

Change in Competition Act and Investment Canada Act Review Thresholds

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On February 2, 2015, the Canadian Competition Bureau (as created pursuant to the *Competition Act*) announced an increase in the notifiable transaction-size threshold to \$86 million (Canadian Dollars). This represents an increase from the 2014 threshold of CDN\$82 million. The new threshold for 2015 came into effect on February 7, 2015.

Upon the new threshold taking effect, the Competition Bureau must generally be given advance notice of proposed transactions where:

- the book value of the target's assets in Canada or revenues from sales in or from Canada generated from those assets (as reflected in the most recent audited financial statements) exceed CDN\$86 million; and
- the C\$400 million "size of parties" test is met, (where the combined Canadian assets or revenues of the parties and their respective affiliates in, from or into Canada exceed CDN\$400 million).

Where a transaction is notifiable, parties must submit to the Bureau a pre-merger notification filing containing certain required information (as well as additional information if the Bureau issues a supplementary information request) and are prohibited from closing until expiration, termination or waiver of the statutory waiting period set out in the *Act* (which is 30 days from filing complete pre-merger notification filings or, if the Bureau issues a supplemental information request, 30 days from compliance with such supplemental information request).

However, regardless of the increased notification threshold, merging parties must be mindful that the Commissioner of Competition retains the jurisdiction to investigate and challenge a transaction within one year following the closing even if it did not meet the pre-merger notification thresholds.

The threshold for transactions requiring foreign investment review under the *Investment Canada Act* has likewise been increased for 2015. Direct acquisitions of control of Canadian businesses by non-Canadians are reviewable under the *Investment Canada Act* where certain financial thresholds are met. The rules cover both share

and asset purchase acquisition transactions. In regards to a direct acquisition by a "WTO investor" (that is, an investor that is ultimately controlled by persons who are residents or citizens of World Trade Organization member countries), Industry Canada has announced an increase in the book value of assets threshold which triggers a review requirement. The new threshold, which is effective for 2015, is CDN\$369 million. The 2015 threshold was CDN\$354 million.

The threshold for direct acquisitions by non-WTO investors and for acquisitions by non-Canadians of Canadian cultural businesses remains unchanged at CDN\$5 million.

Investments by non-Canadians that do not exceed the review thresholds must nevertheless be notified to Industry Canada within 30 calendar days of closing. The notification procedure is fairly straightforward, though certain information must be disclosed to Industry Canada.

If you have any questions or comments regarding these developments, please do not hesitate to contact David J. Wilson.

The above information is meant to be informational and does not constitute binding legal advice. Special legal advice should be sought for your particular circumstances.



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