

## Canada's first rejection of an investment on national security grounds

October 7, 2013 marked the first time that the Canadian Government expressly rejected a proposed foreign investment on the basis of the national security provisions that were added to the *Investment Canada Act* in 2009. The Minister of Industry announced that:

"The Government of Canada has concluded its review of the Accelerero Capital Holdings' proposed acquisition of the Allstream division of Manitoba Telecom Services Inc. (MTS) under the national security provisions of the Investment Canada Act. The result of this review is that the transaction will not proceed.

MTS Allstream operates a national fibre optic network that provides critical telecommunications services to businesses and governments, including the Government of Canada."

MTS expressed surprise and disappointment in response to the rejection of the proposed investment. Although the basis for the rejection was not detailed by the Minister due to confidentiality concerns, another Cabinet Minister commented that "We have to listen to the advice that we get from intelligence and police security agencies (and) that's what we're doing." It has also been reported that the review considered other investments by one of Accelerero's Egyptian principals in North Korea.

While at least one previous transaction involving an offshore uranium project is thought to have been abandoned in part due to the commencement of a national security review, this is the first time that the Government has expressly prohibited a foreign investment based on the national security provisions. Notably, this proposed investment involved telecommunications rather than the military/defense sector which is most closely associated with security issues. This approach parallels that of the U.S. *Foreign Investment and National Security Act*, which expressly covers, among other sectors, critical technology and infrastructure. Investors can conclude that the Canadian Government may employ the national security provisions of the *Investment Canada Act* to address more than just narrow military or terrorism issues.

While *Investment Canada Act* issues have gained prominence recently, and any transaction involving a foreign investor is potentially reviewable for national security issues even if below the regular review thresholds, national security reviews have been relatively rare and are likely to remain so. The overwhelming majority of the small number of reviewable transactions continue to be approved under the standard "net benefit to Canada" test and there are pending amendments that will significantly increase the review thresholds (see our [July 2013](#) and [December 2012](#) bulletins). However, in potentially sensitive cases, investors need to consider the *Investment Canada Act* issues early, and from a broad economic and public policy perspective. In particular, transactions which raise high profile political concerns (at a national or provincial level), may have national security implications, and/or involve State-Owned Enterprise investors, may receive very careful scrutiny. For such transactions, thorough analysis of potential sensitivities related to both the acquired business and the investor(s) should be undertaken, and complementary government relations and/or communications initiatives may need to be combined with the *Investment Canada Act* strategy and submissions.

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