

Merger Review Thresholds Decreased for 2021

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Thanks to decreases in Canada's GDP caused by the COVID-19 pandemic, thresholds for notification under the *Competition Act* and reviews under the *Investment Canada Act* have come down somewhat for 2021:

- **Competition Act:** the transaction size threshold is now \$93 million Canadian assets or sales.
- **Investment Canada Act:** review thresholds are \$1.043 billion for WTO investors and vendors, \$1.565 billion for investors and vendors from countries that Canada has a trade agreement with, and \$415 million for state-owned enterprises from WTO countries.

Competition Act Pre-Merger Notification Thresholds

Merging parties must make a pre-merger notification filing to the Competition Bureau where a merger exceeds the notification thresholds. In general terms, there is a two-part threshold. For a transaction to be notifiable, both of these criteria must be met:

- **Party size of \$400 million:** the parties to the transaction, plus their affiliates, collectively, must have either assets in Canada, or annual gross revenues from sales in, from, or into Canada, of more than \$400 million. This threshold stays the same every year.
- **Transaction size of \$93 million:** the business that is the subject of the transaction must have assets in Canada, or gross revenues from sales in or from Canada, of more than \$93 million.

Merging parties do not need approval from the Bureau to close their transaction. However, they must wait out the statutory notice period of 30 days after they file their notification before closing. If the Bureau issues a supplementary information request within that 30-day period, then the parties must wait an additional 30 days after they provide the information requested.

Businesses should note that, regardless of whether a transaction is subject to pre-merger notification, the Commissioner of Competition can review and challenge a transaction prior to or within one year of closing.

Most mergers do not raise any competition issues and are deemed “non-complex” by the Bureau. The Bureau clears over 90% of non-complex mergers within its two-week service standard.

The filing fee for merger notifications for 2021 is \$74,905.57. This fee is revised annually and was reduced slightly for 2021.

Investment Canada Act

Investments by non-Canadians to acquire control of a Canadian business that exceed the applicable review threshold cannot close until they have been approved after a review under the *Investment Canada Act*.

The thresholds differ depending on the type of investor and the type of investment. The basic threshold is \$5 million in assets for direct investments, and \$50 million for indirect investments. The basic thresholds only apply to investments in cultural businesses, or investments that do not benefit from a higher threshold (investments involving parties that are not ultimately controlled out of WTO member countries).

The 2021 thresholds for direct investments to acquire control of a Canadian business (other than a cultural business), based on the nature of the parties to the investment are as follows:

Private sector investors (not state owned)	Enterprise value
WTO investors (investors from WTO member countries)	\$1.043 billion
Non-WTO investors buying from a WTO Investor	\$1.043 billion
Trade agreement investors (investors from countries that Canada has a trade agreement with)	\$1.565 billion
Non-trade agreement investors buying from a trade agreement investor	\$1.565 billion
State-owned enterprises (SOEs)	Asset book value
WTO SOEs	\$415 million

There is no threshold for trade agreement SOEs. As they will almost always qualify as WTO SOEs, that threshold will apply.

All investments by non-Canadians, whether by acquisition (including where control is not acquired) or establishment of a new Canadian business, are potentially subject to review on national security grounds (see [Canada Toughens National Security Reviews of Foreign Investments](#)).