

# 2024 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>
Acquisition of assets or voting interests in a Canadian corporation, limited partnership or trust <sup>4</sup>	<p>Target had assets in Canada or revenues from sales in or from Canada (domestic sales plus exports) &gt; C\$93 million* during previous FY<sup>5</sup></p> <p><b>Proposed legislation likely to pass in early 2024 will expand the test to also include sales into Canada</b></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\$1.989 billion*	Target's enterprise value ≥ C\$1.326 billion*	Target's asset book value ≥ C\$528 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
Additional requirement for asset transactions	Assets form part of an "operating business" (Generally, there must be at least one employee in Canada)	All or substantially all of the target assets used in carrying on a "Canadian business"			
Additional requirements for equity transactions	<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" and investor is controlled outside of Canada			
Filing	Notification pre-closing to the Canadian Competition Bureau (CCB) if the above criteria are met <sup>6</sup>	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.		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)	
		Proposed legislation likely to pass in early 2024 will require investments into certain, yet-to-be defined Canadian businesses to be accompanied by pre-closing notifications to allow the government to consider national security implications			
		Post-closing notification otherwise Legislation likely to pass in early 2024 will provide the government with discretion to initiate net benefit reviews of any acquisition of a Canadian business by a non-Trade Agreement SOE within 45 days following the receipt of a notification		Post-closing notification otherwise <sup>7</sup>	
No-close period	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			
Filing fee	C\$82,719.12*	None			
Possibility of national security review	Not applicable	<p>Applies to any investment in an entity with Canadian operations (including minority equity investments), but must be commenced within 45 days of filing of notification or application for review.<sup>9</sup></p> <p>Proposed legislation likely to pass in early 2024 will require minority investments and investments in entities with Canadian operations that are engaged in yet-to-be defined business activities to file pre-closing notifications if the investor will obtain both access to confidential information about the entity and certain control rights in the entity. This will allow the government to initiate pre-closing national security reviews for investments of potential concern that do not rise to the level of the acquisition of a Canadian business.</p> <p>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.</p>			

\*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, Brunei, 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 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 23 non-notifiable matters over its last two fiscal years (for the fiscal years ended March 31, 2022 and 2023).

<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. Legislation likely to pass in early 2024 will increase this time period to 45 days.

<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, 2023, 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 174 days, though about one-third of these reviews 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.

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