

# Investment Canada Act and Competition Act Quick Reference – 2017

## Investment Canada Act Thresholds

There are multiple thresholds for review of direct acquisitions of control of a Canadian business by a non-Canadian WTO investor:

1. **Direct acquisition of a publicly-traded entity** – \$1 billion\* or more in enterprise value, based on the target’s market capitalization, plus total liabilities (less operating liabilities), minus cash and cash equivalents.
2. **Direct acquisition of a privately-held entity** – \$1 billion\* or more in enterprise value, based on the total acquisition value, plus total liabilities (less operating liabilities), minus cash and cash equivalents. Where acquiring less than 100%, total acquisition value will include amounts in addition to those payable by the non-Canadian acquiring control.
3. **Acquisition of assets** – \$1 billion\* or more in enterprise value, based on the total consideration payable, plus the liabilities that are assumed by the investor (other than operating liabilities), minus the cash and cash equivalents that are transferred to the investor.
4. **Direct acquisition of a cultural business** – book value of assets of Canadian business is \$5 million or more.
5. **Direct acquisition by a non-WTO investor of a non-WTO controlled target** – book value of assets of Canadian business is \$5 million or more.
6. **Direct acquisition of control by a state-owned enterprise (“SOE”)** – book value of assets of Canadian business is \$379 million or more.

\*Effective September 21, 2017 the enterprise value threshold increased to \$1.5 billion for an investment by a non-Canadian that is controlled by nationals of certain free trade agreement partners to acquire control **directly** of a Canadian business. The new threshold applies to European Union investors that are not state-owned investors, as well as to investors that are not state-owned investors from the United States, Mexico, Chile, Colombia, Panama, Peru, Honduras and South Korea.

**Direct acquisitions** of Canadian businesses **below the thresholds**, and **indirect WTO investments, including by SOEs**, are subject to notification only; they may be reviewed on national security grounds.

**Indirect non-WTO investment or indirect investment in the cultural sector** is subject to review where the book value of assets is \$50 million or more (or \$5 million in certain cases).

“**Control**” of corporations is deemed not to occur unless 1/3 or more of voting shares are acquired (subject to control in fact test for cultural businesses or SOE acquisitions). Control is presumed to be acquired for acquisitions of between 1/3 and a majority of voting shares, but this presumption can be rebutted if there is no control in fact. For non-corporate entities, control is acquired when a majority of voting interests is acquired, and no control is acquired when the voting interests acquired represent less than a majority.

**National Security Regime** – The government may review and prohibit any level of investment by a non-Canadian in a Canadian business if it determines that the investment may be “injurious to national security”. For more information on recently-published *Guidelines on National Security Review of Investments*, see Osler’s summary at [osler.com](http://osler.com).

## Competition Act Notification Thresholds

Where both the Party Size and Transaction Type Thresholds are met, prior to closing the parties must either: (a) notify and observe the statutory waiting period; (b) obtain an advance ruling certificate (“ARC”); or (c) obtain a waiver from the notification provisions and a no-action letter.

**Party Size Threshold** – Parties to the transaction and their affiliates have aggregate book value of assets in Canada, or gross revenues from sales in, from or into Canada, in excess of \$400 million.

### Transaction Type Thresholds

Type	In respect of the acquired business, the continuing corporation or the combination, the value of assets in Canada, or the gross revenues from sales in or from Canada generated from those assets
Asset Acquisition	exceeds \$88 million
Share Acquisition	exceeds \$88 million and <ul style="list-style-type: none"><li>• where the shares are publicly traded, more than 20% of the outstanding voting shares will be held following the acquisition, or if more than 20% are already held, more than 50% will be held following the acquisition; or</li><li>• where the shares are not publicly traded, more than 35% of the outstanding voting shares will be held following the acquisition, or if more than 35% are already held, more than 50% will be held following the acquisition</li></ul>
Amalgamation (e.g., Delaware Merger)	exceeds \$88 million and at least two of the amalgamating corporations, together with their affiliates, each have assets in Canada, or gross revenues from sales in, from or into Canada, in excess of \$88 million
Acquisition of an Interest in an Unincorporated Combination	exceeds \$88 million and purchaser and its affiliates are entitled to more than 35% of profits or assets on dissolution, or if more than 35% already held, to more than 50% of profits or assets on dissolution

**Notification Timeline** – The initial review period is 30 days. If during the initial review period the Competition Bureau issues a supplementary information request (“SIR”), akin to a US-style Second Request, the transaction cannot be completed until 30 days after compliance with the SIR.

**ARC** – ARC may be issued where a transaction raises minimal or no substantive competition law issues and typically is issued within 2-3 weeks of an ARC request being made.

**Filing Fee** – \$50,000