

TAKEOVERS AND MERGERS PANEL

12. Upon completion of the Proposed Transfer, China Baowu would own 51% of the

iron and steel conglomerates, each with a production capacity of at least 80 million tonnes.

- (F) The Proposed Transfer, if implemented, would likely enable the enlarged and consolidated China Baowu group to achieve a production capacity of at least 80 million tonnes and qualify as a large-scale iron and steel conglomerate under the State Policy.
 - (G) The Proposed Transfer is being initiated with the support of Central SASAC to implement and support the PRC government's overall policy and strategic planning in relation to the long-term development of the PRC iron and steel industry.
15. The main reasons submitted by China Baowu that the Waiver should be granted are summarized below:
- (A) China Baowu and Anhui SASAC are parties acting in concert, and the Proposed Transfer at nil consideration is being done under the unique facts and circumstances of this case, which should justify the granting of the Waiver under Note 6(a) to Rule 26.1 of the Takeovers Code, or alternatively, under section 2.1 of the Introduction to the Codes.
 - (B) China Baowu and Anhui SASAC should be considered as members of a concert group for the following reasons:
 - (i) The Proposed Transfer would enable China Baowu to acquire the entire 51% of Magang Group for nil consideration so that China Baowu would be able to consolidate the iron and steel production of the Company and Magang Group and achieve concentration of production capacity in furtherance of the State Policy. This demonstrates that the Proposed Transfer is not a typical commercial transaction, since valuable assets would be transferred at nil consideration. The purpose of the Proposed Transfer at nil consideration shows that China Baowu and Anhui SASAC are actively acting in concert by cooperating to achieve such concentration and consolidation.
 - (ii) Upon completion of the Proposed Transfer, each of China Baowu and Anhui SASAC would hold over 20% of the equity interest in Magang Group and would fall within the

SASAC should be presumed to be parties acting in concert under Class (1) of the presumptions of acting in concert as set out in the Codes.
 - (iii) The proposed transfer of interest in Magang Group by Anhui SASAC to China Baowu at nil consideration would fall within Note

of voting rights as a gift or at nominal consideration. Therefore, China Baowu and Anhui SASAC should be presumed to be parties acting in concert under Class (9) of the presumptions of acting in concert as set out in the Codes.
 - (C) The Proposed Transfer is unique and special as it is made in accordance with specific PRC laws that regulate the transfers of state-owned assets at nil consideration. This is done with the intent of enabling China Baowu

to consolidate the iron and steel businesses of the Company and Magang Group so as to achieve greater concentration of iron and steel production in furtherance of the State Policy.

- (D) Even though not all levels of State-owned Assets Supervision and **SASAC** regarded as acting in concert, Central SASAC (the ultimate controller of China Baowu) and Anhui SASAC either are actually or should be presumed to be acting in concert with each other in the current unique situation of the Proposed Transfer at nil consideration pursuant to PRC laws.
- (E) China Baowu and Magang Group had a relatively long historical relationship with each other since they were both controlled and

are to be interpreted to achieve their underlying purposes. Accordingly, each of the Codes, through the General Principles, may apply to situations not specifically covered by any Rule. Therefore, the spirit of

statutory control of Magang Group, which in turn controls approximately 45.54% of the voting rights in the Company;

- (B) as at 31 December, 2018, the total assets of the Company represented approximately 79.25% of the total assets of Magang Group; and
- (C) for the year ended 31 December, 2018, the total profits of the Company represented approximately 92.11% of the total profits of Magang Group.

Accordingly, _____ holding in the Company would be significant in relation to Magang Group under the chain principle set out in Note 8 to Rule 26.1 of the Takeovers Code.

