# Competition Act And Investment Canada Act Thresholds For 2017

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Certain merger notification thresholds under Canada's *Competition Act* and the foreign investment review thresholds under the *Investment Canada Act* are updated on a yearly basis. On March 3, 2017, the Competition Bureau announced that the pre-merger notification "transaction-size" threshold under the *Competition Act* had increased. The Federal Government has also announced that the pre-merger review threshold under the *Investment Canada Act* for acquisitions involving Canadian businesses by WTO ("World Trade Organization") members will also increase.

## New Pre-Merger Notification "Transaction-size" Threshold under the *Competition Act*

The Competition Bureau announced that the pre-merger notification "transaction-size" threshold for 2017 has increased to **CAD $88 million**, from the 2016 threshold of CAD $87 million. This increase took effect on March 4, 2017. A proposed transaction generally requires notification to the Competition Bureau under the *Competition Act* where both of the following thresholds are exceeded:

1. **Size-of-the-parties threshold**: The parties to the transaction, together with their affiliates, collectively have assets in Canada, or gross annual revenues from sales in, from or into Canada, that exceed CAD $400 million; and,
2. **Transaction-size threshold**: The size of the specific transaction will exceed CAD $88 million. In the case of asset transactions, this would mean that either the value of the assets in Canada, or the annual gross revenues from sales in or from Canada generated from those assets, exceed CAD $88 million. In the case of an acquisition of voting shares, this would mean that either the value of the assets of the corporation in Canada (and its affiliates), or the annual gross revenues from its sales in or from Canada generated from those assets, exceed CAD $88 million. Additionally, in order for pre-merger notification to be triggered with respect to voting share transactions, the percentage of voting shares held by

the entity acquiring the shares would have to rise as a result of the transaction above 20 percent of the total outstanding voting shares of a public corporation, or above 35 percent in the case of a private corporation. If the entity acquiring the shares already owned shares in excess of 20 or 35 percent (depending on the type of transaction, the transaction would have to result in the entity owning more than 50 percent of the total outstanding voting shares of the corporation acquired.

## Pre-Merger Review Thresholds for Direct Investments under the *Investment Canada Act*

The threshold for pre-merger reviews for direct investments involving Canadian (non-cultural) businesses by WTO members (non state-owned) is expected to increase to **CAD $1 billion** in enterprise value on April 24, 2017. This threshold was originally scheduled to increase to CAD $800 million in 2017, and to CAD $1 billion in 2019. However, in its 2016 Fall Economic Statement the Federal Government announced that "to ensure that Canada's legislative framework supports investments that can create jobs and opportunities for middle class Canadians, the threshold for review under the *Investment Canada Act* will be raised to $1 billion, two years sooner than planned".

The Investment Review Division of the Department of Innovation, Science and Economic Development also announced that the threshold for pre-merger reviews for direct investments involving Canadian (non-cultural) businesses by state-owned enterprises which are WTO members will increase to **CAD $379 million** from CAD $375 million in 2016. This threshold is based on the "book value" of the Canadian business' assets.

The existing (book value) threshold of **CAD $5 million** will continue to apply to transactions that relate to cultural businesses[1] or where none of the parties are from a country that is a WTO member. If these thresholds are not exceeded, the acquisition of control of a Canadian business by a non-Canadian entity is only subject to a post-closing reporting obligation (notification).

[1] A "cultural business" is defined by the *Investment Canada Act* as a business that that carries on any of the following activities:
(a) the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine readable form, other than the sole activity of printing or typesetting;
(b) the production, distribution, sale or exhibition of film or video recordings;
(c) the production, distribution, sale or exhibition of audio or video music recordings;
(d) the publication, distribution or sale of music in print or machine readable form; or
(e) radio communication in which the transmissions are intended for direct reception by the general public, any radio, television and cable television broadcasting undertakings and any satellite programming and broadcast network services.

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