

Canadian Threshold for Merger Review on the Decline

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Canadian Threshold for Merger Review on the Decline

The Canadian Competition Bureau has announced that, effective immediately, the Competition Act's pre-merger notification threshold relating to transaction size will decrease to \$93 million from the 2020 threshold of \$96 million. This threshold requires that the target business have assets in Canada or annual revenues in or from Canada in excess of the threshold, in each case determined in accordance with the target's most recent audited annual financial statements.

The transaction size threshold is adjusted annually consistent with changes in Canada's GDP. However, this is the first time in recent memory that the transaction size threshold has decreased year-over-year - in prior years when the GDP has decreased year-over-year the Competition Bureau left the transaction size threshold unchanged.

Any transactions that have not yet closed, including transactions that have already been signed/announced, are immediately subject to this new threshold. As a result, merging parties and their counsel should consider whether any on-going transactions that fell slightly below the prior transaction size threshold when initially assessed may satisfy the new \$93 million threshold and now be subject to notification.

In order for transactions to be subject to pre-merger notification in Canada they must also meet a "size of parties" threshold, which requires that the merging parties and their affiliates have, in aggregate, at least \$400 million of assets in Canada or annual revenues in, from or into Canada. In addition, purchasers of shares or non-corporate equity interests must also satisfy applicable voting interest thresholds - generally, a 35% voting interest for non-public corporations or non-corporate entities or 20% for publicly traded corporations. These thresholds remain the same.