

2005 BCSECCOM 18

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - Issuer requires relief from prohibition against certain collateral agreements in s. 107(2) of the Act - The offeror issuer has entered into a collateral agreement with a shareholder of the offeree issuer; the agreement is entered into for valid business reasons, and not for the purpose of providing the shareholder with a benefit beyond what other shareholders of the offeree issuer will receive under the offer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 107(2) and 114(1)(a)

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

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Bell Canada and Nexxlink Technologies Inc.

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker” or collectively, the “Decision Makers”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Nexxlink Technologies Inc. and Bell Canada (collectively the “Filers”), for a decision pursuant to securities legislation of the Jurisdictions (the “Legislation”), in connection with a proposed take-over bid to be made by Bell Canada to acquire all of the issued and outstanding common shares of Nexxlink Technologies Inc., that the entering into by Karol Brassard, Gestion Rolco Inc. and Capital Rolco Inc. of the Non-Competition Agreement (as defined hereinafter), including the payment of a non-competition indemnity, and the determination of the Indexation (as defined hereinafter) under the Services Agreement (as defined hereinafter), are

2005 BCSECCOM 18

made for reasons other than to increase the value of the consideration paid to them for their Securities (as defined hereinafter), and that the Non-Competition Agreement (as defined hereinafter) may be entered into and the Indexation under the Services Agreement may be determined (as hereinafter set forth) despite the Legislation (the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”):

- (a) the *Agence nationale d’encadrement du secteur financier* is the principal regulator for this application; and
- (b) this MMRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 – Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

The decision is based on the following facts represented by the Filers:

1. Bell Canada is a corporation existing under the laws of Canada and is a reporting issuer or its equivalent in each Jurisdiction.
2. Bell Canada or its subsidiary (collectively, “Bell Canada”) is contemplating making an offer for all the issued and outstanding common shares in the share capital of Nexxlink (as defined hereinafter), on a fully-diluted basis, for a cash consideration of \$6.05 per share (the “Offer”).
3. Nexxlink Technologies Inc. (“Nexxlink”) is a corporation existing under the laws of Canada and is a reporting issuer in Québec and Ontario. Nexxlink’s common shares (the “Common Shares”) are listed and posted for trading on the Toronto Stock Exchange under the symbol “NTI”.
4. The authorized capital of Nexxlink consists of an unlimited number of Common Shares without par value and an unlimited number of preferred shares, issuable in series.
5. As at November 17, 2004, there were 10,172,182 Common Shares issued and outstanding and 875,500 options to purchase Common Shares (the “Stock Options”) (the Common Shares and the Stock Options are hereinafter referred to as the “Securities”).

2005 BCSECCOM 18

6. CGI Group Inc. ("CGI") is a shareholder of Nexxlink holding directly or indirectly 3,446,076 Common Shares representing approximately 34% of the Common Shares of Nexxlink currently issued and outstanding.
7. As at May 31, 2004, BCE Inc., a related party to Bell Canada, exercised control or direction, directly and indirectly, over 128,296,525 Class A subordinate shares representing approximately 28.89% of the total equity of CGI.
8. Mr. Karol Brassard ("Brassard") is the Executive Chairman of the Board of Directors Nexxlink. From February 28, 1999 to June 13, 2002, Brassard was the Chairman of the Board of Directors and the Chief Executive Officer of Nexxlink. Since June 2002, Mr. Robert Courteau has held the office of President and Chief Executive Officer of Nexxlink.
9. Brassard is generally regarded as being the founder of Nexxlink and remains key to its success and outlook. Under Brassard's stewardship, Nexxlink's sales increased from approximately \$62,660,000 to \$100,300,000, total assets increased from approximately \$22,411,000 to \$75,644,000, and operating income (EBITDA) increased from approximately \$1,420,000 to \$6,483,000, over the three year period ended July 31, 2004.
10. Brassard currently holds, or exercises control or direction over, directly or indirectly, 829,635 Common Shares and 250,000 Stock Options representing, in the aggregate, approximately 9.8% of the Common Shares of Nexxlink currently issued and outstanding (on a fully-diluted basis). Brassard holds 765,000 of such Common Shares through Capital Rolco Inc. ("Capital Rolco").
11. Brassard is the beneficial owner of all the issued and outstanding shares in the share capital of Gestion Rolco Inc. ("Rolco") and Capital Rolco.
12. Nexxlink and Rolco are parties to that certain services agreement effective October 21, 2003 (the "Services Agreement"). As provided in the Services Agreement, Brassard, through Rolco, acts as Executive Chairman of the Board of Directors of Nexxlink and assumes strategic advisory duties with Nexxlink. The amount of time spent by Rolco in providing its services varies as such services are not provided on a regular and continuous basis and the amount of time so spent by Rolco depends on the tasks at hand at a given time including punctual and specific requests from Nexxlink from time to time. While strategic planning during annual review by the Board of Directors of Nexxlink may require Rolco to provide its services on a full time basis for a given time,

2005 BCSECCOM 18

other matters may require such service to be provided on a sporadic basis. Rolco's advice is regularly sought by the Board of Directors and management of Nexxlink to review the businesses of Nexxlink, uncovered markets, investor relations type duties and other strategic matters as well as attendance at quarterly meetings of the Board of Directors of Nexxlink when required.

