



Northern Exposure: Canadian Competition Law/Investment Canada Update

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Welcome and Introductions

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Agenda



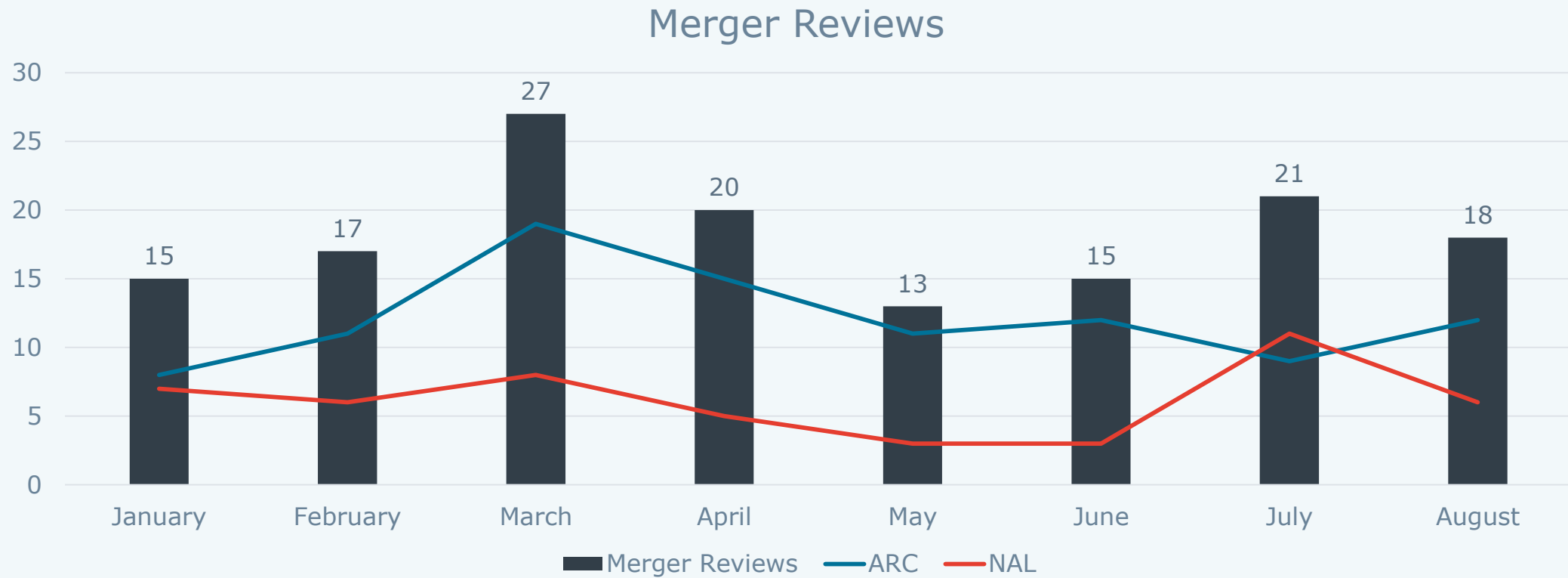
- Enjoining Mergers – What's New?
- The Competition Bureau: Current Focus
- Canadian Gatekeepers – Abuse of Dominance Developments
- New Competitor Collaboration Guidelines
- Canadian Foreign Investment Control Developments
- Q&A



