

## 2023 Competition Act and Investment Canada Act Thresholds

This chart is a general reference guide to assess whether a transaction triggers a filing under the *Competition Act* or the *Investment Canada Act*. It does not include all applicable calculation rules, exemptions, etc., does not address other sector-specific regimes in industries such as transportation, broadcasting/telecom and financial services, and does not constitute legal advice.

	COMPETITION ACT	INVESTMENT CANADA ACT			
	All Buyers	Trade Agreement investors <sup>1</sup>	WTO investors <sup>2</sup>	State-owned enterprise (SOE) investors	Other investors or investments in cultural businesses <sup>3</sup>
<b>Acquisition of assets or voting interests in a Canadian corporation, limited partnership or trust<sup>4</sup></b>	<p>Target had assets in Canada or revenues from sales in/from Canada (domestic sales plus exports) &gt; C\$93 million* during previous FY<sup>5</sup></p> <p>Buyer &amp; affiliates, plus target / vendor &amp; affiliates have assets in Canada or revenues from sales in/from/into Canada (domestic sales plus exports and imports) &gt; C\$400 million during previous FY</p>	Target's enterprise value ≥ C\$1.931 billion*	Target's enterprise value ≥ C\$1.287 billion*	Target's asset book value ≥ C\$512 million*	Target's asset book value in previous FY ≥ C\$50m unless direct acquisition of Canadian business or target's Canadian assets >50% of total assets, then asset book value ≥ C\$5m
<b>Additional requirement for asset transactions</b>	Assets form part of "operating business"	All or substantially all of the target assets used in carrying on a "Canadian business"			
<b>Additional requirements for equity transactions</b>	<p>Target carries on an "operating business"</p> <p>Corporations: Buyer acquires &gt;20% voting shares of a public corporation, &gt;35% voting shares of a private corporation, or &gt;50% if buyer exceeds prior thresholds</p> <p>Other Entities (LPs, JVs, Trusts) : Buyer acquires &gt;35% interest in profits or assets on dissolution, or &gt;50% interest if buyer already holds &gt;35%</p>	Target carries on a "Canadian business"			
<b>Filing</b>	Notification pre-closing to the Canadian Competition Bureau (CCB) if the above criteria are met <sup>6</sup>	<p>Application for review pre-closing if above criteria are met and deal structured as an acquisition of assets, or a direct acquisition of a Canadian corporation or the voting interests of an LP, JV or Trust.</p> <p><b>Note:</b> Transactions which do not require a pre-closing filing (including acquisitions of less than control) may be filed pre-closing to obtain certainty with respect to potential national security reviews.</p>	Application for review if above criteria are met, but can be filed 30 days post-closing if an indirect acquisition (of shares of a foreign corporation)		
		Post-closing notification otherwise	Post-closing notification otherwise <sup>7</sup>		
<b>No-close period</b>	30 days unless CCB issues a Supplementary Information Request (SIR), then 30 days after compliance <sup>8</sup>	45 days, extendable to 75 days at the discretion of the Minister, or longer if the investor consents			
<b>Filing fee</b>	C\$77,452.36*	None			
<b>Possibility of national security review</b>	Not applicable	Applicable to all new Canadian businesses or investments in existing Canadian businesses (including minority equity investments), but must be commenced within 45 days of filing of notification or application for review. <sup>9</sup> If no filing is required, a voluntary notification can be submitted that will commence a corresponding 45 day period. If an investor elects not to file, the government has 5 years to decide whether or not to initiate a national security review.			

\*Subject to annual revision.

## Notes

<sup>1</sup> A Trade Agreement investor refers to a non-SOE investor ultimately controlled in a jurisdiction with a trade agreement with Canada, namely: all EU countries as well as the United States, Australia, Chile, Colombia, Honduras, Japan, Malaysia, Mexico, New Zealand, Panama, Peru, Singapore, South Korea, the United Kingdom and Vietnam.

<sup>2</sup> A WTO investor refers to a non-SOE investor ultimately controlled in a state that is a member of the World Trade Organization.

<sup>3</sup> Investments in businesses involved in the publication, distribution, sale or exhibition of books, magazines, periodicals, newspapers, film or video products, audio or video music recordings and music in print or machine readable form, as well as radio, television and cable, broadcasting undertakings, and satellite programming and broadcast network services.

