

2003 BCSECCOM 306

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief for first trades of securities acquired in connection with a statutory arrangement where issuer may temporarily be deemed a reporting issuer in some jurisdictions

Applicable British Columbia Provisions

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

Multilateral Instrument 45-102 *Resale of Securities*

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

AND

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

AND

IN THE MATTER OF IMAGICTV INC. AND ALCATEL

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (each, a “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories and Nunavut (the “Jurisdictions”) has received an application from ImagicTV Inc. (“ImagicTV”) and Alcatel (together with ImagicTV, the “Filers”), for, among other things, a decision pursuant to the securities legislation, regulations, rules and/or policies of the Jurisdictions (the “Legislation”) that:

- (a) the Primary Trades (as defined in paragraph 36 below) in connection with the proposed acquisition of ImagicTV by Alcatel (the “Acquisition”), to be effected by way of a plan of arrangement (the “Arrangement”) under section 192 of the *Canada Business Corporations Act* (the “CBCA”), be exempt from the requirements contained in the Legislation that a trade in a security be conducted through a registered party (the “Registration Requirements”) and to file a preliminary

2003 BCSECCOM 306

prospectus and a prospectus and receive receipts therefor prior to distributing a security (the “Prospectus Requirements”); and

- (b) certain trades in securities obtained in Primary Trades be exempt from the Prospectus Requirements;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this Application;

AND WHEREAS, unless otherwise defined herein, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS the Filers have represented to the Decision Makers that:

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 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”.
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 they can be exchanged for Alcatel Shares in accordance with the provisions of the Alcatel ADSs.
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. Alcatel’s corporate headquarters are located at 54, rue La Boétie, 75008 Paris, France.
5. Based upon information contained in Alcatel’s audited financial statements for the year ended December 31, 2002, Alcatel’s net sales were EURO 16.5

2003 BCSECCOM 306

billion (approximately U.S.\$17.3 billion). Alcatel's total assets as at December 31, 2002 were EURO 25.8 billion (approximately U.S.\$27.1 billion) and its shareholders' equity was EURO 5 billion (approximately U.S.\$5.2 billion).

6. Alcatel's market capitalization at the close of business on January 31, 2003 was EURO 8.1 billion.
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 not a "reporting issuer" or the equivalent under the Legislation.
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.
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.
10. An application will be made by Alcatel to the NYSE to list thereon the Alcatel ADSs to be issued pursuant to the Arrangement, and will be made 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 Revised Options.
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.
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

2003 BCSECCOM 306

requirements. Alcatel Canada is not on the list of defaulting reporting issuers maintained by any of the Decision Makers.

13. 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 any of the Decision Makers.
14. The common shares of ImagicTV (the “ImagicTV Shares”) are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) (symbol: IMT) and are also quoted on the Nasdaq SmallCap Market (the “Nasdaq”)(symbol: IMTV).
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.
16. ImagicTV’s corporate headquarters are located at One Brunswick Square, 14th Floor, Saint John, New Brunswick E2L 3Y2.
17. In the year ended February 28, 2002, ImagicTV generated net revenue of U.S.\$4,215,000 and a net loss of U.S.\$18,704,000. Total shareholders’ equity at February 28, 2002 was U.S.\$45,793,000.
18. ImagicTV’s market capitalization at the close of business on March 24, 2003 was approximately U.S.\$28.7 million.
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 March 24, 2003, there were 24,775,219 ImagicTV Shares issued and outstanding and no preferred shares issued or outstanding. As at March 24, 2003, options to acquire 2,661,833 ImagicTV Shares were granted and outstanding pursuant to ImagicTV’s employee stock option plans.
20. As of March 24, 2003, Alcatel held, indirectly through Alcatel Canada, a total of 3,986,856 ImagicTV Shares, representing approximately 16.1% of the ImagicTV Shares. An Alcatel employee, Mr. Timothy Hember, sits on the ImagicTV board of directors. He has not participated in its deliberations in respect of the Acquisition.