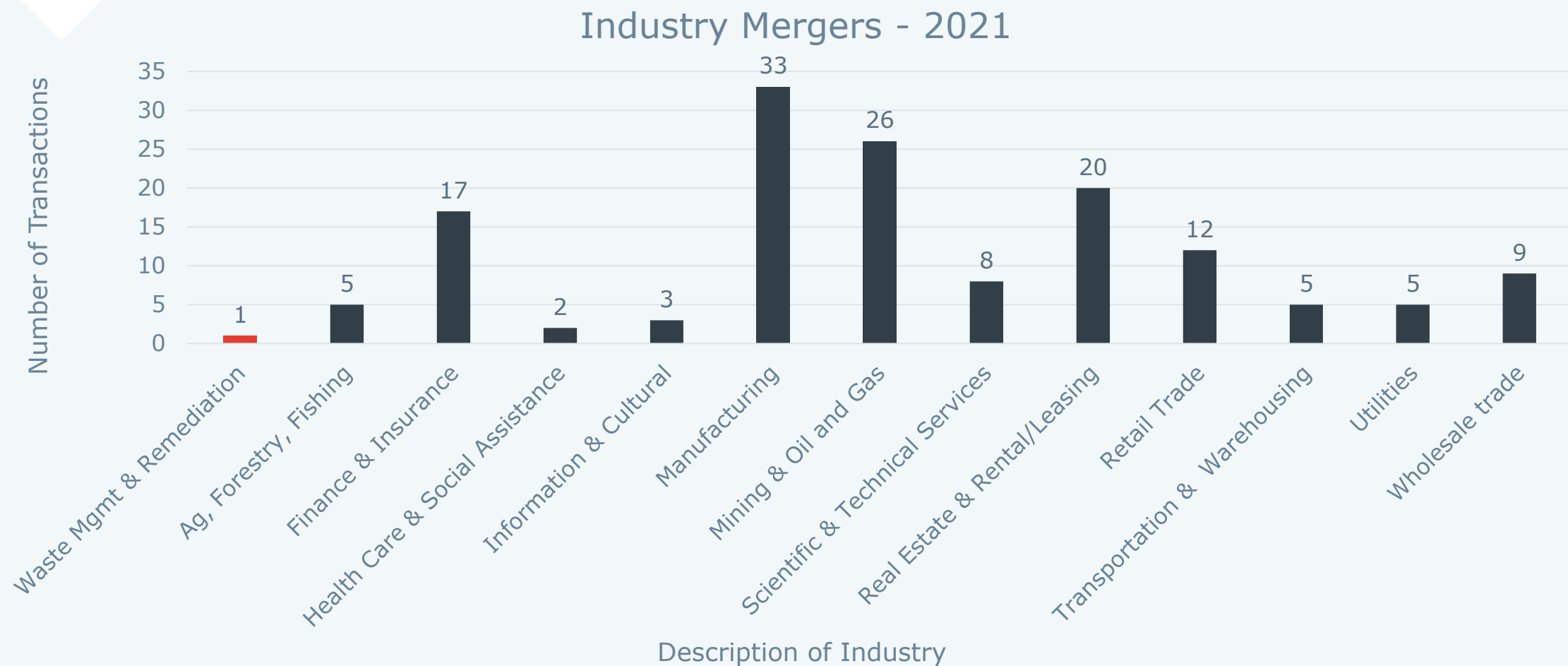
Enjoining Mergers – What's New?

