Goodmans LLP Update

Competition Law Update

March 25, 2015

Thresholds for Investment Canada Reviews to be Increased to $600 Million in Enterprise Value

The Government of Canada announced that new (higher) monetary thresholds for Investment Canada review of investments from WTO countries will become effective April 24, 2015. It also introduced amendments to the national security review process, effective immediately, potentially lengthening the time periods for such reviews and requiring the filing of additional information.

Increased Threshold for Review

New regulations (first announced in 2009) will come into force on April 24, 2015, changing the monetary threshold for "net benefit" reviews of acquisitions of control by non-Canadians from WTO countries. Currently, the threshold is $369 million, based on the book value of the assets of the Canadian business being acquired, adjusted annually to reflect changes to GDP.

The new threshold for investors from WTO countries will be $600 million (to be increased to $800 million in two years' time and to $1 billion two years later), based on the enterprise value of the Canadian business being acquired. The new regulations set out the details for how enterprise value is to be calculated for this purpose.

This new threshold is subject to specific exceptions in the case of acquisitions by state-owned enterprises (SOEs) and acquisitions of cultural businesses. Reflecting the greater scrutiny accorded investments from SOEs (announced by the Prime Minister himself in 2012), those investors from WTO countries will continue to be subject to the current lower threshold, based on book value and adjusted annually. Cultural businesses will continue to be subject to the much lower, and fixed, $5 million book value threshold. All acquisitions of control by non-WTO investors remain subject to this same $5 million threshold.

Increased Timeline for National Security Reviews

Effective immediately, there will be increases to the timelines applicable to the separate national security reviews under the Investment Canada Act. These include, among other amendments, an increase to 45 days (from 25 days) for the time period for the Minister of Industry to determine whether to commence a review (on "reasonable grounds to believe that an investment by a non-Canadian could be injurious to national security"), as well as the potential for the Minister to unilaterally extend the review period up to an additional 45 days. The result of these amendments is that a national security review, which under the existing rules occupied 130 days, could now extend up to 200 days in total.

Conclusion

The increased monetary thresholds for net benefit reviews under the ICA are welcome, and put an end to the uncertainty that has existed since these measures were first announced in 2009.

Maintenance of the existing threshold for SOEs, even those from WTO countries, and the increased timelines for national security reviews, reflect the increasing importance of national interest and security considerations in foreign investment reviews in Canada and globally.

For further information regarding Investment Canada reviews of investments, contact our Competition, Antitrust and Foreign Investment Group.