<sup>4</sup> Amendments to the *Competition Act* in 2022 have introduced an anti-avoidance provision that prevents parties from avoiding notification requirements by structuring their transactions in a manner that is designed to avoid notification requirements.

<sup>5</sup> For formal corporate amalgamations, in addition to the “target” (the continuing corporation) being required to have assets or revenues from sales in and from Canada in excess of C\$93 million, at least two of the amalgamating corporations, together with their affiliates, must each have assets in Canada or revenues from sales in, from or into Canada, in excess of C\$93 million.

<sup>6</sup> The CCB can challenge any merger, including those below the notifiable thresholds up to one year after closing. The CCB reviewed 27 non-notifiable matters over its last two fiscal years (for the fiscal years ended March 31, 2021 and 2022).

<sup>7</sup> For below-threshold investments in cultural businesses, the Governor-in-Council (the federal Cabinet) may, within 21 days after receipt of a notification, require that the investor submit an application for review and obtain an approval for the investment.

<sup>8</sup> Actual review periods may extend beyond the waiting periods. The CCB’s non-binding “service standards” are two weeks for “non-complex” transactions and 45 days for “complex” transactions, except where a SIR is issued. If a SIR is issued, the service standard time period runs until 30 days following submission of the complete response to the SIR. The CCB can complete its review before or after the end of the service standard period.

<sup>9</sup> A full-scale national security review process can take up to 200 days to complete, or longer if the investor consents. For its fiscal year ended March 31, 2022, the Department of Innovation, Science and Economic Development Canada reported that the average review timeline for investments triggering the application of the national security regime was 133 days, though many of these reviews would have concluded prior to a full-scale review being ordered.

We would be pleased to discuss *Competition Act* and *Investment Canada Act* filing obligations with you in more detail.

### Neil Campbell

t: 416.865.7025

e: [neil.campbell@mcmillan.ca](mailto:neil.campbell@mcmillan.ca)

### Joshua Chad

t: 416.865.7181

e: [joshua.chad@mcmillan.ca](mailto:joshua.chad@mcmillan.ca)

### John Clifford

t: 416.865.7134

e: [john.clifford@mcmillan.ca](mailto:john.clifford@mcmillan.ca)

### Dan Edmondstone

t: 416.307.4121

e: [dan.edmondstone@mcmillan.ca](mailto:dan.edmondstone@mcmillan.ca)

### Ryan Gallagher

t: 604.691.6865

e: [ryan.gallagher@mcmillan.ca](mailto:ryan.gallagher@mcmillan.ca)

### Hannah Johnson

t: 647.943.9172

e: [hannah.johnson@mcmillan.ca](mailto:hannah.johnson@mcmillan.ca)

### Joshua Krane

t: 416.865.7299

e: [joshua.krane@mcmillan.ca](mailto:joshua.krane@mcmillan.ca)

### Janine MacNeil

t: 416.307.4124

e: [janine.macneil@mcmillan.ca](mailto:janine.macneil@mcmillan.ca)

### Mrunal Masurekar

t: 416.307.4220

e: [mrunal.masurekar@mcmillan.ca](mailto:mrunal.masurekar@mcmillan.ca)

### James Musgrove

t: 416.307.4078

e: [james.musgrove@mcmillan.ca](mailto:james.musgrove@mcmillan.ca)

### Mark Opashinov

t: 416.865.7873

e: [mark.opashinov@mcmillan.ca](mailto:mark.opashinov@mcmillan.ca)

### Sarah Stirling-Moffet

t: 416.945.8025

e: [sarah.stirling-moffet@mcmillan.ca](mailto:sarah.stirling-moffet@mcmillan.ca)

### François Tougas

t: 604.691.7425

e: [francois.tougas@mcmillan.ca](mailto:francois.tougas@mcmillan.ca)

### Éric Vallières

t: 514.987.5068

e: [eric.vallieres@mcmillan.ca](mailto:eric.vallieres@mcmillan.ca)

### William Wu

t: 416.865.7187

e: [william.wu@mcmillan.ca](mailto:william.wu@mcmillan.ca)

