



## Federal Cabinet takes unusual steps to block the CCCI/Aecon transaction over national security concerns

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On May 24, 2018, the Federal Cabinet issued an Order-in-Council directing the Chinese state-owned enterprise CCC International Holding Limited (CCCI) not to implement its proposed acquisition of the Canadian construction company Aecon Group Inc. (Aecon) pursuant to the national security provisions of the [Investment Canada Act](#).

### National Security Review under the Investment Canada Act

Under the *Investment Canada Act*, all proposed acquisitions of a Canadian business by non-Canadian investors are subject to an initial assessment for possible national security concerns. Where the Minister of Innovation, Science and Economic Development, after consultation with the Minister of Public Safety and Emergency Preparedness, considers that the investment “could be injurious to national security”, he may recommend to the Federal Cabinet to order a full-scale national security review of the investment. Following the full-scale national security review, the Federal Cabinet has the power to issue an Order-in-Council to (a) direct the non-Canadian investor not to implement the investment, (b) authorize the investment subject to certain undertakings, terms or conditions, or (c) where the investment is already implemented, order the non-Canadian investor to divest itself of control of the Canadian business or of its investment in the Canadian entity.

### CCCI/Aecon Transaction

In the case of the proposed CCCI/Aecon transaction, CCCI is a subsidiary of China Communications Construction Co., Ltd., which is 64 percent owned by the Chinese government; Aecon is a major Canadian construction company, which is involved in the design and construction of major transportation and infrastructure projects, the operation and servicing of major utilities and telecommunications facilities, and the development of public-private partnership projects across Canada. CCCI announced its proposed acquisition of Aecon on October 26, 2017. The Federal Cabinet ordered a full-scale national security review in February 2018, which ended in the order to block the transaction last week.

Due to the lack of transparency in the national security review process, it is difficult for the public to know the precise nature of the national security concerns that led to Federal Cabinet’s decision to block the CCCI/Aecon transaction. However, the [Guidelines on the National Security Review of Investments](#) issued by Innovation, Science and Economic Development Canada provides a list of factors that the government will consider when it assesses an investment for potential national security concerns. (For Stikeman’s analysis of the Guidelines, please see our [post](#).) One factor that is likely to be of importance in the CCCI/Aecon transaction is:

The potential impact of the investment on the security of Canada's critical infrastructure. Critical infrastructure refers to processes, systems, facilities, technologies, networks, assets and services essential to the health, safety, security or economic well-being of Canadians and the effective functioning of government

Given its work relating to telecommunications, electric grid and nuclear power plants, this transaction would expose such critical infrastructure to CCCI, a Chinese state-owned enterprise. Prime Minister Justin Trudeau [echoed those concerns](#) on the day after the decision. In addition, the decision to block the transaction also came after intense opposition from Members of Parliament, business groups and domestic construction companies, for concerns that the transaction would give China access to sensitive Canadian intellectual property and make Canadian firms less competitive in future project bids.

The Federal Cabinet's decision to block the CCCI/Aecon transaction provides a stark contrast to the 2017 decision to approve the acquisition of Norsat International Inc., a Canadian satellite communications company, by the Chinese firm Hytera Communications Corp., Ltd. The Federal Cabinet approved that transaction without ordering a full-scale national security review, notwithstanding that the United States raised concerns that Norsat had contracts with U.S. military and defence contractors and other NATO allies. That decision led to weeks of political controversy in Canada in the summer of 2017. That experience likely played a role in the Federal Cabinet's decision to block the CCCI/Aecon transaction. In the new political environment, future investments in Canada by Chinese investors, particularly by Chinese state-owned investors, are likely to be subject to heightened national security scrutiny.

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