Jody L. Wivcharuk | Calgary

Merger Review Landscape in 2021

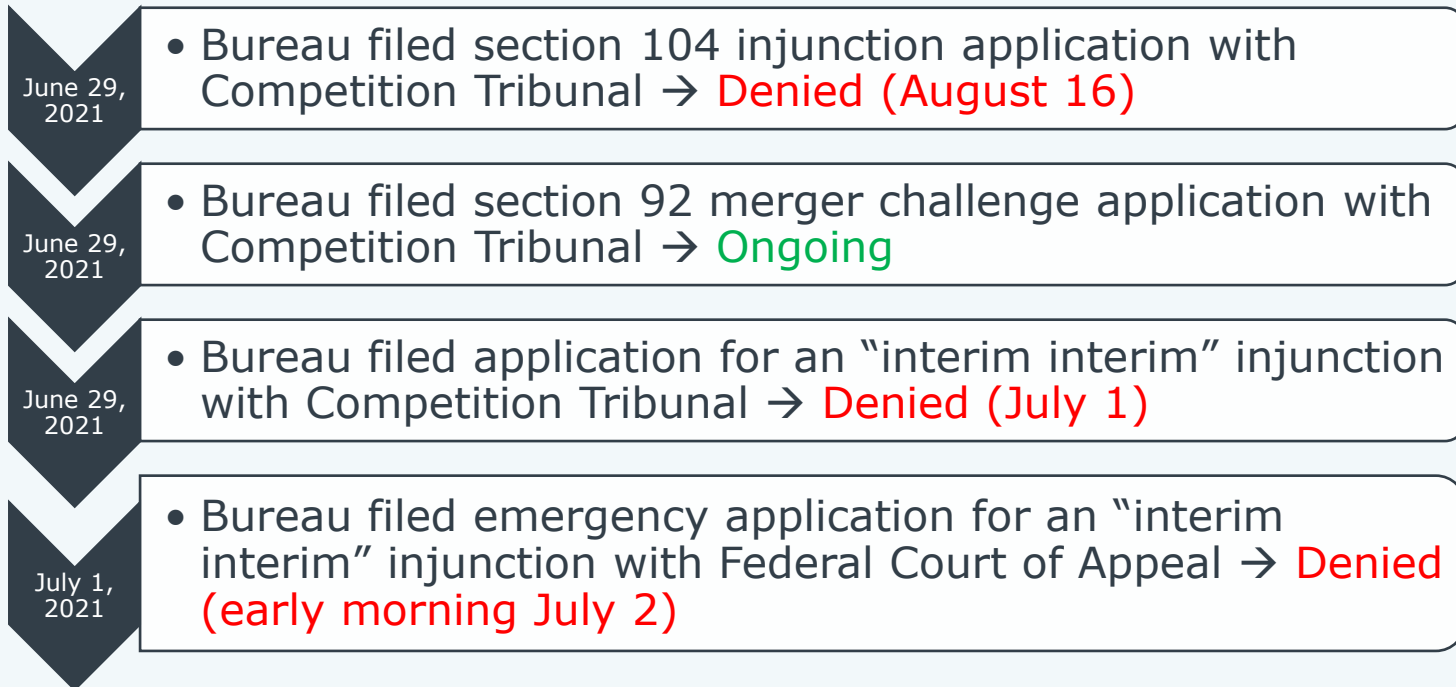


Industries Represented



Secure and Tervita Merger – What’s Happened?

Competition Bureau challenged proposed merger of rival oil and gas waste service providers



Enjoining Mergers - What's New?

Competition Bureau Take-aways

To stop a Merger before it closes:

- (1) section 104 injunction application, together with section 92 merger challenge application, *much earlier* in the process; or
- (2) interim section 100 injunction application

Dealmakers Take-aways

Significant implications for deal timing and standard deal terms





The Competition Bureau: Current Focus

Guy Pinsonnault | Ottawa

Strategic Vision Suited For The Digital Age

- Increased Funding
- New Enforcement Tools
- Relationship with Partners
- Recruitment



Creation Of The Digital Enforcement Intelligence Branch

- Center of Expertise on Technology and Data
- Provide Specialized Technical Support
- Recruitment of Employees with New Expertise and Skills
- 4 Separate Components:
 - ❖ Digital
 - ❖ Intelligence
 - ❖ Remedies
 - ❖ Behavioral Economics Unit

| Enhancement Of Enforcement

- Timely Enforcement Action
- New Tools Suited for the Digital Age
- Active Monitoring of Remedies
- Injunctions
- Criminal Charges



Comprehensive Review Of The *Competition Act*

- 'Weak' Maximum Available Penalties
- Legal Tests to Prevent Anti-Competitive Mergers
- Gaps in Cartel Law
- Efficiencies Defence



Canadian Gatekeepers – Abuse of Dominance Developments

Mark Opashinov | Toronto



We will increase our capacity to take on new and more complex anticompetitive conduct, especially in digital markets.

Matthew Boswell,
Commissioner of Competition
(Fall 2021 Speech)



Searching for Antitrust Issues at Google

The Bureau is concerned that Google may have restricted third party tools and access to YouTube's advertisement inventory, and thereby favoured its own products and services.

By a recent Court Order, Google must turn over a large volume of data and internal documents about its customers, business practices, related to its digital advertising business lines.



The New(ish) Abuse of Dominance Guidelines

The Bureau updated its guidelines in 2019, and included ten case studies about potentially reviewable conduct.

EXCLUSIVE DEALING

The Bureau may review customer contracts to look for terms that create or enhance switching costs. The Bureau is currently investigating whether incentive payments in Google's contracts deter the entry of new competitors.

TIED SELLING

The Bureau may investigate a company's policy changes if they restrict customers' access to products and services. For example, the Bureau may take issue with a policy that makes one product's warranty conditional on buying and using another product from the same company.





The Guidelines suggest more investigations are on the horizon

- Predatory pricing and retaliatory business practices are potential areas of review.
- The line between vigorous competition and reviewable conduct can be difficult to distinguish.



