

Competition, Antitrust and Foreign Investment

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Competition Act and Investment Canada Act Review Thresholds Announced for 2016

The Government of Canada has announced the annual adjusted monetary thresholds for review of acquisitions involving Canadian businesses under the *Competition Act* and the *Investment Canada Act* for 2016.

Competition Act

Subject to limited exemptions, under the *Competition Act*, parties to a share, asset, amalgamation or combination transaction may be required to file pre-merger notification filings if certain financial thresholds are met.

With respect to an asset transaction, parties must provide the Competition Bureau with pre-merger notification filings if a proposed transaction exceeds two thresholds: (a) the size of the transaction; and (b) the size of the parties.

- *“Size-of-Transaction” Threshold* - The pre-merger notification threshold relating to transaction size for 2016 has been increased to \$87 million from the 2015 threshold of \$86 million. Therefore, this threshold will be met where the aggregate value of the target’s assets in Canada, or the annual gross revenue from sales in or from Canada generated by the target’s Canadian assets, exceed \$87 million.

- *“Size-of-Parties” Threshold* - This threshold is not adjusted annually. It is met where the parties to a transaction (together with their affiliates) have combined assets in Canada, or annual gross revenues from sales in, from or into Canada, exceeding \$400 million in aggregate value.

For share transactions, in addition to exceeding the financial thresholds noted above, pre-merger notification will normally be required where:

- i. the purchaser, as a result of the transaction, holds more than 20% of the voting shares of the target public company (more than 35% of the voting shares if the voting shares of the target company are not publicly traded), or
- ii. if the purchaser before the transaction holds voting shares of the target company that exceed 20% or 35%, as applicable, the purchaser will as a result of the transaction, hold more than 50% of the voting shares of the target company.

The “Size-of-Parties” and “Size-of-Transaction” thresholds are also relevant in determining if pre-merger notification is required for amalgamation and combination transactions, although the tests used to determine if merger notification is required for amalgamations and combinations are somewhat different than described above for asset and share transactions.

Investment Canada Act

Investments in Canada by foreign investors (i.e. entities controlled directly or indirectly by non-Canadians) are reviewable under the “net benefit” provisions of the *Investment Canada Act* if the foreign investor (a) acquires control of a Canadian business and (b) meets certain

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financial thresholds. These financial thresholds vary greatly depending on whether the target Canadian business is a cultural business, the transaction is a direct or indirect acquisition, the investor is a state-owned enterprise (SOE), or the investor is from a WTO country (a “**WTO Investor**”).

For 2016, only the review threshold applicable to investments by WTO Investors that are also SOEs has been adjusted, from the 2015 threshold of \$369 million to \$375 million, based on the book value of the Canadian business’s assets.

Under changes made in 2015, the review threshold for direct acquisitions of Canadian businesses by private sector WTO Investors will remain at \$600 million, based on the enterprise value of Canadian business being

acquired, until 2017, when this threshold will be increased to \$800 million. In addition, the review threshold for private sector investors from Canada’s trading partners among TPP and EU countries is slated to increase to \$1.5 Billion under trade agreements with those countries if ratified by the Government of Canada. These changes are summarized in greater detail in our March 25, 2015 Update, *Thresholds for Investment Canada Reviews to be Increased to \$600 Million in Enterprise Value* and our November 12, 2015 Update, *TPP to Increase Thresholds for Investment Canada Reviews to \$1.5 Billion in Enterprise Value*.

For further information regarding review of investments under the *Competition Act* or *Investment Canada Act*, contact our Competition, Antitrust and Foreign Investment Group.