

# 2005 BCSECCOM 453

## Headnote

**1996 Securities Act s. 88** Cease to be a reporting issuer in BC. The filer became a reporting issuer by exchanging its securities with a BC reporting issuer or its shareholders as set out in item (d) of the definition of reporting issuer in section 1(1) of the *Securities Act*; the issuer's securities are traded only through a market or exchange outside of Canada – Canadian residents own less than 2% of the issuer's securities; the issuer does not intend to do a public offering of its securities to Canadian residents; the issuer is subject to the reporting requirements of UK securities laws and all shareholders receive the same disclosure

## Exemption Order

### O<sub>2</sub> plc

#### Section 88 of the Securities Act, R.S.B.C. 1996, c. 418

### Background

- ¶ 1 O<sub>2</sub> plc (O<sub>2</sub>) applied for an order under s. 88 of the Act to be deemed to have ceased to be a reporting issuer.

### Representations

- ¶ 2 O<sub>2</sub> represents that:
1. it was incorporated on December 10, 2004 under the *Companies Act of 1985* (United Kingdom) (the Companies Act) and its registered and head office is in the United Kingdom (UK);
  2. it is a holding company for a group of companies providing mobile communications services in Europe, particularly through wholly owned businesses in the UK, Germany, Ireland and the Isle of Man;
  3. as of June 3, 2005, there were approximately 8,704,918,462 ordinary shares of O<sub>2</sub> issued and outstanding (O<sub>2</sub> Shares) and 131,000,000 O<sub>2</sub> Shares to be issued under the O<sub>2</sub> Share Option Plan, the O<sub>2</sub> Savings Related Share Option Scheme and the Non-Executive Directors Remuneration Scheme; there are approximately 739,867 holders of O<sub>2</sub> Shares;

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4. the O<sub>2</sub> Shares are listed on the London Stock Exchange (the LSE) and O<sub>2</sub> is subject to reporting requirements under applicable UK securities laws;
5. as a result of the scheme of arrangement (the arrangement) described below, O<sub>2</sub> became a reporting issuer in British Columbia and Québec;
6. mmO<sub>2</sub> plc (mmO<sub>2</sub>) was incorporated in England and Wales on March 30, 2001 under the Companies Act with a registered office in the UK;
7. before the arrangement, mmO<sub>2</sub> was a holding company carrying on the activities now carried on by O<sub>2</sub>; mmO<sub>2</sub> was a reporting issuer in British Columbia and Québec as well as being subject to reporting requirements under United States and UK securities laws; mmO<sub>2</sub> was not a reporting issuer in any other Canadian jurisdiction;
8. in order to create a more efficient capital structure, mmO<sub>2</sub> completed the arrangement on March 14, 2005 under the Companies Act;
9. under the arrangement, O<sub>2</sub> issued an O<sub>2</sub> Share or a cash alternative for each existing ordinary share of mmO<sub>2</sub> outstanding; as a result, mmO<sub>2</sub> became a wholly-owned subsidiary of O<sub>2</sub>;
10. effective May 19, 2005, mmO<sub>2</sub> ceased to be a reporting issuer in British Columbia; on May 16, 2005, the Autorité des marchés financiers (the Autorité) revoked the reporting issuer status of mmO<sub>2</sub>;
11. as of June 3, 2005, 382 shareholders of O<sub>2</sub> reside in Canada holding 445,709 O<sub>2</sub> Shares, representing approximately 0.0005% of all O<sub>2</sub> shareholders and 0.00005% of O<sub>2</sub> Shares issued and outstanding; of these, 96 British Columbia residents hold 135,844 O<sub>2</sub> Shares, representing approximately 0.0001% of all O<sub>2</sub> shareholders and 0.000001% of O<sub>2</sub> Shares issued and outstanding and 18 Québec residents hold 16,942 O<sub>2</sub> Shares, representing approximately 0.00002% of all O<sub>2</sub> shareholders and 0.000002% of O<sub>2</sub> Shares issued and outstanding;
12. other than O<sub>2</sub> Shares, no securities of O<sub>2</sub> are held by residents in Canada;
13. there is currently no public market for the O<sub>2</sub> Shares in Canada and O<sub>2</sub> does not intend to list its securities on any Canadian stock exchange or to make a public offering of its securities to Canadian residents;
14. the only market for the O<sub>2</sub> Shares is on the LSE;

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15. O<sub>2</sub> is subject to reporting requirements under applicable UK securities laws;  
O<sub>2</sub> is also subject to the rules of the LSE;
16. because O<sub>2</sub> has more than 15 security holders resident in Québec, the Autorité will not deem O<sub>2</sub> to have ceased to be a reporting issuer in Québec; on June 29, 2005, the Autorité granted O<sub>2</sub> permanent relief from the continuous disclosure requirements under Regulation 51-102 - Continuous Disclosure Obligations and from the insider reporting requirements of Title III of the Securities Act (Québec) applicable to O<sub>2</sub>;
17. O<sub>2</sub> will submit an application to the Autorité to revoke the reporting issuer status of O<sub>2</sub> in Québec as soon as there are fewer than 15 security holders in Québec;
18. O<sub>2</sub> has undertaken:
  - (a) not to offer or distribute its securities in any jurisdiction in Canada by way of an exemption from the prospectus and registration requirements of the securities legislation of any jurisdiction in Canada until O<sub>2</sub> has ceased to be a reporting issuer in every jurisdiction in Canada; and
  - (b) to deliver at the same time and in the same manner all disclosure materials relating to O<sub>2</sub> to securityholders residing in Canada that O<sub>2</sub> is required to deliver to securityholders residing in the UK under UK securities law; and
19. the executive and non-executive directors, the General Counsel and Secretary of O<sub>2</sub> and the assets of O<sub>2</sub> are all located outside of Canada.

### **Order**

- ¶ 3 Because it is not prejudicial to the public interest, the commission orders, under section 88 of the Act, that O<sub>2</sub> is deemed to cease to be a reporting issuer.
- ¶ 4 July 4, 2005

Martin Eady, CA  
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British Columbia Securities Commission