

ANNEX 1: Comparison of Merger Control in Canada, the United States, and the EC.

1.1 Notification, waiting periods, timelines

In Canada, pre-notification is obligatory for transactions which exceed certain thresholds. These transactions (called "Notifiable Transactions") concern four types of merger - share acquisitions, asset acquisitions, amalgamations and incorporated combinations. 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. For amalgamations, notification is required where the value of assets in Canada or annual gross revenue from sales in or from Canada of the continuing corporation exceeds \$70 million. Notification is required for a proposed acquisition of "voting shares" of a corporation, where the corporation has assets in Canada, or gross annual revenues from sales in or from Canada, that exceed \$35 million and where, as a result of the acquisition, the acquirer will have a greater than 20 per cent voting interest in a public company or a greater than 35 per cent voting interest in a private company.

There are general exemptions from pre-notification for:

- a) transactions between affiliates;
- b) joint ventures falling within section 112 of the Competition Act; and
- c) transactions which have received an Advance Ruling Certificate from the Director of Investigation and Research.

Notifying parties may choose one of two notification forms - the short form or the long form. For the short form, there is a waiting period of seven days. For the long form the waiting period is 21 days. However, if the short form is used the Director can insist on a long form notification if the transaction appears to raise substantial competition issues. In this case, the 21 day waiting period is restarted. In practice, it appears that in complex transactions a longer waiting period is voluntarily agreed. If the acquisition is to be carried out through the facilities of a Canadian stock exchange, the waiting period is ten trading days.

The parties to a merger may also ask the Director to issue an Advance Ruling Certificate (ARC) on their proposal which gives an assurance to them that a proposed merger will not be referred to the Tribunal if the merger proceeds as proposed within one year of the issuance of the ARC. No specific form is needed in requesting an ARC but it is evidently in the parties' interests to provide all relevant information to