13. Capital Rolco is indebted to Nexxlink in the amount of \$225,000 (the "Rolco Loan"). The Rolco Loan is payable upon demand and does not bear interest. The Rolco Loan is to be repaid by October 21, 2006, and Nexxlink will be entitled to set-off repayment of the Rolco Loan against any payment due to Rolco (as hereinafter described and notwithstanding the fact that the loan is to be repaid by Capital Rolco).
14. Pursuant to the Services Agreement, Rolco was entitled to receive, as of August 2004, a basic fee in the amount \$333,125 per annum (the "Basic Fee"). The Services Agreement also provides that Rolco is entitled to performance fees representing 50% to 75% of the Basic Fee based on objectives defined with the Board of Directors of Nexxlink and to additional performance fees awarded at the discretion of the Board of Directors of Nexxlink (collectively, the "Performance Fee"), and to the reimbursement of certain administrative fees established at 15% of the Basic Fee incurred in the performance of its duties (the "Administration Fee", together with the Basic Fee and the Performance Fee, the "Aggregate Fees"). The Aggregate Fees paid to Rolco are reviewable annually by the Board of Directors of Nexxlink.
15. For the fiscal year ended July 31, 2004, Rolco received a Performance Fee in the amount of \$122,687. The Performance Fee for such year was set at 50% of the Basic Fee for such year by the Board of Directors of Nexxlink in accordance with the Services Agreement. The Basic Fee for the fiscal year ended July 31, 2004, was \$325,000. The Performance Fee, on an annualized basis, for the 12-month period ended July 31, 2004 would have been \$162,500.
16. The Services Agreement was executed for a three-year term and, pursuant to its terms, will be automatically renewed for additional successive three-year periods, unless otherwise notified to the contrary by either party thereto. The current term expires on October 21, 2006.
17. The Services Agreement may at all times be terminated by Nexxlink without notice or further compensation for any major breach of the provisions thereof. The Services Agreement also provides for the payment of compensation to Rolco upon the occurrence of certain events, such as (a) the early termination of the Services Agreement by Nexxlink without cause, (b) a change of control

2005 BCSECCOM 18

of Nexxlink, (c) the non-renewal of the Services Agreement, (d) Nexxlink unilaterally amending the mandate of Rolco or (e) Nexxlink having materially diminished Rolco's ability to perform under the Services Agreement. Upon the occurrence of any one of such events, Rolco is entitled to receive a payment equal to two and one half times the amount of the Basic Fee and the Administration Fee assuming the occurrence of any one of such events on or prior to October 21, 2005 (two times the amount of the Basic Fee and the Administration Fee if any one of such events were to occur after October 21, 2005 but on or prior to October 21, 2006).

18. The Services Agreement also contains non-competition provisions effective throughout the term of the Services Agreement and for a period of one year following its termination. However, the Services Agreement expressly provides that notwithstanding the provisions thereof, non-competition restrictions will not apply to Rolco should the Services Agreement be terminated prior to the expiry of its term or should it not be renewed. Under the Services Agreement, Nexxlink may also, in its entire discretion, impose a non-competition period of more than twelve months in consideration for the payment of an amount that is no less than the Aggregate Fees paid to Rolco the previous year.
19. The Services Agreement was approved (with Brassard abstaining from voting) by Nexxlink's Compensation Committee on September 24, 2003. Further annual determinations required under the Services Agreement pertaining more particularly to the Indexation (as defined hereinafter) of the Basic Fee and the fixing of the Performance Fee were approved by Nexxlink's Compensation Committee for the current year. At such time Nexxlink's Compensation Committee also approved the acceleration of the Performance Fee in the event of a change of control. The Compensation Committee is (and was at all relevant times) comprised of four directors three of whom are independent. Following several meetings of Nexxlink's Compensation Committee, the Services Agreement was formally amended on October 14, 2004, effective August 1, 2004.
20. As of November 17, 2004, a non-binding letter of intent was entered into among Bell Canada and Nexxlink regarding the potential acquisition by Bell Canada of all of the issued and outstanding Common Shares in the share capital of Nexxlink.
21. It is currently envisaged that the Offer would be made pursuant to the insider bid requirements of applicable securities laws and that an independent valuation would be prepared in accordance with the requirements of Policy

2005 BCSECCOM 18

Statement Q-27 of the *Autorité des marchés financiers* and Rule 61-501 of the Ontario Securities Commission.

