

2004 BCSECCOM 12

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief for first trades of shares issued to complete a spin off provided first trade is conducted through stock exchange outside Canada - shareholders unable to rely on exemption in MI 45-102 because issuer becomes reporting in Quebec

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 76

Multilateral Instrument 45-102 *Resale of Securities*, s. 2.14

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA, ONTARIO,
PRINCE EDWARD ISLAND, QUEBEC, SASKATCHEWAN,
NORTHWEST TERRITORIES, NUNAVUT AND YUKON TERRITORY**

AND

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

AND

IN THE MATTER OF TELEFÓNICA, S.A.

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the Decision Maker) in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Québec, Saskatchewan, Northwest Territories, Nunavut and Yukon Territory (the Jurisdictions) has received an application from Telefónica, S.A. (Telefónica) for a decision pursuant to the securities legislation of the Jurisdictions (the Legislation) that the prospectus and registration requirements contained in the Legislation shall not apply to the Spin-off (as defined in paragraph 16 below) and to Telefónica;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the System) the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS Telefónica has represented to the Decision Makers that:

2004 BCSECCOM 12

1. Telefónica is a corporation (*sociedad anónima*) organized under the laws of the Kingdom of Spain.
2. Telefónica is one of the world's leading companies in the telecommunications sector with an active presence in 16 countries and operations in nearly 50 countries.
3. Pursuant to a prospectus dated December 14 1997, Sociedad Estatal de Participaciones Patrimoniales, S.A., a corporation wholly owned by the Spanish government, completed a secondary public offering in Canada (Canadian Offering) of American Depositary Shares (each an ADS) each representing the right to receive three ordinary shares (each an Ordinary Share) of Telefónica.
4. As a result of the Canadian Offering, Telefónica is a “*reporting issuer*” or has equivalent status in each applicable Jurisdiction.
5. Telefónica is not in default of any of the reporting issuer requirements of the Legislation.
6. The Ordinary Shares of Telefónica are listed on each of the Madrid, Barcelona, Bilbao and Valencia stock exchanges (collectively, the Spanish Stock Exchanges). They are also listed on various foreign exchanges including London, Frankfurt, Paris, Buenos Aires, and Tokyo stock exchanges and are quoted through the Automated Quotation System of the Spanish Stock Exchanges and through the SEAQ International System of the London Stock Exchange.
7. The ADSs of Telefónica are currently listed on the New York Stock Exchange (NYSE) and on the Lima Stock Exchange.
8. In addition to the Ordinary Shares and the ADSs, Telefónica has issued Brazilian Depositary Shares (each a BDS) each representing the right to receive one Ordinary Share, which are listed on the São Paulo Stock Exchange. (Ordinary Shares, ADSs and BDSs are collectively referred to herein as Telefónica Shares, and holders of Telefónica Shares are referred to herein as Telefónica Shareholders)
9. As of October 15, 2003, Telefónica issued and outstanding capital consisted of 4,955,891,361 Ordinary Shares.
10. As of December 31, 2002, there were 111,084,331 ADSs and 6,923,769 BDSs outstanding.

2004 BCSECCOM 12

11. As permitted by Spanish law, Telefónica has issued bearer securities and does not maintain a share register. Telefónica is unable to accurately determine the number of Canadian resident Telefónica Shareholders holding Ordinary Shares (Canadian Ordinary Shareholders) or in what Jurisdiction such Canadian Ordinary Shareholders reside.
12. As of October 8, 2003 there are currently approximately 9,507 Canadian resident Telefónica Shareholders holding ADSs (Canadian ADS Holders; Canadian Ordinary Shareholders and Canadian ADS Holders are collectively referred to herein as Canadian Shareholders), of which there are 1,250 resident in Alberta, 1,131 resident in British Columbia, 124 resident in Manitoba, 50 resident in New Brunswick, 91 resident in Newfoundland, 163 resident in Nova Scotia, 5,757 resident in Ontario, 19 resident in Prince Edward Island, 759 resident in Québec, 143 resident in Saskatchewan, 10 resident in the Northwest Territories, 3 resident in the Yukon Territory, and 7 Canadian ADS Holders whose Jurisdiction of residence is unknown, the aggregate of which represents approximately 0.07357% of the total issued and outstanding Ordinary Shares.
13. Antena 3 is a corporation (*sociedad de nacionalidad española*) organized under the laws of the Kingdom of Spain.
14. As of October 15, 2003, Telefónica owned 34.14% of Antena 3.
15. Antena 3 is not a “*reporting issuer*” nor does it have equivalent status in any of the applicable Jurisdictions. Further, there is no current intention that Antena 3 will become a “*reporting issuer*” or obtain equivalent status in any of the applicable Jurisdictions other than in Québec by operation of law.
16. On April 11, 2003, at Telefónica’s annual general shareholders’ meeting (AGM), Telefónica Shareholders passed a resolution to ratify a proposed distribution in kind to Telefónica Shareholders through the allocation of Antena 3 Shares (the Spin-off).
17. The Spin-off is the direct result of Telefónica’s requirement to divest itself of Antena 3 in order to comply with Spanish law, which restricts the ownership of television stations, such as Antena 3, by telecommunication providers, such as Telefónica.
18. Prior to the AGM, Telefónica sent information about the Spin-off to all of the Telefónica Shareholders in the form of a shareholder circular (Circular).