- 22. Upon completion of the Proposed Transfer, China Baowu would trigger a mandatory Takeovers Code.
- 23. Note 6(a) to Rule 26.1 of the Takeovers Code sets out clearly the factors that must be taken into account in considering whether a waiver may be granted, i.e. (i) whether there has been a change in the leader of the relevant concert group and whether the balance between the shareholdings of the group has changed significantly; (ii) the price paid for the shares acquired; and (iii) the relationship between the persons acting in concert and how long have they been acting in concert.
- 24. To put it simply, Note 6(a) to Rule 26.1 of the Takeovers Code provides that a waiver from the general offer obligation may be granted, if in the true sense of the words there is not a change in control in question, and, on the basis that a concert party group was in existence in the first place.
- 25. The Panel decision regarding the transfer of interest in Hong Kong Aircraft **Haeco Case** _____ dance that Note 6(a) to Rule 26.1 of the Takeovers Code should be given a narrow interpretation. This is consistent with General Principle 2 of the Codes, which provides that if control of a company changes or is acquired or consolidated, a general offer to all other shareholders is normally required.
- 26. China Baowu and Anhui SASAC should not be considered to be parties acting in concert for the following reasons:
 - (A) The Executive has for some time taken the view that different levels of SASAC should not be considered to be acting in concert with each other. That this view is well understood and takes into account the practical reality that Central SASAC does not normally manage assets that are held by lower level SASAC and that it would be impracticable to recognize Central SASAC to be acting in concert with other levels of SASAC, as such a position would result in most PRC state-owned enterprises being viewed as members of a single concert group, which would in turn lead to any general offer in accordance with the Takeovers Code involving a state-owned enterprise becoming unmanageable. This view is also

various different submissions by professional parties, that different levels of SASAC operate largely independently of each other.
 - (B) The technical argument that China Baowu and Anhui SASAC should be presumed to be acting in concert once they each hold more than 20% of

the equity of Magang Group should not be acceptable as China Baowu should not be able to rely on the transaction that triggers the mandatory general offer obligation as the basis for granting a waiver of that obligation.

- (C) The argument that China Baowu and Anhui SASAC should be considered to be parties acting in concert

the requirement to make a mandatory general offer was triggered.

- (B) The price should be by reference to the VWAP rather than the closing price on the relevant day since the use of VWAP would reduce the possibility of price manipulation, e.g. where a large number of small orders for the shares were placed at the end of the day.
- (C) The price should be determined at the time when China Baowu has decided to proceed with the Proposed Transfer, i.e. when China Baowu would be required under Rule 3.5 of the Takeovers Code to make an announcement in relation to its firm intention to make an offer. This takes into account of the fact that China Baowu stated in the Rule 3.7 Announcement that it would review whether or not and how best to proceed with the Proposed Transfer if the Waiver is not granted. This would mean that the market would know the offer price once it is known that a general offer will be made.

The decision and the reasons for it

- 30. It is accepted that the Proposed Transfer would result in a change in control of the Company through the application of the chain principle (see paragraph 21 above). As a result, a mandatory general offer obligation would be triggered, unless a waiver is granted.
- 31. The relevant provisions regarding the granting of waivers from making a mandatory general offer obligation are set out in Note 6(a) to Rule 26.1, reproduced below:

“6. Acquisition of voting rights by members of a group acting in concert

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SASAC had been acting in concert at any relevant time prior to the Proposed Transfer. As such, this factor has not been met either.

39. We note the following statements set out in paragraph 26 of the Haeco Case:

Under Note 6(a) to the Notes to Rule 26.1, the Code envisages that acquisitions by one member of a concert party from another which cause the purchaser's shareholding to cross a trigger point in the Code will "normally" result in a mandatory takeover offer obligation arising. This must be the starting point; waivers are a concession which are granted only in a comparatively narrow range of circumstances

These statements clearly summarize the underlying spirit of Note 6(a) to Rule 26.1 of the Takeovers Code.

40. Under these circumstances, we do not agree that Note 6(a) to Rule 26.1 would be applicable.
41. China Baowu also argued that the Waiver may be granted under section 2.1 of the Introduction to the Codes. Section 2.1 of the Introduction to the Codes would allow the Waiver to be granted if the strict application of Rule 26.1 to the *unnecessarily restrictive or unduly burdensome or otherwise inappropriate, manner*
42. Section 2.1 of the Introduction to the Co *Although the Rules are expressed in more detailed language than the General Principles, they, like the General Principles, are to be interpreted to achieve their underlying purposes*
43. Rule 26.1 lies at the heart of the Takeovers

49. This price represents the latest available VWAP of the H shares of the Company that is free from any impact that may have been brought about by the possibility of a general offer resulting from the Proposed Transfer.
50. Finally, the Panel was also asked to consider delaying the publication of its decision by one month. As