

Canadian Merger Notification Thresholds Increased

The 2014 increases to the merger notification threshold under Canada's *Competition Act* and the investment review threshold under the *Investment Canada Act* have been announced:

Competition Act

The *Competition Act* requires advance notification of certain merger transactions involving operating businesses in Canada where "size-of-parties" and "size-of-target" financial tests both are exceeded:

- The "size-of-parties" test requires that the parties to a transaction, together with their affiliates, have assets in Canada, or annual gross revenues from sales in, from or into Canada, exceeding **C\$400 million**. (The "size-of-parties" threshold remains unchanged for 2014.)
- The "size-of-target" test generally requires that the value of assets in Canada to be acquired, or owned by the corporation the shares of which are being acquired, or the annual gross revenue from sales in or from Canada generated by those Canadian assets or the corporation, exceeds a specified threshold. **The Competition Bureau announced on January 20, 2014 that the "size-of-target" threshold would be increased to C\$82 million for 2014.** (The new threshold will take effect immediately following publication in the *Canada Gazette*, which is expected to occur on January 25, 2014. This represents a \$2 million increase from the C\$80 million threshold for 2013.)

Investment Canada Act

The *Investment Canada Act* requires that any Non-Canadian that acquires control of a Canadian business (whether or not that

business is controlled by Canadians prior to the acquisition) must file either a notification or an application for review. For the purposes of the *Act*, a Non-Canadian includes any entity that is not controlled or beneficially owned by Canadians.

Generally, "WTO Investors" are required to file a pre-closing application for review and approval when directly acquiring a Canadian business which:

- has assets with a book value in excess of a threshold to be adjusted annually, which for 2014 is expected to be **C\$354 million** (the official amount will be published in the *Canada Gazette* in early 2014); or
- is cultural in nature and has assets with a book value in excess of C\$5 million.

In general, a WTO investor is an entity that is owned or controlled by citizens from countries which are members of the World Trade Organization. Special rules apply to Non-WTO Investors as well as to acquisitions by State-Owned Enterprises (see the bulletin on the [guidelines for State-Owned Enterprises](#) for further details) and in certain other situations in the cultural sector.

In 2013, the government amended the *Investment Canada Act* to establish thresholds based on "enterprise value" for WTO Investors (except State-Owned Enterprises) which will start at C\$600 million and rise to C\$1 billion over four years (see our bulletin on the [Investment Canada Act amendments](#)). These changes are still pending and may come into force later this year.

If you have any questions regarding the application of the increased thresholds outlined in this bulletin to your proposed transaction, please contact any member of McMillan's [Competition and Antitrust Group](#).

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[a cautionary note](#)

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