

2017 CANADIAN MERGER NOTIFICATION THRESHOLD INCREASES

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The 2017 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\$88 million for 2017**. The new threshold will take effect immediately following publication in the Canada Gazette, which is expected to occur on February 6, 2017. This represents a \$1 million increase from the C\$87 million threshold for 2016.
- 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 2016.)

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.

WTO Investors (firms controlled in WTO countries) that are not State-Owned Enterprises 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**. This enterprise value threshold also applies for non-WTO Investors that directly acquire control of a Canadian business that was immediately prior to the investment controlled by

a WTO Investor. The test was to remain at C\$600 million until April 2017, when it was scheduled to move to C\$800 million for a further two-year period (until April 2019), and then C\$1 billion until December 2020. However, in the Fall of 2016 the Government announced that, **in 2017 the enterprise value threshold is expected to increase to C\$1 billion**. It will then be subject to inflationary indexing in subsequent years.

As well the **2017 asset size threshold has been increased to \$379 million** for direct acquisitions by WTO country State-Owned Enterprises and by non-WTO country State-Owned Enterprises that acquire control of a Canadian business that immediately prior to the investment was controlled by a WTO Investor. This is a \$4 million increase from the previous \$375 million threshold.

The asset size thresholds for investments by non-WTO Investors that are not described above and investments in Canadian cultural businesses remain at \$5 million for direct acquisitions and \$50 million for indirect acquisitions.

Quick Checklists

Please see our [Canadian Competition Act and Investment Canada Act Filing Checklist](#), showing the 2017 thresholds.

Please see our March 2015 bulletin containing a detailed explanation of the changes to the *Investment Canada Act* in 2015 that introduced the enterprise value threshold.

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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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