureau will host virtual public information sessions about the recent amendments to the *Competition Act* on September 8-9, 2022.
- As of August 2, 2022, pursuant to recent amendments to the *National Security Review of Investments Regulations*, foreign investors acquiring minority interests and making other investments in new or existing Canadian businesses that do not trigger a filing obligation under the *Investment Canada Act*, have the option of making voluntary national security review filings.
 - Under the amendments, non-Canadians will be able to file before closing to obtain a determination within 45 days as to whether their intended investment raises national security concerns. Where no filing is made, the government will have up to five years after closing (up from the current 45 days) to review the investment under the national security regime

Bureau Business

- The Bureau will host the Competition and Green Growth Summit focusing on the interaction between competition law and policy and sustainability. The Summit (which will be held on September 20, 2022) will bring together international competition authorities, regulators, businesses, non-governmental organizations, lawyers, and academics.
- The Bureau registered a consent agreement with the Competition Tribunal relating to Alimentation Couche-Tard Inc.'s proposed acquisition of Wilsons. Wilsons operates and supplies Esso, Wilsons Gas Stops and Go! Store retail gas locations in Nova Scotia, New Brunswick, Prince Edward Island, as well as Newfoundland and Labrador. To resolve the Bureau's concerns that the proposed transaction would likely substantially lessen or prevent competition in the supply of retail gasoline in

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some markets within these provinces, Couche-Tard has agreed to sell 46 Wilsons sites and supply agreements, and one Couche-Tard gas station to a buyer (or buyers) to be approved by the Commissioner of Competition.

- The Bureau registered consent agreements with Parkland Corporation (Parkland) and Federated Cooperatives Limited (FCL), respectively, related to their proposed acquisitions of Husky Oil gas stations. In November 2021, both Parkland and FCL entered into separate purchase agreements to acquire 337 Husky stations located in Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia. To address the Bureau's concern that the proposed transactions were likely to result in a substantial lessening of competition in the supply of fuel to consumers in certain markets across Canada, the consent agreements provide that Parkland and FCL will sell certain gas stations and that certain Husky stations and dealer contracts will be transferred to Parkland instead of FCL.
- The Bureau registered a consent agreement with the Competition Tribunal relating to the proposed joint venture between Pembina Pipeline Corporation and KKR's Global Infrastructure Funds. In particular, the Commissioner had concerns with the acquisition of a 50% interest in the Key Access Pipeline System (KAPS) project resulting from the associated purchase of the remaining portion of Energy Transfer Canada ULC (ETC) not already held by KKR. To remedy the Bureau's concerns, Pembina and KKR are required to sell ETC's interest in the KAPS project to a third party.
- The Bureau released a statement reminding snow removal businesses that it is illegal to agree with their competitors on prices (including increases and surcharges) or territories (including streets and neighborhoods) and with respect to the number of customers they will sign up.
- The Bureau has published a Competition Assessment Toolkit to assist all levels of government in Canada to assess and, ultimately, reduce the impact on competition of their policies. According to the Bureau "[t]he Toolkit is designed to assist policymakers in identifying competition issues at an early stage, and then make use of the resources available to them—including the Bureau—to tailor policies appropriately to maximize the benefits of competition to the economy."

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