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FRASER MILNER CASGRAIN LLP

STALKING HORSES & BREAK FEES

In *Re: Nortel Networks Corp.* the Ontario Superior Court of Justice considered an application for court approval of the Bidding Procedures pertaining to the sale of Nortel's "Layer 4-7" business, as well as approval of a "Stalking Horse" bidding process.

Prior to filing for protection under the CCAA, Nortel decided that the Layer 4-7 business should be sold. Shortly after filing, Nortel agreed to enter into an Asset Purchase Agreement with Radware for the purchase of the Layer 4-7 business (the "Purchase Agreement").

Given that some of the U.S. debtors were parties to the Purchase Agreement and that stakeholders desire was to maximize the value of their interests, Nortel and Radware agreed that the Purchase Agreement would be subject to higher or better offers under a sale process pursuant to s.363 of the U.S. Bankruptcy Code (the "Code"), and that the initial Purchase Agreement would serve as the "stalking horse" bid pursuant to that process.

The Ontario Supreme Court of Justice approved the Bidding Procedures as set out in the Second Monitor's Report, subject to U.S. bankruptcy approval, as they were in accordance with the procedures in §363 of the Code, including the provision that provided for a break fee and expense reimbursement fee in favour of the seller. In view of the relatively small size of the Layer 4-7 business, the court held that although the timelines stipulated in the Bidding Procedures were relatively short, it was desirable to establish the most expedient process to achieve the best realization for stakeholders.

For further information please contact David Mann at 403 268-7097 or David LeGeyt at 403 268-3075, or visit our website www.fmc-law.com/insolvency.