

# 2003 BCSECCOM 501

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Relief to be deemed to cease to be a reporting issuer granted to a French public company that became reporting as a result of acquiring a Canadian reporting issuer - de minimus number of shares held by Canadian residents

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 1(1) and 88

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA AND SASKATCHEWAN**

**AND**

## **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

## **IN THE MATTER OF ALCATEL**

## **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia, Alberta and Saskatchewan (the “Jurisdictions”) has received an application from Alcatel (the “Filer”), for a decision pursuant to the securities legislation, regulations, rules and/or policies of the Jurisdictions (the “Legislation”) that Alcatel be deemed to have ceased to be a reporting issuer upon completion of the Arrangement (as defined below);
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for this Application;
3. AND WHEREAS, unless otherwise defined herein the terms herein have the meaning set out in National Instrument 14-101 Definitions;
4. AND WHEREAS the Filer has represented to the Decision Makers that:
  - 4.1 Alcatel was established in 1898 as a publicly-owned company under the name “Compagnie Generale d’Electricite”. Alcatel was nationalized by the French state in 1982 and became a

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publicly-held company again in May 1987. In January 1991, Alcatel changed its official name to “Alcatel Alsthom Compagnie Generale d’Electricite”. On September 1, 1998, Alcatel changed its official name to “Alcatel”;

- 4.2 Alcatel is a company organized under the laws of France. The Class A shares of Alcatel (the “Alcatel Shares”) are listed on Euronext Paris among other non-Canadian stock exchanges. Alcatel Shares are also listed on The New York Stock Exchange (the “NYSE”) in the form of Class A American Depositary Shares (“Alcatel ADSs”)(symbol: ALA). Each Alcatel ADS is equivalent to one Alcatel Share, and can be exchanged for Alcatel Shares in accordance with the provisions of the Alcatel ADSs;
- 4.3 Alcatel, together with its consolidated subsidiaries and associated companies, is a leading global provider of advanced telecommunications, Internet, networking and optics products and services, integrating communications onto a single broadband network and creating end-to-end networks that help people communicate in smarter ways. It has thousands of employees worldwide, located in over 100 countries, including Canada;
- 4.4 Alcatel’s corporate headquarters are located at 54, rue La Boétie, 75008 Paris, France;
- 4.5 based upon information contained in Alcatel’s audited financial statements for the year ended December 31, 2001 (which were prepared in accordance with French generally accepted accounting principles), Alcatel’s net sales were EURO 25.4 billion (approximately U.S.\$22.6 billion). Alcatel’s total assets as at December 31, 2001 were EURO 36.5 billion (approximately U.S.\$32.6 billion) and its shareholders’ equity was EURO 9.6 billion (approximately U.S.\$8.6 billion);
- 4.6 Alcatel’s market capitalization at the close of business on January 31, 2003 was EURO 8.1 billion;
- 4.7 Alcatel is subject to the reporting requirements of the Commission des Opérations de Bourse, Euronext Paris, the U.S. Securities and Exchange Commission (the “SEC”) and the NYSE, and is deemed to be a “reporting issuer” in the

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Jurisdictions as a result of the Arrangement described at paragraph 4.21 below;

- 4.8 as at December 31, 2002, Alcatel's capital included Alcatel Shares of nominal value of EURO 2 each, of which 1,239,193,498 Alcatel Shares were issued and outstanding.
- 4.9 as at December 31, 2002, Alcatel ADSs representing 118,294,748 Alcatel Shares were issued and outstanding. Each Alcatel ADS may be converted into one Alcatel Share. Each Alcatel ADS is designed to be economically equivalent to one Alcatel Share and a holder of Alcatel ADSs is also indirectly entitled to similar voting rights to the underlying Alcatel Shares;
- 4.10 application will be made by Alcatel to the NYSE to list thereon the Alcatel ADSs to be issued pursuant to the Arrangement, and to Euronext Paris in respect of the underlying Alcatel Shares. Application will also be made by Alcatel to Euronext Paris in respect of the Alcatel Shares that are issuable from time to time upon the exercise of certain options issued by ImagicTV that will, by virtue of the Arrangement, be exercisable for Alcatel Shares;
- 4.11 a wholly-owned subsidiary of Alcatel, Alcatel Canada Inc. ("Alcatel Canada"), is a reporting issuer in each province of Canada, other than Québec. Alcatel Canada was known as Newbridge Networks Corporation prior to its acquisition by Alcatel in 2000;
- 4.12 the outstanding securities of Alcatel Canada, other than the common shares indirectly owned by Alcatel, consist solely of shares exchangeable solely for Alcatel ADSs ("Exchangeable Shares") that, apart from being non-voting, are designed to be economically equivalent to the Alcatel ADSs. They are listed on the TSX. As a result, pursuant to rulings obtained from the Canadian securities regulatory authorities in 2000, Alcatel Canada's current public disclosure consists solely of the documents that Alcatel files with the SEC and Alcatel Canada is generally exempted from Canadian continuous disclosure requirements. Alcatel Canada is not on the list of defaulting reporting issuers maintained by the Decisions Makers;

