

CANADIAN MERGER NOTIFICATION THRESHOLDS INCREASED

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The 2015 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 from 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 February 2, 2015 that the "size-of-target" threshold would be increased to C\$86 million for 2015.** The new threshold will take effect immediately following publication in the Canada Gazette, which is expected to occur on February 7, 2015. This represents a \$4 million increase from the C\$82 million threshold for 2014.

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 Industry Canada has announced is expected to be **C\$369 million** for 2015 (the official amount will be published in the Canada

Gazette in early 2015); 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. Lower thresholds apply to acquisitions by Non-WTO Investors. Additional control-in-fact tests and other special rules also apply to acquisitions by State-Owned Enterprises (see the bulletin on the [Guidelines for State-Owned Enterprises](#) for further details) and 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.

Please [go here](#) for the 2015 Canadian Competition Act and Investment Canada Act Filing Checklist, showing the thresholds.

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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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