22. In connection with the Offer, Bell Canada proposes to enter into a “soft” lock-up agreements with Capital Rolco, Brassard and certain members of his family (collectively, the “Brassard Group”), and CGI, pursuant to which they will agree to tender and vote all of their Securities in favour of the Offer.
23. Bell Canada’s acquisition proposal is subject, among others, to (a) the abandonment, waiver or renunciation by Rolco of various entitlements and rights under the Services Agreement (including, but not limited to, the automatic renewal rights, the change of control related provisions (other than in respect to any entitlement of Rolco to the acceleration of the payment of the Performance Fee for the current year) and other entitlements and rights which could be triggered by the consummation of the Offer), and (b) the entering into by Brassard, Rolco and Capital Rolco of a non-competition agreement (the “Non-Competition Agreement”) providing for a 15-month non-compete effective from the date of termination of the Services Agreement.
24. As part of Bell Canada’s acquisition proposal, the Services Agreement would remain in place until October 21, 2006 to ensure an orderly transition of the business and affairs of Nexxlink to Bell Canada and benefit from Brassard’s extensive strategic knowledge of the industry. The Services Agreement will not be renewed upon the expiry of the current term if the Offer is completed, unless agreed to by the parties thereto.
25. Assuming a change of control of Nexxlink, the Services Agreement provides that Rolco could be entitled to payments equal to \$3,104,952 as a result of the completion of the Offer, consisting of (i) the payment of a change of control indemnity (\$957,734) and the Performance Fee (\$166,563), (ii) the continuance of the Services Agreement until October 2006 (consulting fees equal to \$684,840), without renewal (contract non-renewal indemnity of \$804,976); and (iii) a non-competition provision effective throughout the term of the Services Agreement and for a period of 15 months following its termination (\$490,839, as required by Bell Canada).

Pursuant to Bell Canada’s acquisition proposal, Rolco would be entitled to payments equal to \$2,147,218 assuming (i) the continuance of the Services Agreement until October 2006 (consulting fees equal to \$684,840 and contract non-renewal indemnity of \$804,976), (ii) the payment of the Performance Fee (\$166,563) and (iii) the above mentioned non-competition payment.

2005 BCSECCOM 18

26. Following the completion of the Offer, it is contemplated that Brassard will step down as Executive Chairman of the Board of Directors of Nexxlink. With respect to the duties of Rolco following completion of the Offer, it is expected that they will be of a nature similar to those previously performed (as described in paragraph 12 above, with the exception of the Executive Chairmanship and investor relations type duties) and that the time spent by Rolco in providing such services will be similar on an annualized basis in comparison to the period preceding the completion of the Offer.
27. As the initial take and pay under Bell Canada's acquisition proposal is scheduled to occur on or about February of 2005, the 15-month non-competition period was viewed by Bell Canada as an acceptable non-competition period so as to ensure that a minimum period of three years elapsed between the date of the initial take and pay and the expiry of the Non-Competition Agreement.
28. Under the Non-Competition Agreement, Brassard, Rolco and Capital Rolco are to receive a non-competition indemnity payment of \$490,839, payable as to one half on the first anniversary of the closing of the Offer, and as to the balance at the expiry of the 15-month non-competition period. As stated in paragraph 18 above, under the Services Agreement, Nexxlink may in its entire discretion, impose a non-competition period of more than twelve months in consideration for the payment of an amount that is no less than the Aggregate Fees paid to Rolco the previous year. Had this formula been applied textually, and assuming that the Performance Fee targets had been achieved, Rolco would have been entitled to a non-competition payment far in excess of \$490,839. Rolco has also agreed to decrease its entitlement by excluding its right to the Performance Fee. Otherwise, the amount of \$490,839 was established by using the formula set out in the Services Agreement.
29. As stated above, the Services Agreement will remain in force until October 21, 2006, and during its continuation Rolco will be entitled to the Aggregate Fees contemplated by the Services Agreement and the Basic Fee will be increased by the Board of Directors of Nexxlink by 2.5% (the "Indexation") consistent with the 2.5% indexation to the Basic Fee for the prior year. In addition, upon expiry of the Services Agreement, the non-renewal fee contemplated by the Services Agreement will be paid to Rolco. The Indexation represents an adjustment to a financial term of the Services Agreement, as such Indexation is discretionary and not mandatory under the Services Agreement.
30. It is a condition to Bell Canada's acquisition proposal that the entering into of the Non-Competition Agreement, including the payment of the aforesaid non-competition payment indemnity, and the determination by the Board of

2005 BCSECCOM 18

Directors of Nexxlink of the Indexation under the Services Agreement as outlined above, not be considered by the Decision Makers to be a collateral benefit.

31. The entering into the Non-Competition Agreement and the determination by the Board of Directors of Nexxlink of the Indexation under the Services Agreement are not being made for purposes of conferring Brassard, Rolco and/or Capital Rolco with an economic or collateral benefit. The non-competition indemnity payment was negotiated at arm's length on commercially reasonable terms and conditions and represents a lesser amount than in keeping with the formula set out in the Services Agreement.
32. The entering into the Non-Competition Agreement is of significant value to Bell Canada as it believes that it is important to the success and growth of the business being acquired that Brassard does not compete with it for the term of the Non-Competition Agreement.
33. Details of the material terms of the Services Agreement and the Non-Competition Agreement will be disclosed in the take-over bid circular of Bell Canada as well as in the Board of Directors' circular of Nexxlink.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

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

DATED December 16, 2004

Daniel Laurion
Surintendant de la Direction de
L'encadrement des marchés des valeurs