2008 BCSECCOM 587

October 15, 2008

Headnote
Mutual Reliance Review System for Exemptive Relief Applications - *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 a Canadian jurisdiction, is subject to the reporting requirements of Australian 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, Quebec,
New Brunswick, Prince Edward Island, 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
Telstra Corporation Limited

MRRS Decision Document

Background
The local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Nova Scotia and Ontario (the "Jurisdictions") has received an application from Telstra Corporation

Limited (the "Applicant") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Applicant is not a reporting issuer under the Legislation (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) this MRRS 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
This decision is based on the following facts represented by the Applicant:

1. The Applicant is incorporated under and regulated by the Australian *Corporations Act 2001* (the "Australian Corporations Act") as a "public company". The Applicant's head office and principal place of business is in Melbourne, Australia. The Applicant is currently a reporting issuer in each of the Jurisdictions.

2. The Applicant, together with its subsidiaries, is the principal telecommunications carrier in Australia, offering a broad range of telecommunications and information services. The Applicant's market capitalization was approximately A$53.879 Billion as at July 21, 2008.

3. The Applicant underwent a capital reorganization in November 1997 pursuant to which the Government of the Commonwealth of Australia (the "Commonwealth"), which had held all of the issued and outstanding capital stock of the Applicant, sold approximately 33.3% of the Applicant's issued shares to the public in the form of ordinary shares ("Ordinary Shares") or American Depositary Receipts ("ADRs") (the "Commonwealth Sale").

4. In October 1999 the Commonwealth sold an additional 16.6% of the Applicant's then issued Ordinary Shares to the public.

5. On November 20, 2006, the Commonwealth sold a further 31.1% of the Applicant's then issued Ordinary Shares to the public and transferred its remaining 17.1% to the Future Fund, an investment fund established by the

Commonwealth pursuant to the *Future Fund Act 2006* (Australia). The board of guardians of the Future Fund is responsible for investment decisions and holds all Future Fund investments for and on behalf of the Commonwealth. The board of guardians is a separate legal entity to the Commonwealth.

6. The Ordinary Shares are quoted on the Australian Stock Exchange and on the New Zealand Stock Exchange. In addition, the Applicant has debt securities valued at approximately A$16.6 billion listed on the Australian Stock Exchange, the London Stock Exchange and the Swiss Stock Exchange.

7. The Applicant is not in default of any reporting or other requirement of the Australian Stock Exchange, the New Zealand Stock Exchange, the London Stock Exchange, the Swiss Stock Exchange or the Australian Corporations Act. The Applicant is not in default of securities legislation in any jurisdiction in Canada, except that the Applicant has not filed on SEDAR its annual financial statements and related information for the year ended June 30, 2008 that were due on September 29, 2008 (or paid related filing and participation fees) in view of the fact that the final form of this decision document was pending on that date.

8. The ADRs were issued by the Bank of New York as depositary and until April 23, 2007 were listed on the New York Stock Exchange (the "NYSE"). As at July 14, 2008, there were 27,805,022 ADRs outstanding. There are approximately 48 registered holders of ADRs of the Applicant worldwide. The ADRs currently trade on the over-the-counter market in the United States under the symbol "TLSYY".

9. As of July 14, 2008 there was an aggregate of 12,433,047,357 Ordinary Shares of the Applicant issued and outstanding worldwide. The only issued and outstanding class of shares of the Applicant are the Ordinary Shares. There are approximately 1.4 million registered holders of Ordinary Shares of the Applicant worldwide.

10. As part of the Commonwealth Sale, Ordinary Shares and American Depositary Shares ("ADS") were distributed by prospectus to investors resident in Canada (the "Canadian Offering"). Each ADS represented 20 Ordinary Shares and were evidenced by ADRs. As a result of the volume of trading activity of ADRs listed on the NYSE being low, the Applicant decreased the number of Ordinary Shares underlying each ADR from 20 Ordinary Shares to 5 Ordinary Shares. This was done to reduce the trading price of ADRs to a level more in-line with other foreign issuers listed on the NYSE at the time. This decrease was effective from August 23, 1999.

11. In connection with the Canadian Offering, the Applicant obtained an order of the principal regulator dated September 12, 1997 (the "Order") exempting the Applicant from the continuous disclosure requirements of sections 75, 77, 78 and 79 of the Ontario Securities Act (as they were drafted at that time) in light of the Applicant's agreement to comply with applicable U.S. securities laws relating to current reports and annual reports and to file concurrently with the principal regulator any such reports filed with the U.S. Securities and Exchange Commission (the "SEC") and the NYSE. Substantively similar orders were issued by the Decision Makers in the other Jurisdictions: British Columbia (June 22, 1998 with effect as of September 10, 1997), Alberta (September 11, 1997), Saskatchewan (September 24, 1997), Manitoba (September 12, 1997), Quebec (February 9, 1998 with effect as of September 12, 1997), New Brunswick (September 8, 1997), Nova Scotia (September 10, 1997), Newfoundland and Labrador (September 12, 1997) and Prince Edward Island (September 12, 1997) (collectively, the "Additional Orders"). The Applicant complied with the terms of the Order and the Additional Orders.

