

2009 BCSECCOM 710

November 13, 2009

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 88 – *cease to be a reporting issuer in BC* - The issuer's securities are traded only on a market or exchange outside of Canada - Canadian residents own less than 2% of the issuer's securities and represent less than 2% of the issuer's total number of security holders; the issuer does not intend to do a public offering of its securities to Canadian residents, will not be a reporting issuer in any Canadian jurisdiction, is subject to the reporting requirements of foreign securities laws, and all shareholders receive the same disclosure

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba,
Ontario, Québec, Nova Scotia and Newfoundland and Labrador
(the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Applications
In Multiple Jurisdictions

and

In the Matter of
Telefónica, S.A.
(the Filer)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision pursuant to the securities legislation of the Jurisdictions (Legislation) that the Filer is deemed to have ceased to be a reporting issuer in each of the Jurisdictions (Exemptive Relief Sought).

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Under the Process for Exemptive Relief Applications in Multiple Jurisdictions for a coordinated review application:

1. the Ontario Securities Commission is the principal regulator for this application; and
2. the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 - *Definitions* have the same meaning in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation (*sociedad anónima*) organized under the laws of the Kingdom of Spain.
2. The Filer's registered office and main offices are located at Gran Vía 28, 28013 Madrid, Spain.
3. Pursuant to a prospectus dated December 14, 1997, Sociedad de Participaciones Patrimoniales, S.A., a corporation wholly owned by the Spanish government, completed a secondary public offering in Canada (the Canadian Offering) of American Depositary Shares (each an ADS) each representing the right to receive three ordinary shares (each an Ordinary Share) of the Filer.
4. The Canadian Offering was made pursuant to an order of the Ontario Securities Commission, dated January 17, 1997, exempting the Filer from (a) the continuous disclosure requirements in Sections 75, 77, 78 and 79 of the Securities Act (Ontario) and allowing the Filer (i) to comply with applicable United States securities laws relating to current reports and annual reports; (ii) to file concurrently any such reports filed with the United States Securities and Exchange Commission; (iii) to provide such documents to securityholders resident in Ontario in the manner and at the time required by United States securities laws; and (iv) to comply with the disclosure requirements of the New York Stock Exchange (NYSE) and to issue and file in Canada, any press release that discloses a material change in the affairs of the Filer and (b) the information circular, proxy and proxy solicitation requirements in Section 81 and Part XIX of the Securities Act (Ontario), provided that any proxies and proxy solicitation material provided to securityholders in the United States are

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provided, at the same time and in the same manner, to Ontario securityholders. Substantively similar orders were issued by the Decision Makers in the other Jurisdictions.

5. As a result of the Canadian Offering, the Filer is a reporting issuer or has equivalent status in each applicable Jurisdiction.
6. The Filer is not in default of any of the requirements of the Legislation in each Jurisdiction.
7. The Filer qualifies as a “SEC foreign issuer” under National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102) and has relied on and complied with the exemptions from Canadian continuous disclosure requirements afforded to SEC foreign issuers under Part 4 of NI 71-102.
8. Under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) (NI 13-101), the Filer is a “foreign issuer (SEDAR)”. As a result, the Filer is not required to comply with NI 13-101.
9. The Ordinary Shares of the Filer are listed on each of the Madrid, Barcelona, Bilbao and Valencia stock exchanges and are quoted through the Automated Quotation System. They are also listed on various foreign exchanges including London, Buenos Aires and Tokyo stock exchanges.
10. The ADSs of the Filer are currently listed on the NYSE and on the Lima Stock Exchange.
11. In addition to the Ordinary Shares and the ADSs, the Filer has issued Brazilian Depositary Shares (each a BDS) each representing the right to receive one Ordinary Share, which are listed on the São Paulo Stock Exchange. (Ordinary Shares, ADSs and BDSs are collectively referred to herein as Filer Shares.)
12. The Filer is not in default of any reporting requirement or other requirement of any of the exchanges on which its securities are listed.
13. None of the Filer’s Shares are traded on a marketplace in Canada as defined in National Instrument 21 – 101 – *Marketplace Operation*.
14. As of July 20, 2009, the Filer’s issued and outstanding capital consisted of 4,704,996,485 Ordinary Shares (including Ordinary Shares represented by ADSs).

