Competition Act and Investment Canada Act Thresholds for 2018

February 15, 2018

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 February 10, 2018, the Federal Government published the increases for the pre-merger notification "transaction-size" threshold under the *Competition Act*, and the pre-merger review threshold under the *Investment Canada Act* for acquisitions involving Canadian businesses by state-owned enterprises controlled in World Trade Organization ("WTO") member states.

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

The pre-merger notification "transaction-size" threshold for 2018 has increased to C$92 million, from the 2017 threshold of C$88 million. A proposed transaction generally requires notification to the Competition Bureau under the *Competition Act* where both of the following thresholds are exceeded:

1. Party-size threshold: The parties to the transaction, together with their affiliates, collectively have assets in Canada, or gross annual revenues from sales from or into Canada, that exceed C$400 million (this threshold remains unchanged from year to year); and,
2. Transaction-size threshold: The size of the specific transaction will exceed C$92 million. In the case of asset or share transactions, this would mean that either the value of the assets in Canada of the target, or the annual gross revenues from sales in or from Canada generated from those assets, exceed C$92 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 per cent of the total outstanding voting shares of a public corporation, or above 35 per cent in the case of a private corporation. If the entity acquiring the shares already owns shares in excess of 20 or 35 per cent (depending on the type of transaction), the transaction would have to result in the entity owning more than 50 per cent 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), will remain at C$1 billion. This increase came into effect on June 22, 2017.

As also discussed in our most recent bulletin, on September 21, 2017, this threshold was increased to C$1.5 billion in enterprise value for non-state owned enterprise investors from any Comprehensive Economic and Trade Agreement ("CETA") country or other bilateral free trade agreement partner country (now defined in the *Investment Canada Act* as a "Trade Agreement Investor"). Other Trade Agreement Investors include European Union countries, Chile, Colombia, Honduras, Mexico, Panama, Peru, South Korea, and the United States.

On January 23, 2018, eleven countries agreed on the core elements of a new agreement to be called the "Comprehensive and Progressive Agreement for Trans-Pacific Partnership" ("CPTPP")1. The text of the CPTPP outlines that this threshold will also be C$1.5 billion for investors (other than state-owned enterprises) of each signatory state (*i.e.* Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, and Vietnam), once that signatory state ratifies the CPTPP in its own jurisdiction.

The Investment Review Division of the Department of Innovation, Science and Economic Development also published that the threshold for pre-merger reviews for direct investments involving Canadian (non-cultural) businesses by state-owned enterprises which are controlled in WTO member states will increase to C$398 million from C$379 million in 2017. This threshold is based on the "book value" of the Canadian business' assets.

The existing (book value) threshold of C$5 million will continue to apply to transactions that relate to cultural businesses2 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 Formerly known as the Trans-Pacific Partnership, prior to the exclusion of the United States.

2 A "cultural business" is defined by the *Investment Canada Act* as a business that that carries on activities in the book, magazine, periodical or newspaper industries, film/video/TV, music, or radio broadcasting industries.

By

Devin Persaud, Denes A. Rothschild

Expertise

Competition/Antitrust and Foreign Investment

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.