informed of the progress of the inquiry. Once an inquiry has commenced, the Director can apply for authorization from a court to search for and seize records, to conduct oral examinations and to exercise the other investigative powers provided for by the Act.

Prenotification is required for firms/transactions above a certain size[41] and provision is made for advance ruling certificates by the Director.

If the Director and parties fail to agree on a solution to a merger matter, the Director has the discretion to apply to the quasi-judicial Competition Tribunal for a variety of orders.[42] The Tribunal has a broad range of remedies (i.e., interim or conditional orders). In the case of a completed merger, orders may include dissolution, asset or share disposal or any other measure. In the case of a proposed merger, the Tribunal may prohibit the transaction, permit it to be completed subject to conditions or order any other action. The Director is the only person who can apply to the Competition Tribunal for a merger to be prohibited, restructured or approved. No application can be made by the Director in respect of a merger more than three years after that merger has been substantially completed.

As observers have pointed out, the focus of the merger review process has been the Director's office rather than the Competition Tribunal. This is partly because of the Bureau's "fix it first" or "compliance-oriented" approach, but also because "it soon became evident to Bureau officials that business executives (and their advisors) wanted a merger review process that would be speedy, confidential, and relatively free of uncertainty".[43] In order to avoid having to go before the Competition Tribunal, business executives have asked the Director what parts of a merger raise concerns so that, if possible, they can be restructured to avoid a challenge.

While it has been pointed out that this process may inadvertently have given the Director more power than intended under the legislation and that the Competition Tribunal has been unable to develop jurisprudence, others say the balance in the enforcement system was deliberate and point to the process' rapidity and relative efficiency.

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[41] Parties, together with their affiliates, must have total assets or total sales in, from, or into, Canada of over $400 million. Second, the value of the target company's assets or gross revenues from sales in or from Canada must be $35 million. See Annex 1 for a detailed review of notification requirements, waiting periods, and timelines under Canadian, U.S. and EC laws. Annex 1 also reviews the nature of information sought under the three notification systems.

[42] The Tribunal is composed of lay members and judges.

[43] W.T Stanbury, "An assessment of the merger review process under the Competition Act", Canadian Business Law Journal, Volume 20, no.1, March, 1992, p. 441.