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- 4.13 ImagicTV Inc. (“ImagicTV”) was incorporated in 1997 under the name “imagicTV Inc.” and changed its name in 1998 to “ImagicTV Inc.” It became a reporting issuer in November 2000 pursuant to an initial public offering of the ImagicTV Shares in all provinces and territories of Canada. ImagicTV is not on the list of defaulting reporting issuers maintained by the Decision Makers;
- 4.14 the ImagicTV Shares are listed and posted for trading on the TSX (symbol: IMT) and are also quoted on the Nasdaq (symbol: IMTV);
- 4.15 ImagicTV provides software products and related services that are designed to enable telephone companies and other service providers to deliver multi-channel digital television and interactive media services to their subscribers over a broadband network infrastructure;
- 4.16 ImagicTV’s corporate headquarters are located at One Brunswick Square, 14th Floor, Saint John, New Brunswick E2L 3Y2;
- 4.17 in the year ended February 28, 2002, ImagicTV generated net revenue of US\$4,215,000 and a net loss of US\$18,704,000. Total shareholders’ equity at February 28, 2002 was US\$45,793,000;
- 4.18 ImagicTV’s market capitalization at the close of business on February 6, 2003 was approximately US\$18.8 million;
- 4.19 ImagicTV’s authorized capital consists of an unlimited number of ImagicTV Shares and an unlimited number of preferred shares issuable in series. As at February 6, 2003, there were 24,731,607 ImagicTV Shares issued and outstanding and no preferred shares were issued or outstanding. As at February 6, 2003, options to acquire 2,729,172 ImagicTV Shares were granted and outstanding pursuant to ImagicTV’s employee stock option plans;
- 4.20 as of March 24, 2003, Alcatel held, directly or indirectly, a total of 3,986,856 ImagicTV Shares, representing approximately 16.2% of the ImagicTV Shares. An Alcatel employee, Mr. Timothy Hember, sits on the ImagicTV board of directors. He

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has not participated in its deliberations in respect of the Arrangement;

4.21 the Acquisition was effected by way of a plan of arrangement (the “Arrangement”) under section 192 of the Canada Business Corporations Act;

4.22 an interim order of the Superior Court of Justice (Ontario) (the “Court”) (the “Interim Order”) pursuant to the CBCA dated March 21, 2003 sets out certain requirements relating to the approval of the Arrangement by the holders of ImagicTV Shares and ImagicTV Options (collectively, the “ImagicTV Securityholders”). The Interim Order provides, among other things, that:

4.22.1 the approval of not less than 66 2/3% of ImagicTV Securityholders present or voting by proxy (with holders of ImagicTV Shares and ImagicTV Options voting together) at a meeting of ImagicTV Securityholders for the purpose of approving the Arrangement (the “Meeting”); and

4.22.2 the final approval of the Court;

must be obtained in order for the Arrangement to be completed.

4.23 in connection with the Arrangement and the Meeting, ImagicTV sent to ImagicTV Securityholders, together with other documents, the Circular, prepared in accordance with the CBCA and the Legislation, subject to any relief obtained in respect thereof;

4.24 the Meeting was held on April 23, 2003 and the required approval of the ImagicTV Securityholders was obtained. The final approval of the Court of the Arrangement was obtained on April 24, 2003;

4.25 the Arrangement was completed as of April 29, 2003. Alcatel, became the indirect legal and beneficial owner of all of the outstanding ImagicTV Shares immediately prior to the Effective Time (other than those owned by Alcatel or any of its affiliates and those held by a shareholder of ImagicTV who properly

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exercises his, her or its right of dissent from the terms of the Arrangement).

- 4.26 Residents of Canada will beneficially hold less than 1% of the issued and outstanding shares of Alcatel, assuming that all of the Exchangeable Shares were exchanged for Alcatel Shares.
  - 4.27 former ImagicTV Securityholders holding Alcatel ADSs or Alcatel Shares will be provided with the continuous disclosure and other shareholder materials that are provided to holders of Alcatel ADSs resident in the United States or holders of Alcatel Shares resident in France.
  - 4.28 there is currently no market in Canada through which the Alcatel ADSs or Alcatel Shares may be sold, and no market is expected to develop.
  - 4.29 by virtue of the Arrangement, provisions in the Legislation deem Alcatel to be considered a reporting issuer. Alcatel will also by virtue of the Arrangement become a reporting issuer under the securities legislation of Québec.
- 5. AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, 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 pursuant to the Legislation is that Alcatel is deemed to have ceased to be a reporting issuer under the Legislation.

DATED this 6<sup>th</sup> day of May, 2003

Patricia M. Johnston  
Director, Legal Services & Policy Development