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15. As of May 21, 2009, there were approximately 1,513,529 beneficial securityholders worldwide (including 62,213 holders of its ADSs).
16. The Filer retained Georgeson (Spain and Portugal) (Georgeson), a provider of strategic shareholder consulting services, to assist it in determining Canadian holdings of Filer Shares.
17. Georgeson conducted an analysis of the most recent register of the Filer's securityholders dated May 21, 2009, which was requested from the Iberclear, the Spanish central depository system, in connection with the Filer's most recent annual general meeting of its securityholders, to determine the number of individual securityholders with Canadian addresses. Any securityholders with Canadian addresses were assumed to be Canadian securityholders. Any securityholders with non-Canadian addresses were assumed to be non-Canadian securityholders. It was assumed that Canadian residents do not hold any BDSs.
18. On May 26, 2009, Georgeson commenced a comprehensive inquiry on behalf of the Filer in order to determine Canadian holdings of Filer Shares. Georgeson contacted by phone and by e-mail global custodians, members of the Canadian Bankers Association and participants of Clearing and Depository Services Inc. Each institution was requested to provide Georgeson with the following information, as of May 25, 2009 (the Measuring Date):
 - (a) the aggregate number of Ordinary Shares and ADSs such institution holds, for its own account and for the account of third parties, as of the Measuring Date;
 - (b) the aggregate number of Ordinary Shares and ADSs such institution holds for the account of residents of Canada, as of the Measuring Date; and
 - (c) the number of Canada resident accounts on whose behalf such institution holds Ordinary Shares and ADSs, and the number of Ordinary Shares and ADSs held by such institution for each such Canadian resident account, including the province or territory of residence of the beneficial owner, in each case as of the Measuring Date.
19. Where Georgeson did not receive a timely response from an entity in respect of the initial inquiry, Georgeson contacted the entity by phone to provide a detailed explanation as to the purpose of the inquiry and to solicit a response.
20. Georgeson completed its inquiry on July 22, 2009. Georgeson determined that as of the Measuring Date, there were:

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- (a) 41,487,451 Ordinary Shares and 719,743 ADSs (representing 2,159,229 Ordinary Shares) held beneficially by Canadians, together representing approximately 0.93% of the outstanding Ordinary Shares;
 - (b) 18,646 securityholders (9,613 holders of Ordinary Shares and 9,033 holders of ADSs) identified as Canadian representing approximately 1.23% of securityholders worldwide.
- 21. Therefore, residents of Canada do not:
 - (a) directly or indirectly beneficially own more than 2% of a class or series of the outstanding securities of the Filer worldwide; and
 - (b) directly or indirectly comprise more than 2% of the total number of owners of a class or series of securities of the Filer worldwide.
- 22. The Filer currently has no plans to raise financing by way of a public offering of its securities in Canada. The Filer has no plans to undertake an offering of its securities in Canada pursuant to an exemption from the registration and prospectus requirements of the Legislation.
- 23. In the 12 months before applying for the decision, the Filer has not taken any steps that indicate there is a market for its securities in Canada.
- 24. None of the Filer's securities are listed, traded or quoted on a marketplace in Canada as defined in National Instrument 21-101 - *Marketplace Operation* and the Filer does not intend to have its securities listed, traded or quoted on such a marketplace in Canada.
- 25. The Filer is subject to, and will continue to comply with, all applicable requirements of United States federal securities law and applicable rules of the NYSE. The continuous disclosure reporting requirements under United States federal securities law and NYSE rules are substantively similar to the reporting requirements under the securities legislation of the Jurisdictions.
- 26. The Filer has undertaken in favour of the securities regulatory authorities of the Jurisdictions to continue to deliver, or make available, all disclosure material required by United States federal securities law to be delivered, or made available, to holders of its securities resident in the United States to holders of its securities resident in each of the Jurisdictions in the manner and at the time required by United States federal securities law and the requirements of any exchange registered as a "national securities exchange"

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under the *Securities Exchange Act of 1934*, as amended, on which its securities are traded.

27. The Filer's securityholders, including those in the Jurisdictions, have access to its continuous disclosure documents in English through the Filer's corporate website at www.telefonica.com and the U.S. Securities and Exchange Commission website at www.sec.gov.
28. On August 6, 2009 the Filer issued and filed a news release announcing that the Filer has submitted an application to the securities regulatory authorities of the Jurisdictions to cease to be a reporting issuer in the Jurisdictions.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

Dated this 13th day of November, 2009.

David L. Knight

Mary Condon