New Competitor Collaboration Guidelines

Janine MacNeil | Toronto

New Competitor Collaboration Guidelines

- Merger+ agreements
- Non-compete agreements



| New Competitor Collaboration Guidelines

- Sham agreements
- Vertical agreements/dual distribution



| New Competitor Collaboration Guidelines

- Who is a competitor?
- Competitor agreements/joint ventures



New Competitor Collaboration Guidelines

- “Buy side” agreements/employment issues
- Conclusion

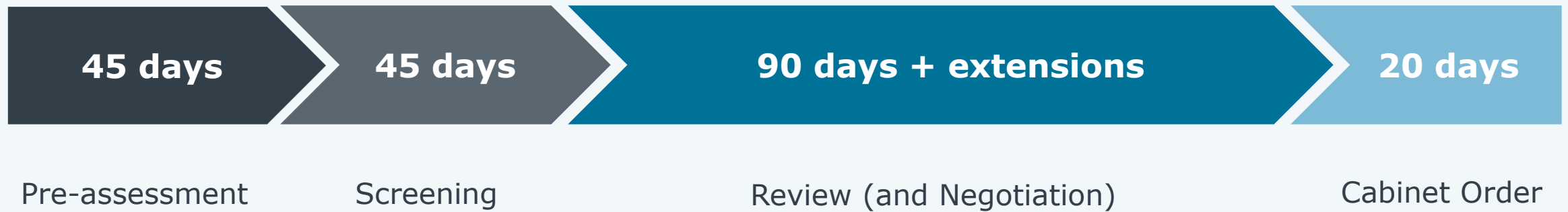




Canadian Foreign Investment Control Developments

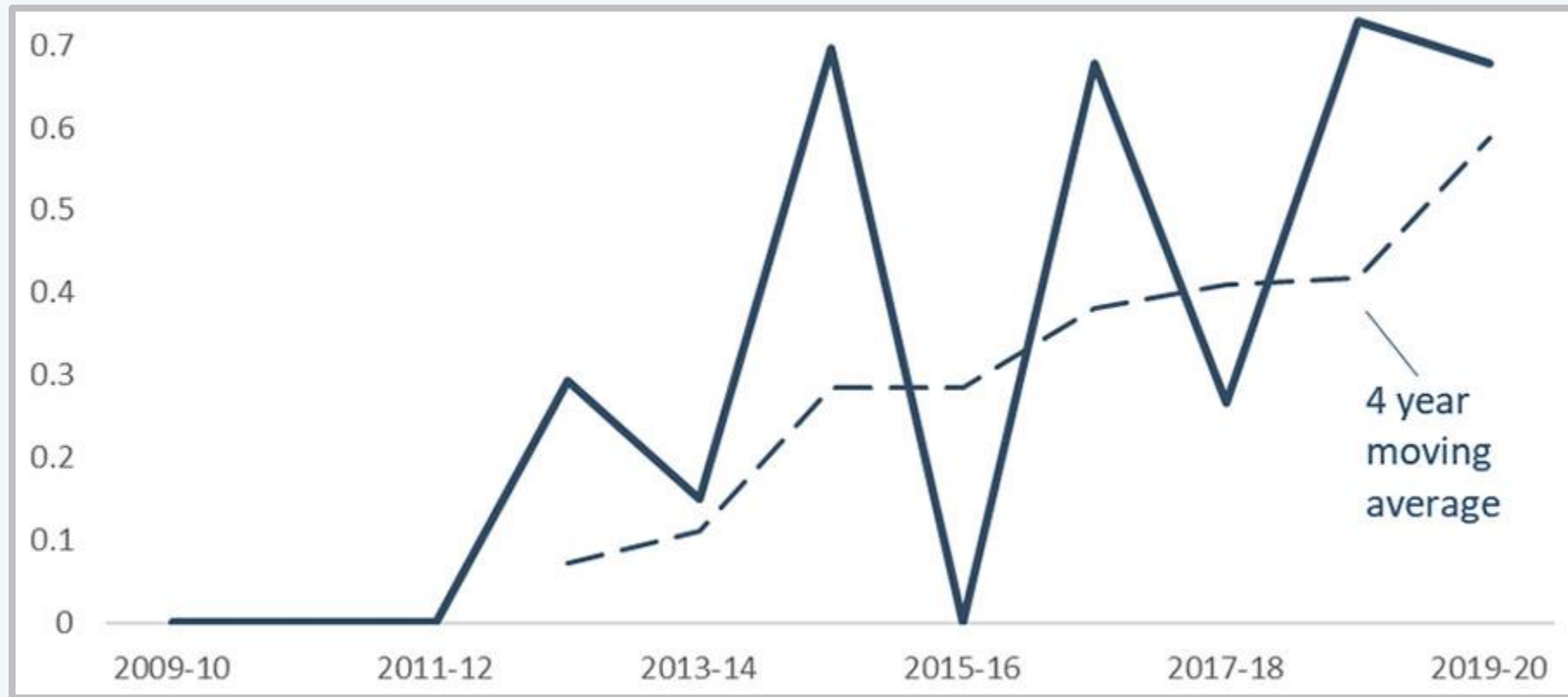
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Timeline

