Competition Act And Investment Canada Act Thresholds For 2016

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Aspects of the Canadian merger notification thresholds under the *Competition Act* and the foreign investment review thresholds under the *Investment Canada Act* are updated on a yearly basis. For 2016, the Canadian federal government has announced that the pre-merger notification "transaction-size" threshold under the *Competition Act*, as well as the pre-merger review threshold under the *Investment Canada Act* for acquisitions involving Canadian businesses by WTO-member state-owned enterprises have increased.

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

The Competition Bureau announced that the pre-merger notification “transaction-size” threshold for 2016 has increased to CAD $87 million, from the 2015 threshold of CAD $ 86 million. This increase took effect on February 6, 2016. A proposed transaction generally requires notification to the Competition Bureau under the federal *Competition Act* where both of the following two thresholds are exceeded:

- 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
- Transaction-size threshold: The size of the specific transaction will exceed CAD $87 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, are greater than CAD $87 million. In the case of a voting shares transaction, 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, are greater than CAD $87 million. Additionally, in order for pre-merger notification to be triggered with respect to share transactions, the entity acquiring the shares would have to acquire 20 percent voting share of a public corporation, or 35 percent voting share in the case of a private corporation (or a 50 percent share if the acquirer already owned shares in excess of 20 or 35 percent depending on the type of transaction).

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 will remain at CAD $600 million in enterprise value. This review threshold is scheduled to increase to CAD $800 million, on April 24, 2017 and CAD $1 billion on April 24, 2019. These new "enterprise value" thresholds are based on amendments to the *Investment Canada Act* enacted in 2013 that were brought into force last year.

Innovation, Science and Economic Development Canada has announced that the threshold for pre-merger reviews for direct investments involving Canadian (non-cultural) businesses by state-owned enterprise s which are WTO members will increase to CAD $375 million from CAD $369 million in 2015. These thresholds are 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 businesses1 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 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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