12. The Order states that the exemption from Canadian continuous disclosure requirements granted thereby would "cease to be operative upon the publication in final form of a rule of the [Ontario Securities] Commission relating to foreign issuer disclosure". Accordingly, as of the March 30, 2004 effective date of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* ("NI 71-102"), the Applicant relied on and complied with the exemptions from Canadian continuous disclosure requirements afforded to "SEC foreign issuers" (as such term is defined in NI 71-102) under Part 4 of NI 71-102 and paid all related applicable filing and participation fees in each of the Jurisdictions. In addition, as of March 30, 2004, the Applicant relied on the corresponding exemption from financial statement certification requirements in section 4.1 of Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* ("MI 52-109") afforded to issuers that comply with the financial statement certification requirements of U.S. securities laws.

13. No securities of the Applicant have ever been listed, traded, or quoted on a marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operation* ("NI 21-101") and the Applicant does not intend to have its securities listed, traded or quoted on such a marketplace in Canada.

14. In order to determine the number of Ordinary Shares beneficially owned directly by persons with addresses in Canada, the Applicant employed a third party specialist firm, Link Market Services Limited, to analyse its share register as at July 14, 2008.

15. In order to determine the number of Ordinary Shares beneficially owned by persons with addresses in Canada but registered in the names of third party intermediaries, the Applicant employed a specialist firm, Thomson Reuters, to first identify those registered holders of Ordinary Shares holding the top 200 largest positions (the "Top 200 Holders"). The Top 200 Holders represent the registered holders of approximately 75% of the Applicant's Ordinary Shares on a worldwide basis.

16. Procedures for tracing the beneficial ownership of shares of an Australian listed corporation are detailed in Chapter 6C, Part 6C.2 of the Australian Corporations Act (the "Tracing Provisions").

17. Pursuant to the procedures detailed in the Tracing Provisions, notices were issued to each of the Top 200 Holders to identify the ultimate beneficial owners of Ordinary Shares held by the Top 200 Holders with addresses in Canada.

18. Recipients of notices under the Tracing Provisions are required to reply within two business days with details regarding the beneficial owner of securities in respect of which a notice is given. Failure to do so is an offence under the Australian Corporations Act.

19. Although the Top 200 Holders did not include CDS or Depository Trust Company (DTC), the Applicant's agents undertook specific searches of those names and derivatives of those names. Other searches conducted by the Applicant's agents were specifically designed to turn up the names of Canadian intermediaries.

20. Based on the above procedures and analyses, representing the Applicant's reasonable efforts to ascertain the number of direct and indirect holders of its Ordinary Shares resident in Canada and the holdings of those persons, the Applicant has concluded that, as of July 14, 2008, there was an aggregate of 7,653,253 Ordinary Shares beneficially owned directly and indirectly by persons with addresses in Canada, representing less than 0.05% of all of the issued and outstanding Ordinary Shares of the Applicant. As of the same date there were 318 direct and indirect holders of Ordinary Shares resident in Canada, representing less than 0.022% of the total number of holders of Ordinary Shares. The particulars are as follows:

Canadian Shareholders Holding Ordinary Shares Directly

Jurisdiction	Number of Holders	Number of Ordinary Shares Held
British Columbia	90	105,001
Alberta	64	53,691
Saskatchewan	1	1,000
Manitoba	3	9,200
Ontario	118	149,325
Québec	16	20,108
Nova Scotia	5	9,700
New Brunswick	1	1,000
Prince Edward Island	1	1,000
Newfoundland & Labrador	2	640
Yukon Territory	Nil	Nil
Northwest Territories	Nil	Nil
Nunavut	Nil	Nil
Total	301	350,665

Canadian Shareholders Holding Ordinary Shares Indirectly

Jurisdiction	Number of Holders	Number of Ordinary Shares Held
British Columbia	1	777,267
Alberta	Nil	Nil
Saskatchewan	1	11,310
Manitoba	Nil	Nil
Ontario	9	1,528,739
Québec	5	4,638,972
Nova Scotia	Nil	Nil
New Brunswick	1	346,300
Prince Edward Island	Nil	Nil
Newfoundland & Labrador	Nil	Nil
Yukon Territory	Nil	Nil
Northwest Territories	Nil	Nil
Nunavut	Nil	Nil
Total	17	7,302,588

21. Accordingly, the above procedures and analyses support the conclusion that, as of July 14, 2008, residents of Canada (i) do not beneficially own directly or indirectly more than 2% of the Ordinary Shares of the Applicant worldwide, and (ii) do not represent more than 2% of the total number of owners directly or indirectly of Ordinary Shares of the Applicant worldwide.

