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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the take over bid requirements to permit an offer made in compliance with the laws of Germany to be made in BC – offeror unable to determine the number of BC holders or percentage of securities held by BC holders – number of BC holders and percentage of securities held believed to be *de minimis*

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105-108, 110 and 114(2)(c)

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 P7S1 HOLDING L.P.

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from P7S1 Holding L.P. (the “Applicant”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the formal take-over bid requirements, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors' circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the “Take-over Bid Requirements”), do not apply to the proposed

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offer (the “Offer”) by the Applicant for the outstanding preferred shares (“Preferred Shares”) of ProSiebenSat.1 Media AG (the “Target”);

- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is selected as the principal regulator for this application;
- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Québec Commission Notice 14-101;
- ¶ 4 AND WHEREAS the Applicant has represented to the Decision Makers that:
1. the Applicant is an exempted limited partnership formed under the laws of the Cayman Islands and its registered office is located at Walkers SPV Limited, Walker House, Mary Street, P.O. Box 908 GT, George Town, Grand Cayman, Cayman Islands;
 2. the Applicant is not a reporting issuer or the equivalent in any of the Jurisdictions. The Applicant's securities are not listed or quoted for trading on any Canadian stock exchange or market;
 3. the Target is a stock corporation established under the laws of Germany and is registered in the commercial register of the local courts of Munich;
 4. the Target's stated capital amounts to EUR 194,486,400 and is divided into 97,243,200 Common Shares, which are registered holders shares, and 97,243,200 Preferred Shares, which are bearer shares; the Preferred Shares constitute “equity securities” for the purposes of the definition of “take-over bid” in the Jurisdictions as they carry a residual right to participate in the earnings of the Target and, upon liquidation or winding-up of the Target, in its assets;
 5. the Preferred Shares are traded at the stock exchanges in Frankfurt am Main, Dusseldorf, Stuttgart, Munich, Berlin-Bremen, Hannover and Hamburg; the Target also maintains a facility for American Depositary Receipts in respect of the Preferred Shares but those receipts are not listed on any exchange;
 6. the Target is not a reporting issuer or equivalent in any of the Jurisdictions. The Target's securities are not listed or quoted for trading on any Canadian stock exchange or market;

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7. the Applicant currently holds 69,999,000 or approximately 72.0% of the outstanding Common Shares; the Applicant does not hold any of the Preferred Shares;
8. on August 11, 2003, the Applicant announced the acquisition of control over more than 30% of the voting rights of the Target and its intention to launch, pursuant to the requirements of German Law (§35 *German Securities Acquisition and Takeover Act*), an all-cash mandatory tender offer whereby holders of Common Shares and Preferred Shares of the Target would be invited to tender their Common Shares and Preferred Shares of the Target; the announcement made no statement as to the consideration as this is not required by German Law; in the case of a mandatory tender offer the *German Securities Acquisition and Take-over Act* provides for minimum consideration that must be offered which is the higher of the three-month weighted average stock exchange price during the three months before the announcement of the offer and the price paid to other shareholders in previous or parallel transactions;
9. the Offer is being made, and the offer document (the "Offer Document") reflecting the terms of the Offer is being prepared, in accordance with the laws of Germany and, in particular, in compliance with the *German Securities Acquisition and Takeover Act*;
10. the Offer is also being made in the United States in compliance with Regulation 14E under the *Securities and Exchange Act of 1934* and will be exempt from the requirements of Regulation 14D under that act;
11. in accordance with German law, the Offer Document will be available on the internet under <http://www.P7S1Holding.com> and www.saban.com as well as in the form of free printed copies which will be made available to holders of the Common Shares and Preferred Shares, combined with a public announcement in a national German newspaper and the Wall Street Journal, U.S. edition, which will specify where and how the shareholders may obtain a copy of the Offer Document free of charge;
12. as permitted by German law, the Target has issued bearer securities and does not maintain a share register; accordingly, any information about the Target's shareholdings in Canada can only be determined on a limited enquiry basis; the Target has informed the Applicant that the last enquiry commissioned by the Target concluded that shareholders resident in various Canadian provinces hold more than 2% of the outstanding Preferred Shares; the Applicant believes that as of September 5, 2003 there were no holders of Common Shares resident in Canada; the Applicant believes that one of the holders of Preferred

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Shares resides in British Columbia; the Applicant also believes that shareholders also reside in Manitoba, Ontario and Québec but given that no share register exists for the Preferred Shares, these holders cannot be confirmed;

13. if any material relating to the Offer is sent by the Applicant to holders of the Preferred Shares in Germany, such material will also be sent to holders of Preferred Shares residing in the Jurisdictions (if addresses are known), along with an English translation for convenience purposes, and will be concurrently filed with the securities regulatory authorities in the Jurisdictions;
 14. a public announcement in a national Canadian newspaper, made at the same time as the public announcement in a national German newspaper, will specify where and how the shareholders may obtain a copy of the material relating to the Offer or an English convenience translation free of charge;
 15. the *de minimis* take-over bid exemptions found in certain of the Jurisdictions are not available to the Target since the bid is not being made in compliance with the laws of a jurisdiction that is recognized by the applicable Decision Makers for the purposes of the *de minimis* take-over bid exemptions; also, because the Target does not maintain a share register, the Applicant is unable to determine conclusively the number of holders of the Preferred Shares resident in each of the Jurisdictions, or the number of Preferred Shares held by any of these persons;
 16. all of the holders of the Target's Common Shares and Preferred Shares to whom the Offer is made will be treated equally;
 17. if the requested relief is not granted, holders of the Preferred Shares resident in the Jurisdictions will not have the opportunity to participate in the Offer;
- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (the "Decision");
- ¶ 6 AND WHEREAS 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;
- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that the Applicant is exempt from the Take-over Bid Requirements in making the Offer to the shareholders of the Target who are resident in the Jurisdictions provided that:

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- (i) the Offer and all amendments to the Offer are made in compliance with the laws of Germany;
- (ii) any material relating to the Offer that is sent to the holders of the Preferred Shares in Germany will be sent to the holders of the Preferred Shares resident in the Jurisdictions as well as an English translation, and copies of the material will be filed with the Decision Maker in each Jurisdiction; and
- (iii) a public announcement in a national Canadian newspaper, made at the same time as the public announcement in a national German newspaper, will specify where and how the shareholders may obtain a copy of any material relating to the Offer or an English translation free of charge.

¶ 8 September 22, 2003

Brenda Leong
Director