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Cassels on Competition: September 2026

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In this edition: Canadian Competition Bureau enters into settlement agreement restricting Empire's use of property controls, Competition Tribunal issues interim order pausing the Nortera and B&G Foods transaction, recent Investment Canada Act enforcement activity, and more…

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News You Need to Know

Competition Bureau Reaches Property Controls Settlement with Empire

The Competition Bureau has reached an agreement with Empire Company Limited to address the Bureau's concerns related to Empire's use of property controls and has published a backgrounder in relation to that agreement. Empire is the parent company of multiple grocery banners including Sobeys, Farm Boy, Safeway, IGA, Foodland, FreshCo, Marché Bonichoix and Les Marchés Tradition. Under the agreement, Empire agreed to:

- no longer enforce existing restrictive covenants, enter new restrictive covenants, or request that others establish restrictive covenants that benefit Empire; and,
- limit its use of exclusivity clauses.

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Competition Tribunal Orders Pause on Nortera's Acquisition of Green Giant and Le Sieur Brands

The Competition Tribunal has issued an interim order instructing Nortera Foods Inc. and B&G Foods Canada, ULC not to complete their transaction until it rules on the Competition Bureau's application for an order blocking Nortera's proposed acquisition of B&G Foods Canada's Green Giant and Le Sieur brands on the basis that the proposed transaction would allegedly harm competition in an already concentrated market.

Lithium Chile Challenges Potential National Security Review of Argentinian Asset Sale

Canadian-headquartered junior Lithium Chile Inc. has received a notice pursuant to the national security provisions of the *Investment Canada Act* (ICA) that the proposed sale of its Argentinian subsidiary, Argentum Lithium S.A., to China Union Holdings Ltd. may be subject to a national security review. Lithium Chile's position is that the sale of a foreign asset is outside the jurisdiction of the ICA and it has announced that it intends to forcefully advance that position and seek all remedies available. Lithium Chile had proactively notified the Canadian government in early January of this year, outlining its position that the sale of its Argentum subsidiary fell outside the scope of the ICA.

CorActive Challenges Government Decision Blocking US Board Appointment

A Quebec-based laser firm, CorActive High Tech Inc., that was bought by a Chinese company says the federal government has wrongfully refused to allow an American executive onto its board over concerns that its technology could be used to "benefit foreign militaries."

CorActive has filed an application for judicial review in the Federal Court of Canada seeking an order quashing the decision denying the board appointment on the ground that it was "substantively unreasonable." That decision was made pursuant to undertakings given by the Chinese buyer as a condition of receiving ICA approval to proceed with the acquisition.

Other Competition Bureau Developments

First Consent Prohibition Order Under Expanded Abuse of Dominance Provision

The Bureau has reached an agreement with Kalibrate Canada Inc. to address competition concerns related to one of its data analytics products, which collects and distributes detailed data from gas stations across Canada. A Bureau review concluded that the Kalibrate Market Intelligence product allowed competitors to access confidential and competitively sensitive information, such as volume of fuel sold by individual retailers.

The Bureau concluded that sharing this type of data, which offers visibility into competitors' activities, can weaken competition between gas stations and constituted an abuse of Kalibrate's dominant position in the supply of retail gasoline sales data.

Why This Matters
The settlement marks the first time that the restructured abuse of dominance provision – which since December 2023 has authorized the Competition Tribunal to make a prohibition order against a dominant firm if its conduct meets either the anti-competitive intent or effect requirement – has been used to achieve a prohibition order by way of a consent agreement

The Bureau has also published a position statement providing additional details regarding its investigation, findings and the agreement entered into with Kalibrate.

Bureau Backs Regulatory Changes to Facilitate Interprovincial Meat Sales

The Bureau has published a submission to the Canadian Food Inspection Agency's (CFIA) consultation on proposed amendments to the Safe Food for Canadians Regulations that would facilitate interprovincial trade in red meat where slaughter capacity is limited. The Bureau supports the CFIA's efforts to reduce barriers to interprovincial trade in red meat while maintaining important protections for food safety and public health.

Foreign Investment Review Update

New Mandatory Pre-Closing ICA Notification Regime to Come into Effect Next Year

Amendments to the ICA that are expected to come into force next year will introduce a new pre-closing, suspensory filing obligation for:

> *an[y] investment to acquire, **in whole or in part**, [a Canadian business or Canadian entity], if*
>
> **(i)** the entity carries on a **prescribed business activity**,
> **(ii)** the non-Canadian could, as a result of the investment, have **access to, or direct the use of, material non-public technical information or material assets**, and
> **(iii)** the non-Canadian would have, as a result of the investment,
>
> ***(A)** the **power to appoint or nominate any person who has the capacity to direct the business and affairs of the entity**, such as a **member of the board of directors** or of **senior management**, a trustee of the entity or, in the case of a limited partnership, a general partner, or**(B)** **prescribed special rights** with respect to the entity.*

The new filing obligation constitutes a significant change to ICA practice as it applies to both control and minority investments in "Canadian businesses" (i.e., a business carried in Canada that has a place of business in Canada, an individual or individuals in Canada who are employed or self-employed in connection with the business and assets in Canada used in carrying on the business) and "Canadian entities" (i.e., an entity with a place of operations in Canada or an individual or individuals in Canada who are employed or self-employed in connection with the entity's operations or assets in Canada used in carrying on the entity's operations) as well as to indirect acquisitions which are currently only notifiable within 30 days after closing. As a result, the number of deals subject to pre-closing notification is likely to increase significantly.

The Canadian government is expected to issue draft administrative guidelines in late 2026 which will, among other things, define the "prescribed business activities" subject to the new regime. It is widely expected that activities in the critical minerals industry, in the infrastructure sector, and in the eleven broad technology areas on the Canadian government's Sensitive Technology List will be among the "prescribed business activities." The new regime is anticipated to come into effect by Q2 2027.

In light of the significant penalties for failing to notify (i.e., at least C$500,000), parties should be considering the potential impact of the suspensory regime as the new year approaches.

About the Team

Cassels on Competition is brought to you by the Competition & Foreign Investment Group at Cassels.

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Businesses and investors rely on Cassels for practical advice on competition and foreign investment matters. Our team advises on mergers, *Competition Act* compliance, regulatory investigations, litigation and *Investment Canada Act* reviews, helping clients address issues that can affect transactions, operations and growth. Whether managing day-to-day compliance issues or significant transactions, we provide clear, business-focused guidance to navigate regulatory concerns, mitigate risk, and keep transactions moving.

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