



# Canada

## Global merger control handbook – update

APRIL 2020

### Merger control legislation updates since 1 July 2018

#### COMPETITION ACT UPDATES

In Canada, a mandatory pre-merger notification is required if both: (1) the size of the parties ("**Party Size Threshold**") and (2) the size of the transaction ("**Transaction Size Threshold**") exceed certain thresholds. In some cases there are also shareholding thresholds.

In 2019, the Transaction Size Threshold was increased from CDN\$92 million to **CDN\$96 million**. It remained at this figure in 2020.

The Party Size Threshold remains unchanged and is exceeded where the parties to the transaction, together with their world-wide affiliates, have either:

- Assets in Canada that exceed CDN\$400 million in total value; or
- Annual gross revenues from sales in, from or into Canada that exceed CDN\$400 million.

The Transaction Size Threshold (and if applicable shareholding threshold) is exceeded in the following cases:

MERGER TYPE	THRESHOLD
Acquisition of assets	<p>If, in respect of the acquired business, <b>either</b></p> <ul style="list-style-type: none"> <li>the value of assets in Canada exceeds CDN\$96 million; or</li> <li>the annual gross revenues from sales in or from Canada generated from those assets exceed CDN\$96 million.</li> </ul>
Acquisition of shares	<p>If, in respect of the acquired business, <b>either</b></p> <ul style="list-style-type: none"> <li>the value of assets in Canada owned by the target exceeds CDN\$96 million; or</li> <li>the annual gross revenues from sales in or from Canada generated from those assets exceeds CDN\$96 million.</li> </ul> <p>In addition, in an acquisition of voting shares, a shareholding threshold must also be met. The Act requires notification if the transaction results in:</p> <ul style="list-style-type: none"> <li>the acquisition of more than 20% of the issued and outstanding voting shares of a public company (or, more than 50%, if the buyer already owned 20% or more before the proposed transaction); or</li> <li>the acquisition of more than 35% of the issued and outstanding voting shares of a private company (or, more than 50%, if 35% or more was owned before the proposed transaction).</li> </ul>
Amalgamation	<p>If, in respect of the continuing corporation, <b>either</b></p> <ul style="list-style-type: none"> <li>the value of assets in Canada owned by the continuing corporation (or by corporations it will control) exceeds CDN\$96 million; or</li> <li>the annual gross revenues from sales in or from Canada generated from those Canadian assets exceeds CDN\$96 million; and</li> <li>at least two of the amalgamating corporations, together with their affiliates, each have assets in Canada, or annual gross revenues from sales in, from or into Canada which exceed CDN\$96 million.</li> </ul>
Acquisition of an interest in an unincorporated combination	<p>If, in respect of the continuing combination, <b>either</b></p> <ul style="list-style-type: none"> <li>the value of assets in Canada of the continuing combination exceeds CDN\$96 million, or</li> <li>the annual gross revenues from sales in or from Canada generated from those assets exceed CDN\$96 million; and</li> <li>the buyer acquiring the interest, together with its affiliates, holds an aggregate interest in the continuing combination that entitles the buyer to more than 35% (or more than 50%, if the entitlement was already 35%) of the profits or of the assets on dissolution.</li> </ul>

#### FILING FEE

In addition, in 2020 the filing fee payable to the Competition Bureau Canada for a pre-merger notification filing has increased to CDN\$75,055.68.

#### INVESTMENT CANADA ACT UPDATES

A foreign investor's acquisition of control of a Canadian business in Canada requires compliance with the Investment Canada Act, or 'ICA', and its regulations. In some cases, the ICA deems

the acquisition of a minority interest of a Canadian business by a non-Canadian investor to be an "acquisition of control". When the prescribed thresholds are met, an investment may be subject to a "net benefit review". If an investment is reviewable, the parties may not close the transaction unless the Minister of Innovation, Science and Economic Development is satisfied or is deemed to be satisfied that the investment is likely to be of "net benefit to Canada".

When the thresholds are not exceeded and an investment proposal is not subject to a net benefit review, the non-Canadian investor must still notify the Canadian government of the investment and file a notification in the prescribed form.

In 2020, the thresholds for review were increased as follows:

- **Private sector WTO investments:** An investment is reviewable where a Canadian business has an enterprise value of at least CDN\$1.075 billion and the Canadian business is directly acquired by:

- A WTO investor that is not a state-owned enterprise; or
- A non-WTO investor that is not a state-owned enterprise and the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, “controlled by a WTO investor”; or

An investment is reviewable and:

- A non-WTO investor that is not a state-owned enterprise acquires control of a Canadian business where:
  - The asset value of the Canadian business is at least CDN\$5 million for a direct investment; or – The asset value of the Canadian business is at least CDN\$50 million for an indirect investment, and immediately prior to the implementation of the investment, the Canadian business that is the subject of the investment was not “controlled by a WTO investor”;

- **Private sector trade agreement investments:**

An investment is reviewable where a Canadian business has an enterprise value of at least CDN\$1.613 billion and is acquired by:

- A trade agreement investor that is not a state-owned enterprise; or
- A non-trade agreement investor that is not a state-owned enterprise and immediately prior to the implementation of the investment, the Canadian business was “controlled by a trade agreement investor”.

Investors from the following countries are considered trade agreement investors: Australia, Chile, Colombia, Honduras, Japan, members of the European Union, Mexico, New Zealand, Panama, Peru, Singapore, South Korea, United States, and Vietnam.

- **State-owned enterprise WTO investments:** An investment is reviewable where a Canadian business with at least CDN\$428 million in asset value is directly acquired by:

- A WTO investor that is a state-owned enterprise; or
- A Non-WTO investor that is a state-owned enterprise and where the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, “controlled by a WTO investor”.

- **Investments in a cultural business:** An investment is reviewable where a non-Canadian investor acquires control of a Canadian business that is a “cultural business” as described in section 14.1(6) of the ICA, and

- The asset value of the Canadian business is at least CDN\$5 million for a direct investment; or
- The asset value of the Canadian business is at least CDN\$50 million for an indirect investment.

## Landmark merger control cases since 1 July 2018

There have been no landmark merger control cases in Canada since 1 July 2018.

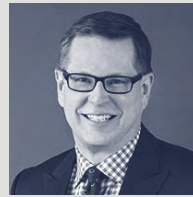
## Web link to the national competition authority

Competition Authority:

<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home>

## Your merger contacts in Canada

DLA Piper (Canada) LLP



**Kevin Wright**

**Partner**

+1 604 643 6461

kevin.wright@dlapiper.com



**Catherine Pawluch**

**Partner**

+1 416 369 5272

catherine.pawluch@dlapiper.com