2004 BCSECCOM 12

19. The information contained in the Circular conforms to the requirements of the NYSE and the United States *Securities Act of 1933*, as amended.
20. At the AGM, the Telefónica Shareholders approved the distribution of 50,000,400 Antena 3 Shares, representing 30% of the outstanding share capital of Antena 3 and valued at €120,003,360 on the books of Telefónica.
21. The Spanish National Securities Market Commission (*Comisión Nacional de Mercado de Valores*) (Spanish Commission) verified the admission of Antena 3 Shares for trading on the Spanish Stock Exchanges on October 17, 2003.
22. Antena 3 does not intend to list the Antena 3 Shares on the NYSE or on a Canadian stock exchange and, as a result, there will be no published market for the Antena 3 Shares in Canada.
23. The Share Distribution and the Spin-off will be effected in compliance with the Spanish Law of Corporations, the rules of the Spanish Commission and the Spanish Stock Exchanges and the regulations thereunder.
24. All materials related to the Spin-off and the Share Distribution of the Antena 3 Shares that are sent by or on behalf of Telefónica to Telefónica Shareholders in the United States will be sent concurrently to Canadian Shareholders and filed with the Decision Makers.
25. Immediately following the Spin-off, the holders of Ordinary Shares will be entitled to receive a pro rata distribution of Antena 3 Shares based on their holdings of Ordinary Shares, adjusted for any splits in the Antena 3 Shares or in the Telefónica Shares.
26. With respect to holders of ADSs, Citibank, N.A. (the Depository), as depository under the Deposit Agreement dated November 13, 1996 among Telefónica, the Depository, and the holders from time to time of ADSs will receive a distribution of the Antena 3 Shares pursuant to the Spin-off. Registered holders of ADSs at the time of distribution (Qualified ADS Holders) will receive a pro rata distribution of the Antena 3 Shares issued to the Depository. The Depository will sell the Antena 3 Shares on behalf of the Qualified ADS Holders as soon as practicable after receiving the Antena 3 Shares. Upon selling the Antena 3 Shares, the Depository will receive and distribute the cash proceeds of such sale, net of expenses of sale and currency conversion, in U.S. dollars to the respective Qualified ADS Holder.
27. Following the Spin-off, holders of Antena 3 Shares who are resident in Canada will receive concurrently from Antena 3 the same disclosure materials

2004 BCSECCOM 12

that are sent to holders of Antena 3 Shares who are resident in Spain pursuant to Spanish law.

28. The distribution of Antena 3 Shares pursuant to the Share Distribution constitutes a “distribution” within the meaning of the Legislation. Given that the Share Distribution is an initiative of Telefónica and that the Antena 3 Shares will be issued in connection with the Spin-off, Telefónica’s involvement may constitute acts in furtherance of a distribution of the Antena 3 Shares to Canadian Shareholders.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the Decision);

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;

THE DECISION OF the Decision Makers pursuant the Legislation is that:

1. except in British Columbia, the prospectus and registration requirements of the Legislation shall not apply to the trades of the Antena 3 Shares pursuant to the Spin-off ; and
2. the first trade in the Antena 3 Shares acquired by Canadian Shareholders pursuant to this decision is a distribution or primary distribution to the public or is deemed a distribution under the Legislation, unless such trade is executed through the facilities of a stock exchange or market outside of Canada, in accordance with all rules and laws applicable to the stock exchange or market upon which the trade is made.

DATED this 30th day of December, 2003.

Theresa McLeod

Suresh Thakrar