2003 BCSECCOM 306

21. The Acquisition is proposed to be effected by way of the Arrangement, pursuant to which a subsidiary of Alcatel (“Acquireco”), Lubelec, a French company, will become the legal and beneficial owner of all outstanding ImagicTV Shares not currently owned by Alcatel or any of its affiliates.
22. At the effective time of the Arrangement (the “Effective Time”), a subsidiary of Alcatel, Coralec, a French company, will issue redeemable bonds (the “ORAs”) to Acquireco in a sufficient amount so as to satisfy the number of Alcatel ADSs to be delivered in exchange for ImagicTV Shares pursuant to the Arrangement (being all of the issued and outstanding ImagicTV Shares, other than those owned by Alcatel or any of its affiliates or those held by a shareholder of ImagicTV who properly exercises his, her or its right of dissent from the terms of the Arrangement).
23. The number of Alcatel ADSs to be issued in respect of the exchange of ImagicTV Shares will be calculated based on the exchange ratio (the “Exchange Ratio”) specified in the agreement entered into in respect of the Arrangement (the “Arrangement Agreement”). Subject to adjustment pursuant to the terms of the Arrangement Agreement, the Exchange Ratio is 0.1733 Alcatel ADSs per ImagicTV Share.
24. The Exchange Ratio is subject to adjustment in the Arrangement Agreement, as follows:
 - (a) if 0.1733, when multiplied by the simple average of the reported closing prices of the Alcatel ADSs on the NYSE during the ten consecutive NYSE trading days ending on the third day prior to the effective date of the Arrangement (the “Effective Date Average ADS Price”), is less than U.S. \$1.00, then the Exchange Ratio will be the quotient of U.S. \$1.00 divided by the Effective Date Average ADS Price, provided that if such quotient is greater than 0.2022, then the Exchange Ratio will be 0.2022; and
 - (b) if 0.1733, when multiplied by the Effective Date Average ADS Price, is greater than U.S. \$1.30, then the Exchange Ratio will be U.S. \$1.30 divided by the Effective Date Average ADS Price.
25. The initial Exchange Ratio is based on a price of U.S.\$1.20 per ImagicTV Share, which represented a premium of approximately 58% to the closing price of the ImagicTV Shares on the Nasdaq on the date prior to the announcement of the proposed transaction.

2003 BCSECCOM 306

26. At the Effective Time, the ORAs issued to Acquireco will be contributed to a trust to be established by ImagicTV and to be constituted under the laws of Ontario (the "ImagicTV Trust"). Thereupon, the ImagicTV Trust will immediately request redemption of the ORAs and direct Alcatel to deliver Alcatel ADSs representing the Alcatel Shares to be issued upon redemption of the ORAs to a depositary, and Alcatel will also issue the applicable underlying Alcatel Shares and cause them to be delivered to a depositary. Holders of ImagicTV Shares will in no instance have ORAs delivered to them.
27. Upon surrender to a depositary for cancellation of a certificate representing the ImagicTV Shares being transferred under the Arrangement, together with certain other documents and instruments, the holder of such surrendered certificate will be entitled to receive, in exchange therefor, Alcatel Class A American Depositary Receipts representing the Alcatel ADSs which such holder has the right to receive under the Arrangement.
28. Pursuant to the Arrangement, all outstanding options to purchase ImagicTV Shares ("ImagicTV Options") will represent options (the "Revised Options") to acquire Alcatel Shares, each such Revised Option to be exercisable for a number of Alcatel Shares at an exercise price in Euros per share based on the Exchange Ratio and the Euro Exchange Rate as determined pursuant to the Arrangement Agreement. Promptly following the Effective Time, Coralec will issue to ImagicTV an additional number of ORAs. The number of ORAs to be thus issued to ImagicTV will be that number necessary to satisfy all possible future exercises of Revised Options.
29. 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:
 - (a) 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 (currently scheduled to be held on April 23, 2003) for the purpose of approving the Arrangement (the "Meeting"); and
 - (b) the final approval of the Court;must be obtained in order for the Arrangement to be completed.

