

Competition, Antitrust and Foreign Investment

September 25, 2017

Government of Canada Raises Monetary Threshold for *Investment Canada Act* Reviews of Investments from Trading Partners to \$1.5 Billion

Starting September 21, 2017, the monetary threshold for reviews of investments to acquire Canadian businesses under the *Investment Canada Act* (the “ICA”) is \$1.5 billion in enterprise value for “trade agreement investors.” In practical terms, this new threshold will apply to the majority of foreign direct investments made in Canada that originate with these investors.

The new \$1.5 billion threshold applies to direct investments to acquire control of a Canadian business either by or from these trade agreement investors. This higher threshold, ushered in as part of the legislative package to implement the Comprehensive Economic and Trade Agreement (CETA), Canada’s new free trade agreement with the European Union, applies equally to investors from other countries with which Canada has certain trade agreements, namely, the United States, Mexico, Chile, Peru, Columbia, Panama, Honduras and South Korea. Starting in 2019, the threshold level will be adjusted annually based on growth in nominal GDP.

For private sector investors from other World Trade Organization (WTO) countries, the pre-existing threshold of \$1 billion in enterprise value will continue to apply to direct investments. Indirect investments by trade agreement investors and WTO investors are not subject to review under the ICA.

The new threshold does not apply to investments made by state-owned enterprises from either trade agreement investors or WTO investors, which continue to be subject to a threshold based on the asset value of the Canadian business being acquired. That asset value threshold was set at \$379 million for 2017. The new threshold also does not apply to investments to acquire cultural businesses, which continue to be subject to a \$5 million asset value threshold. National security reviews under the ICA are not subject to any monetary threshold.

For further information, please contact any member of our Competition, Antitrust and Foreign Investment group.