

no connection? no problem! Canada's Competition Bureau flexes its jurisdictional muscles

The Competition Bureau recently concluded its review of a proposed transaction in the aerospace sector, clearing United Technologies Corporation's acquisition of Goodrich Corporation. While the terms of the transaction are not unusual, the clearance is noteworthy in that demonstrates the Bureau's willingness to scrutinize even those transactions in which:

- the parties do not have any overlapping assets in Canada; and
- the vast majority of customers are located outside of Canada.

Stated differently, the decision suggests that in the era of global commerce virtually any merger, anywhere, is subject to the Bureau's reach, at least in the Bureau's view.

background

UTC and Goodrich manufacture and sell a broad range of parts and components to aircraft manufacturers. In September 2011, they entered into an agreement pursuant to which Goodrich would merge with and become a wholly-owned subsidiary of UTC. In its review of the proposed deal, the Bureau found that "the vast majority of aerospace manufacturing facilities and customers of UTC and Goodrich are located in the U.S. and Europe," suggesting that sales into Canada did not form a material part of either party's balance sheet. Even more significant was the finding that neither party had any relevant assets in Canada. Thus, according

to the Bureau's own assessment, this was a merger with virtually no Canadian connection.

outcome

Following the lead of U.S. and European authorities, the Bureau identified two product markets that raised competition issues: the manufacture, sale and supply of electrical generators and engine controls. While the Bureau determined that the transaction would have resulted in the lessening of competition in the manufacture and sale of certain aircraft parts and components in a Canadian market (notwithstanding that the "vast majority" of UTC and Goodrich customers were outside of Canada), remedial orders issued by authorities in the U.S. and Europe were sufficient to mitigate the Bureau's concerns regarding potential anti-competitive effects in Canada.

impact of this decision

The Bureau's decision to assert jurisdiction over this proposed merger, even after having satisfied itself that there was little connection to Canada, serves as a powerful reminder of the Bureau's view of its jurisdictional reach. While it is unclear how effective the Bureau would be in enforcing a remedy in circumstances where parties do not have relevant assets in Canada, readers are cautioned that when it comes to jurisdiction, in the Bureau's view, the sky's the limit.

by Devin Anderson, Casey Halladay and Mark Opashinov

For more information on this topic, please contact:

Toronto	Devin Anderson	416.865.7255	devin.anderson@mcmillan.ca
Toronto	Casey Halladay	416.865.7052	casey.halladay@mcmillan.ca
Toronto	Mark Opashinov	416.865.7873	mark.opashinov@mcmillan.ca

[a cautionary note](#)

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2012