

Canada Blocks Proposed Acquisition of Allstream on National Security Grounds

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On October 7, 2013, the Canadian Government blocked the proposed acquisition of Allstream Inc. (“Allstream”), a subsidiary of Manitoba Telecom Services Inc. (“MTS”), by Accelero Capital Holdings (“Accelero”). Accelero is an investment firm co-founded by Egyptian billionaire Naguib Sawiris, who was a key investor in the 2009 launch of Wind Mobile, one of Canada’s wireless telecommunications providers.

The Canadian Government’s decision was based on the national security provisions of the *Investment Canada Act*.¹ As a result of 2009 amendments to the *Investment Canada Act*, the Minister of Industry currently has the authority to review any investment (either proposed or already implemented) made by a non-Canadian if there are reasonable grounds to believe that it may be injurious to national security. However, national security reviews rarely occur and, when they do, they typically involve situations where the Canadian business operates in military or other strategically-sensitive areas.

The biggest concern that foreign investors have regarding nationality security reviews is that they lack transparency. The relevant parties answer questions posed by the Government of Canada and are notified of the decision months later, usually with very little explanation. The *Investment Canada Act* is already criticized for applying a vague “net benefit to Canada” test when reviewing regular investments. The lack of transparency in national security reviews creates even greater uncertainty for foreign investors.

In the brief statement issued by the Minister of Industry on October 7, 2013, the only explanation given for the Canadian Government’s decision to block Accelero’s acquisition of Allstream was as follows:

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

This vague statement fails to provide specific reasons for the decision or to further explain the criteria considered by the Canadian Government when performing national security reviews.

The Canadian Government's decision to block the Allstream acquisition was a big surprise for both MTS and Accelerero. According to MTS' subsequent press release, it was heavily influenced by the fact that Accelerero's principals are a well-known and experienced group of telecom executives who have previously been permitted to invest in and operate telecom assets in a number of countries around the world, including Canada (through Wind Mobile).²

The MTS press release further states that the Federal Government's past active support of Accelerero's principals played a significant role in its decision to sell to Accelerero, following the company's strategic review process. MTS also believed that the proposed transaction was consistent with recent changes in Federal policy aimed at increasing foreign direct investment in Canada's telecom sector.

During its discussions with the Canadian Government, Accelerero apparently offered to give up federal government contracts, to stop carrying sensitive government data, and to refrain from using telecom equipment from Chinese-owned Huawei Technologies Co. Ltd. However, these concessions were insufficient to satisfy the Canadian Government's concerns regarding national security.

The Allstream decision may raise additional concerns for BlackBerry, which is still soliciting potential buyers despite the fact that it has signed a tentative agreement with a group of Canadian Investors, led by Fairfax Financial Holdings Limited ("Fairfax"). When China-based Lenovo previously indicated that it was assessing potential acquisition targets, including BlackBerry, Finance Minister Jim Flaherty responded by saying that certain local technologies were off-limits to foreign buyers and that the Canadian Government would look "carefully" at any bid from Lenovo. BlackBerry operates secure servers for the Canadian and United States Governments, which could raise national security issues in the event that a foreign investor offers to acquire the company.

¹ R.S.C., 1985 (1st Supp.).

² <http://www.newswire.ca/en/story/1238241/government-of-canada-rejects-mts-sale-of-allstream-to-accelerero-capital-holdings>.