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Proposed Acquisition of Aecon by CCCI Blocked on National Security Grounds

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The Canadian federal government has blocked a proposed takeover of construction firm Aecon Group Inc. by China Communications Construction Company International Holding Limited (CCCI) on the basis that the transaction would be injurious to Canada's national security. This is only the third transaction blocked under Canada's national security regime, and the first transaction blocked by the Liberal government. The decision was based on the advice of national security agencies, but no reasons were given in the official announcement.

While CCCI does have an affiliate which is listed on the Hong Kong and Shanghai stock exchanges, that affiliate, and CCCI itself, are majority owned by the Chinese government. The proposed acquisition was announced on October 26, 2017, and quickly became the subject of debate in Canada. A national security review was ordered in early 2018. Under the *Investment Canada Act*, a national security review is conducted with input from Canada's security and intelligence agencies and the Department of Public Safety. Factors considered include the potential impact of the investment on the security of Canada's critical infrastructure, the potential for transfer of technology with military application and the potential to enable foreign surveillance or espionage. It was reported that Aecon's involvement in the construction of nuclear power stations, military facilities and communications infrastructure prompted concerns about the Chinese government indirectly acquiring control of Aecon. The decision is in pointed contrast to the decision by the Australian government in 2015 to permit an acquisition of a prominent Australian construction company (John Holland) by a CCCI affiliate.

While the Aecon decision is a significant development and will be closely scrutinized given its high profile, no indication has been given that this decision signals a change in Canada's overall approach to foreign investment, including foreign investment from China. To date, the federal government has exercised its national security review power judiciously as is evident from the national security review statistics in its 2016-2017 *Investment Canada Act Annual Report*. The Annual Report indicates that national security reviews are rarely conducted, as only five of the 737 investments notified or reviewed that year under the *Investment Canada Act* were formally reviewed for national security reasons. Canada's openness to foreign investment in 2017 included 46 investments from China, which established China as the second-most significant investor country in Canada after the United States in terms of number of investments.

In addition, as discussed in our Fall 2017 Update, a number of high-profile transactions from Chinese investors were reviewed and approved by the Trudeau government in 2017. These included Hytera's takeover of Norsat International (a producer of satellite equipment and transceivers, including those for military applications), Anbang Insurance's takeover of Retirement Concepts (which operates retirement homes in British Columbia, Calgary and Montréal), and the government's highly publicized reversal of the previous Conservative government’s decision to reject Hong Kong-based O-Net Communications’ takeover of Montréal-based ITF Technologies (which had sensitive fibre-laser technology).

While the Canadian government has made clear in its official statement that the decision was taken on the recommendation of national security agencies, the full implications of the decision to block CCCI’s acquisition of Aecon remain to be seen. At a minimum, this decision will undoubtedly raise the profile of Canada’s national security regime and reinforces the critical importance of assessing, managing and allocating the risk in transactions potentially raising national security issues.