

	COMPETITION ACT – Notifiable Transactions¹	INVESTMENT CANADA ACT – Reviewable Transactions⁴					
		Direct Acquisitions				Indirect Acquisitions	
		CETA and Trade Agreement Investors⁵ (non-SOE Investors)	Regular Threshold (non-SOE Investors)	SOE Investors⁶	Cultural Sector⁷ or Non-WTO Investors⁸	Cultural Sector⁶ or Non-WTO Investors⁸	Regular Threshold
Transaction-Size Threshold	Target has assets in Canada or revenues generated from Canadian assets (domestic sales plus exports) > C\$88 million. ²	Enterprise value of Target’s Canadian business > C\$1.5 billion. ⁵ (includes EU members, the United States, Chile, Colombia, Honduras, Mexico, Panama, Peru and South Korea)	Enterprise value of Target’s Canadian business > C\$1 billion. ⁵	Canadian business asset value > C\$379 million. ⁹	Canadian business asset value > C\$5 million. ⁹	Canadian business asset value > C\$50 million. ⁹	Not reviewable.
AND							
Party-Size Threshold	Parties to the transaction, together with their affiliates (>50% ownership interest), have assets in Canada or revenues from sales in/from/into Canada (domestic sales plus exports and imports) > C\$400 million.	Not applicable.					
AND							
Share Ownership Threshold (for share acquisitions only)	Publicly-traded company: acquiror will hold >20% of the voting shares of the target (or >50% if the acquiror already holds >20%). Privately-held company: the acquiror will hold >35% of the voting shares of the target (or >50% if the acquiror already holds > 35%).	Acquisition of “control” is deemed to occur if >50% of the voting shares of a corporation are acquired, and presumed to occur if 33%-50% are acquired unless it can be established that the acquiror will not acquire control-in-fact of the corporation through the ownership of voting shares. For acquisitions by state-owned enterprises and in the cultural sector, the Minister can determine that there has been an acquisition of control-in-fact, even if the above shareholding threshold is not exceeded.					
Filing Deadline	None. The transaction cannot close until notice has been given and the no-close waiting period has expired.	None. The investment cannot be implemented until an application for review has been submitted and the no-close waiting period has expired.					Not applicable.
No-close Waiting Period	Default: 30 days unless Commissioner issues a Supplementary Information Request (SIR). If a SIR is issued: 30 days after compliance. ³ If seeking Advance Ruling Certificate without filing notification: until clearance is received.	Until approval is received from Minister of Innovation, Science and Economic Development (or Minister of Heritage in cultural cases) – initial 45-day waiting period, subject to a potential 30-day extension (and subsequent extensions with the investor’s consent). ¹⁰					Not applicable.
National Security	Not applicable.	The Minister can initiate a review of any investment (even minority interests) that “may be injurious to national security” within 45 days of receipt of an <i>Investment Canada Act</i> Notification Form or application for review (or implementation of the investment if it is not notifiable or reviewable). Additional special timelines, review procedures and approval processes apply to such transactions. ¹¹					

* **Overview:** The *Competition Act* thresholds apply until the annually adjusted amounts for 2018 are published in the *Canada Gazette*, which is expected to occur early in 2018. This chart has been prepared as a reference regarding the main attributes of the *Competition Act* (Canada) notification and *Investment Canada Act* review regimes. It does not include all applicable calculation rules, exemptions, etc., does not address other sector-specific regimes in industries such as transportation, broadcasting/telecom and financial services, and does not constitute legal advice. Canadian counsel should be consulted with respect to the application of these provisions to particular factual situations.

NOTES:

¹ **Non-Notifiable Transactions Under the Competition Act:** Mergers that do not meet the thresholds for mandatory notification are nevertheless within the jurisdiction of the Competition Bureau to review for up to one year after closing. The Competition Bureau has reviewed and challenged mergers which fall below the pre merger notification thresholds. For example, according to a Competition Bureau study, it reviewed 23 such matters in its FY2015, and 15 in H1 of its FY 2016. Contact us to discuss the strategic analysis of whether to notify a transaction falling below the thresholds.