2003 BCSECCOM 306

30. In connection with the Arrangement and the Meeting, ImagicTV has sent to ImagicTV Securityholders, together with certain other documents, a management proxy circular (the “Circular”), prepared in accordance with the CBCA and, subject to relief granted in certain of the Jurisdictions, the Legislation.
31. The Circular contains prospectus-level disclosure regarding the business and affairs of Alcatel, and the particulars of the Arrangement, and the following financial statements:
- (a) audited consolidated annual financial statements of Alcatel for the years ended December 31, 2002, December 31, 2001 and December 31, 2000, including balance sheets as at December 31, 2002 and December 31, 2001 (not reconciled to U.S. GAAP) (the “2002 Consolidated Statements”);
 - (b) audited consolidated annual financial statements of Alcatel for the years ended December 31, 2001, December 31, 2000 and December 31, 1999, including balance sheets as at December 31, 2001 and December 31, 2000 (reconciled to U.S. GAAP in respect of consolidated net income and shareholders equity in the notes thereto);
 - (c) unaudited consolidated interim financial statements of Alcatel for the six months ended June 30, 2002 and June 30, 2001, including a balance sheet as at the end of such period;
 - (d) audited annual financial statements of ImagicTV for the years ended February 28, 2002, February 28, 2001 and February 29, 2000, including balance sheets as at February 28, 2002 and February 28, 2001; and
 - (e) unaudited financial statements of ImagicTV for the nine months ended November 30, 2002 and November 30, 2001, including a balance sheet as at the end of each such period.
32. Alcatel’s financial statements (other than the 2002 Consolidated Statements) are prepared in accordance with French GAAP, and reconciled to U.S. GAAP in respect of consolidated net income and shareholders equity in the notes thereto. They are not reconciled to Canadian GAAP.
33. Upon the completion of the Arrangement, it is expected that residents of Canada will beneficially hold significantly less than 1% of the issued and outstanding shares of Alcatel, assuming that all of the Exchangeable Shares were exchanged for Alcatel Shares.

2003 BCSECCOM 306

34. Following completion of the Arrangement, ImagicTV Securityholders holding Alcatel ADSs or Alcatel Shares as a result of the Arrangement 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.
35. 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.
36. Exemptions from the Registration Requirements and/or the Prospectus Requirements may not be available in respect of certain of the trades and/or distributions necessary for ImagicTV Securityholders to obtain the Alcatel ADSs and the Revised Options, and the Alcatel Shares underlying each, that they are entitled to pursuant to the Arrangement (together, the “Primary Trades”).
37. In addition, the first trades in Alcatel Shares and Alcatel ADSs acquired pursuant to the Arrangement (including those Alcatel Shares obtained on exercise of Revised Options or in substitution for Alcatel ADSs) (“Resale Trades”) may not be exempt from the Prospectus Requirements.

AND WHEREAS pursuant to 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 to the Legislation is that:

38. except in British Columbia, Alberta, Saskatchewan and Nova Scotia, the Registration Requirements and Prospectus Requirements shall not apply to the Primary Trades, provided that the first trade in securities acquired under this Decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction; and
39. the Resale Trades in Alcatel Shares or Alcatel ADSs received under the Arrangement and the Resale Trades in Alcatel Shares received upon exercise of the Revised Options or in substitution for the Alcatel ADSs shall be exempt from the Prospectus Requirements if

2003 BCSECCOM 306

- a) in the Jurisdictions other than Québec, the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 – *Resale of Securities*, other than the requirements of paragraph 2.14(1)(a), are satisfied; and
- b) in Québec, such trades are executed through the facilities of a stock exchange or market, or are made to a person, outside of Canada.

April 25, 2003

H. Lorne Morphy

Robert W. Korthals