

# 2016 CANADIAN MERGER NOTIFICATION THRESHOLD INCREASES

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The 2016 increases to the merger thresholds under Canada's *Competition Act* and *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-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, exceeds a specified threshold. The Competition Bureau has announced that the **"size-of-target" threshold will be increased to C\$87 million for 2016**. The new threshold will take effect immediately following publication in the Canada Gazette, which is expected to occur on February 6, 2016. This represents a \$1 million increase from the C\$86 million threshold for 2015.

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 from 2015.)

## **Investment Canada Act**

In 2015 the thresholds in the *Investment Canada Act* were raised, and changed, so as to substitute an enterprise value test for the asset value test for direct acquisitions, except with respect to acquisitions by State-Owned Enterprises and acquisitions of cultural businesses.

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.

Aside from State-Owned Enterprises, WTO Investors (firms controlled in WTO countries) are generally required to file a pre-closing application for review and approval when directly acquiring a Canadian business where the enterprise value exceeds **C\$600 million**. The test will remain at this level until April 2017. It will then move to C\$800 million for a further two-year period (until April 2019), and then C\$1 billion until December 2020. It will then be subject to inflationary indexing in subsequent years. There are exceptions to the general rule as set out in the links below. The **2016 asset size threshold has been increased to \$375 million** for transactions by WTO country State-Owned Enterprises.

### **Quick Checklists**

Please [go here](#) for our 2016 *Canadian Competition Act* and *Investment Canada Act* Filing Checklist, showing the 2016 thresholds.

Please [go here](#) for our March 2015 bulletin containing a more detailed explanation of the changes to the to the *Investment Canada Act* in 2015.

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### **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.

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