² **Annual Adjustment of Competition Act Transaction Size Threshold:** C\$88 million is the threshold at the time of writing. This threshold is likely to be increased in early 2018 to reflect a year-over-year increase in Canada's nominal Gross Domestic Product ("GDP"). (Note that for formal corporate amalgamations, two thresholds apply: (i) the assets in Canada that would be owned by the continuing corporation must have an aggregate value in excess of C\$88 million or must generate revenues in excess of C\$88 million; and (ii) each of at least two of the amalgamating corporations, together with their affiliates, must have assets in Canada or gross revenues from sales in, from or into Canada, in excess of C\$88 million.)

³ **Competition Act Review Period:** Actual review periods may extend beyond the waiting periods. The Commissioner's non-binding "service standards" are two weeks for "non-complex" transactions and 45 days for "complex" transactions, except where a SIR is issued. If a SIR is issued, the service standard time period runs until 30 days following submission of the complete response to the SIR. Early termination of the initial waiting period or the SIR waiting period is possible.

⁴ **Non-Reviewable Transactions Under the Investment Canada Act:** For any acquisition of control of a Canadian business that does not meet the applicable review threshold, an administrative Notification Form must be submitted within 30 days of closing.

⁵ **Investment Canada Act Direct Review Threshold:** Starting on January 1, 2019, the current C\$1 billion 'regular' enterprise threshold and the C\$1.5 billion "CETA" threshold will be adjusted annually to reflect a year-over-year increase in Canada's nominal GDP. However, under the Comprehensive Economic and Trade Agreement between Canada and the EU ("CETA") that was provisionally implemented on September 21, 2017, there was a significant increase in the enterprise value threshold to C\$1.5 billion for investors from participating jurisdictions. As a result CETA's implementation, in addition to increasing the enterprise value threshold for EU countries, 'most-favoured nation' provisions in certain other free trade agreements extended the \$1.5 billion threshold to apply to investors from the United States, Chile, Colombia, Honduras, Mexico, Panama, Peru and South Korea.

⁶ **Investment Canada Act review for Direct Investments by State-Owned Enterprises (SOEs):** For a direct acquisition of a Canadian business where a WTO investor that is a state-owned enterprise investor is involved, and the Canadian business is not engaged in cultural activities, an investment will be reviewable only if the Canadian business has assets with a book value in excess of C\$379 million (see "Asset Value" below). This threshold is likely to be increased in early 2018 to reflect a year-over-year increase in Canada's nominal Gross Domestic Product.

⁷ **Cultural Sector:** Investments in the cultural sector include any investments in businesses involved in the publication, distribution, sale or exhibition of books, magazines, periodicals, newspapers, film or video products, audio or video music recordings and music in print or machine readable form, as well as radio, television, cable, broadcasting undertakings and satellite programming and broadcast network services. There is no *de minimis* exemption: for example, a grocery store that sells magazines at check-out is involved in the sale of magazines and, therefore, the acquisition of that store by a non-Canadian would be subject to the cultural sector review thresholds. In addition, the Governor-in-Council may, within 21 days after receipt of a Notification that falls below the review thresholds, require that the investor submit an application for review and obtain an approval for the investment.

⁸ **Non-WTO Investors:** The non-WTO investor rules generally apply if neither the investor nor the vendor is a "WTO investor" (that is, an entity controlled by citizens or governments of states that are members of the World Trade Organization). However, where a non-WTO investor that is a state-owned enterprise acquires control of a Canadian business not engaged in cultural activities where, immediately prior to the implementation of the investment, the Canadian business is controlled by a WTO investor, the investment will be reviewable only if the Canadian business has assets with a book value in excess of C\$379 million (see "Asset Value" below).

⁹ **Asset Value (Investment Canada Act):** Asset value/Book value of assets under the *Investment Canada Act* is determined by reviewing the "total assets" figure on the balance sheet of the Canadian business at the end of the last completed fiscal year before its acquisition. Where financials are not yet prepared, an amount that is developed from working papers is acceptable.

¹⁰ **Investment Canada Act Review Period:** The Minister can (and usually does) unilaterally extend the initial 45-day waiting period by an additional 30 days (further extensions are only available on consent of the investor).

¹¹ **National Security Review Period:** For National Security reviews, the process can take up to 200 days (or longer with investor consent), including the initial notice of a potential review, Cabinet's decision to order a National Security review, an extension request by the Minister, the Minister's recommendation, and Cabinet's decision.

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For a more detailed discussion of the Canadian merger review regime, see Neil Campbell, James Musgrove, Mark Opashinov and Joshua Chad "Canada", *Merger Control 2017 – Getting the Deal Through* (Law Business Research), p. 90-96.