22. The above procedures and analyses also support the conclusion that even if each of the 27,805,022 ADRs were held by Canadian residents (therefore representing 139,025,110 Ordinary Shares) and the ADRs were exchanged for Ordinary Shares, residents of Canada would still not (i) beneficially own directly or indirectly more than 2% of the Ordinary Shares of the Applicant worldwide, or (ii) represent more than 2% of the total number of owners directly or indirectly of Ordinary Shares of the Applicant worldwide. This conclusion is reasonable for the following reasons:

    (a) Each ADR represents 5 Ordinary Shares of the Applicant. Therefore, the 27,805,022 issued and outstanding ADRs represent 139,025,110 Ordinary Shares (or approximately 1.12% of the 12,433,047,357 Ordinary Shares of the Applicant that are currently issued and outstanding worldwide). Those 139,025,110 Ordinary Shares have been issued and are held by the depositary bank that administers the Applicant's ADR program.

    (b) There are approximately 1.4 million registered holders of Ordinary Shares of the Applicant worldwide and approximately 48 registered holders of ADRs of the Applicant worldwide. If all the issued and outstanding ADRs were exchanged for Ordinary Shares, there would be approximately 1.4 million registered holders of the Applicant worldwide and 2% of that number would be 28,000.

    (c) Therefore, there would have to be approximately 28,000 direct and indirect holders of ADRs resident in Canada in order for those holders to represent more than 2% of the total number of holders of Ordinary Shares of the Applicant worldwide following an exchange of all of the ADRs for Ordinary Shares. In the circumstances, it is highly unlikely that there are 28,000 direct and indirect holders of ADRs resident in Canada. The Applicant believes the number of direct and indirect holders of ADRs resident in Canada is well below the 2% threshold.

    Consequently, the Applicant has not conducted the same efforts (or expended the same time, money and resources) to determine the number of direct and indirect holders of ADRs resident in Canada and the holdings of those persons as it did to determine the number of direct and indirect holders of Ordinary

Shares resident in Canada and their holdings as the result of any such analysis would not change the conclusions reached above.

23. The vast majority of the Applicant's debt securities has been sold into the Australian and European markets and has been placed by brokers using the Euroclear and Cedel systems in Europe. The Applicant has never sold or issued its debt securities directly into the Canadian marketplace. After exercising reasonable efforts to ascertain the direct and indirect holders of its debt securities in Canada, the Applicant has been able to ascertain that as of June 30, 2008, there were only two Canadian residents that beneficially owned directly or indirectly debt securities of the Applicant. Those holders (two Canadian chartered banks) held debt securities of the Applicant valued at approximately A$69.5 million, which represents less than 0.01% of the total value of the Applicant's issued and outstanding listed debt securities worldwide.

24. On June 4, 2007, the Applicant filed a Form 15F – Certification of a Foreign Private Issuer's Termination of Registration of a Class of Securities under Section 12(g) of *The Securities Exchange Act of 1934* or its Termination of the Duty to File Reports under Section 13(a) or Section 15(d) of *The Securities Exchange Act of 1934* (the "Deregistration Application") with the SEC. The Applicant filed the Deregistration Application on the basis that the average daily trading volume ("ADTV") of its equity securities in the United States was 5% or less of the worldwide ADTV in the same securities as measured over a 12-month period ending within 60 days of the Deregistration Application.

25. The Deregistration Application was accepted by the SEC on September 6, 2007 and the Applicant is no longer subject to file current reports and annual reports with the SEC. Since that time the Applicant has relied on and complied with the exemptions from Canadian continuous disclosure requirements afforded to "designated foreign issuers" (as such term is defined in NI 71-102) under Part 5 of NI 71-102 and paid all related applicable filing and participation fees in each of the Jurisdictions. In addition, since September 6, 2007, the has Applicant relied on the corresponding exemption from financial statement certification requirements in section 4.2 of MI 52-109 afforded to issuers complying with sections 5.4 and 5.5 of NI 71-102.

26. The Applicant is subject to the reporting requirements of the Australian Stock Exchange and the Australian Corporations Act (the "Australian Reporting Requirements"). The Australian Reporting Requirements are similar in nature and scope to the reporting requirements under National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102").

27. The Applicant delivers to holders of Ordinary Shares resident in Canada all disclosure material required by Australian Reporting Requirements to be delivered to shareholders. As required by Australian Reporting Requirements, the disclosure material is also available to holders of Ordinary Shares through the Applicant's website.

28. Securityholders of the Applicant resident in Canada would have the same civil remedies under Australian law as securityholders resident in Australia in the event of a misrepresentation in the continuous disclosure documents of the Applicant.

29. In the last 12 months, the Applicant has not conducted an offering of its securities in Canada or taken any other steps that indicate that there is a market for its securities in Canada. The Applicant has no plans to seek a public offering of its securities in Canada or an offering pursuant to an exemption from the registration requirement and prospectus requirement of the Legislation.

30. The Applicant has undertaken in favour of each of the Decision Makers that it will continue to concurrently deliver to its securityholders resident in Canada, all disclosure material it is required by the Australian Reporting Requirements to deliver to Australian resident securityholders.

31. On August 1, 2008, the Applicant issued a press release in Canada announcing that it had submitted an application to the Decision Makers for a decision under the Legislation that the Applicant is not a reporting issuer in the Jurisdictions.

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.

Mary G. Condon
Commissioner
Ontario Securities Commission

Paul K. Bates
Commissioner
Ontario Securities Commission