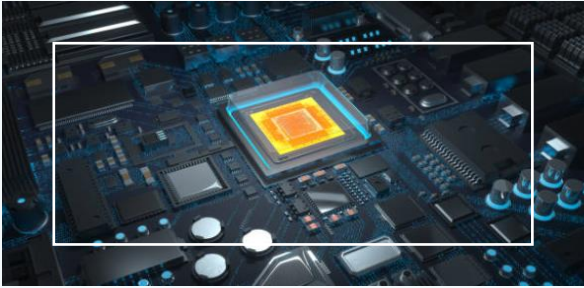


A full national security review process can take 200 days+

Shift in Focus to National Security Reviews



Key Industries



Telecom / Semi-Conductors



Apps that collect personal information



Infrastructure



Financial Services

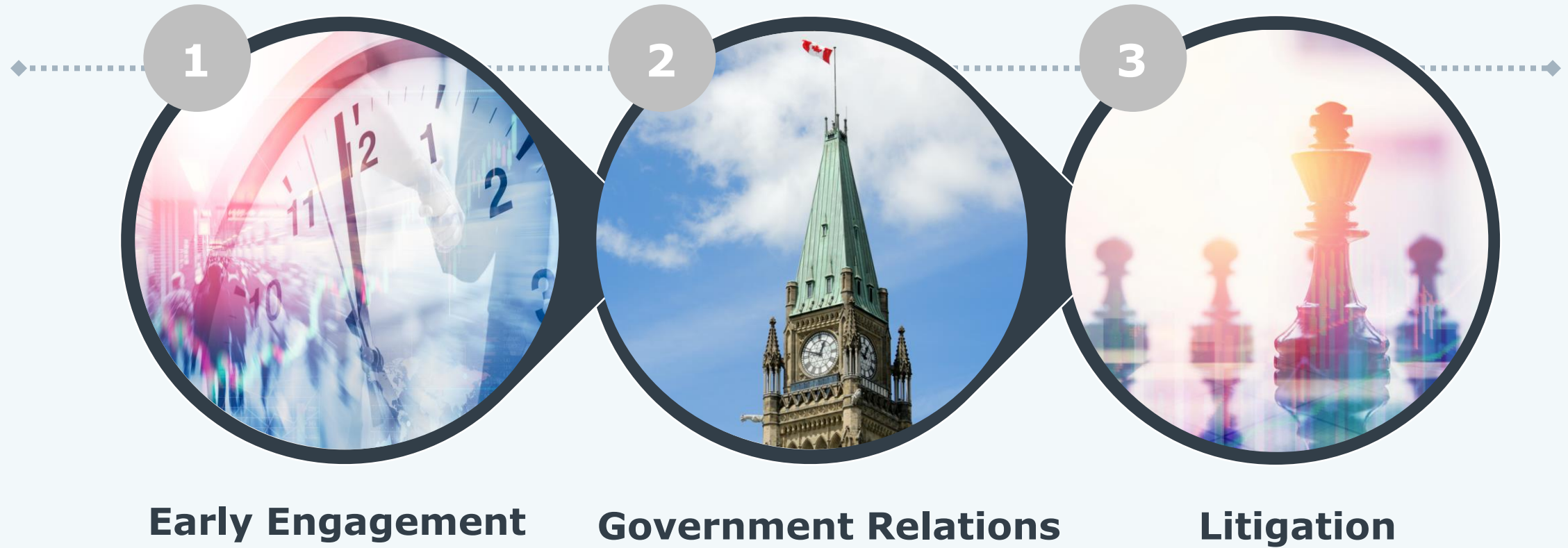


Medical Devices



Advanced Manufacturing

Strategies



Thank You

Q&A



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If you have any questions about McMillan, or how we may help you with your legal needs, please get in touch with us.