TAKEOVERS AND MERGERS PANEL

Panel Decision
in relation to Alibaba Health Information Technology Limited
(formerly CITIC 21CN Company Limited, Stock Code 241)

Purpose of the hearing

1. The Takeovers and Mergers Panel (the "Panel") met on 22nd and 23rd April, 2016 to consider a referral by the Takeovers Executive under Section 10.1 of the Introduction to the Codes on Takeovers and Mergers and Share Buy-backs (the "Takeovers Code") which relates to a particularly novel, important or difficult point at issue.

8. On 23rd January, 2014, 21CN announced that it had entered into an agreement with Alibaba (the "Whitewash Transaction") under which it would subscribe for shares in 21CN at a subscription price of HK$0.30 per share, subject to the grant of a whitewash waiver of the Rule 26 mandatory general offer obligation which would otherwise result from the subscription. The whitewash waiver was subject to the consent of the Takeovers Executive and, if that were to be granted, the approval of the shareholders of 21CN who were to receive the advice of an independent financial adviser.

9. During the due diligence process conducted by Alibaba's Hong Kong lawyers it was discovered that Mr. Chen held on trust a 1% shareholding in a subsidiary of 21CN and

acquired Alibaba's online pharmacy business and the economic interest in OpCo with the result that Mr. Chen received a 9.56% shareholding in the enlarged company. This was slightly lower than the percentage specified in the 23rd January, 2014 side agreement and is accounted for by the enlargement of the business scope of the Target Company from what was originally intended in January.

16. On 15th April, 2015, 21CN announced the proposed acquisition of the Target Company in which Alibaba held a 90.44% shareholding interest with the balance being held by Mr. Chen. The consideration for this acquisition which was valued at approximately HK$19.5 billion was the issue of shares in, and convertible bonds of, 21CN to Alibaba and shares in 21CN to Mr. Chen. Based on the issue price of the shares in 21CN of HK$5.28, this valued Mr. Chen's interest in the Target Company at some HK$1.6 billion. The transaction constituted a reverse takeover under the Listing Rules of the Hong Kong Stock Exchange and it was through the vetting process in connection with this that the shareholding of Mr. Chen in 21CN came to light.

17. On 31st March, 2016, 21CN announced that it would no longer proceed with the proposed acquisition of the Target Company as the long stop date has been reached and in the light of the substantial regulatory uncertainties in relation to the medical and healthcare industry in the PRC.

18. At the time of the meeting following the award of the B2C Permit to OpCo held on 13th November, 2013, the closing share price of 21CN was HK$0.51. Immediately before the suspension of the shares pending the publication of the 23rd January, 2014 announcement, the shares in 21CN closed at HK$0.83. Trading resumed on 24th January, 2014 following the publication of the terms of the Whitewash Transaction, and the shares in 21CN closed at HK$3.92. Since then the shares in 21CN have traded in the range of between HK$14.32 and HK$2.19 and for the most part well in excess of HK$4.00. When the Panel met the shares in 21CN traded in the range of between HK$5.31 and HK$5.01.

The relevant provisions of the Takeovers Code

19. A fundamental principle of the Takeovers Code is the equality of treatment of shareholders in the context of a takeover or merger transaction, which for this purpose includes a whitewash waiver transaction. This is set out in General Principle 1 which states:

    "All shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly."

20. To give effect to this General Principle, Rule 25 of the Takeovers Code prohibits transactions between an offeror, or potential offeror, and parties acting in concert with it and a shareholder in the offeree company. Since its Notes give example of transactions which are considered to be special deals and how such transactions are to be treated, the Rule and its Notes are quoted in full:

Notes to Rule 25:

1. Top-

4. Disposal of offeree company assets

In some cases, certain assets of the offeree company may be of no interest to the offeror. There is a possib]TJ-134(po)3E1

decision in the case of British & Commonwealth Holdings plc/Mercantile House Holdings plc in connection with Rule 16 of the City Code which confirmed that a favourable condition would be one that comprised a special benefit over and above its market value.

42. In the Takeovers Executive's Panel Paper, reference had been made to Mr. Chen and his sister being concert parties by presumption. Alibaba did not believe that the meaning of "*shareholder*" was to be extended to include parties with a similar relationship as presumed concert parties and this had not been the way that the Rule had been interpreted previously. This was why Alibaba's Hong Kong legal advisers saw no reason to consult the Takeovers Executive in advance. Concert party activity is directed to arrangements between parties with the objective of acquiring or consolidating control. This was absent in this case. Further, Alibaba was adamant that it was not acting in concert with Mr. Chen and had no reason to do so.

43. Overall, the OpCo transaction did not fit within the ambit of Rule 25. It was not the kind of transaction it was designed to regulate, it was an entirely separate matter unrelated to the Whitewash Transaction. Alibaba had no reason to think it was dealing with a shareholder and the arrangements did not contain favourable conditions. Even if for some technicality it did fall within its ambit, Section 2.1 of the Introduction to the Takeovers Code gave the Panel a clear discretion to waive or modify the application of the Rule in accordance with its underlying purpose.

44. The OpCo Agreement to the extent the Panel considered it to be a special deal could be rectified by shareholders now. This would be a more appropriate line of action than insisting on a mandatory general offer at a price which is most unlikely to be accepted by any shareholder. The value of the favourable condition is almost impossible to assess an

co-operation agreements between the offeror and a shareholder

Limited [6th

in the most exceptional circumstances, other than the circumstances when a waiver is permitted under the Notes to Rule 26.1 and Notes on dispensations from Rule 26.

58. In this case, the Panel considers that the starting point for any offer must be HK$0.30, being the price at which Alibaba subscribed for shares in 21CN which resulted in it becoming its majority shareholder. The Panel does not consider that the Jademan case provides an appropriate precedent. In the Jademan case, there were no purchases of voting rights attaching to shares; in this case clearly there was.

59. The difficulty which both the Panel and the Takeovers Executive have faced is to make an adjustment to the base offer price of HK$0.30 which reflects the favourable terms received by Mr. Chen. When the OpCo Agreement was entered into there was no certainty that he would receive any shares in the Target Company. Obviously this contingent or conditional right had value but placing a precise value on it presents problems.

60. The Panel also had regard to the price performance of the shares in 21CN since the agreements with Alibaba were announced. The unaudited consolidated net tangible asset value of 21CN at 30th September, 2015 is some HK$0.19 per share. Yet the shares in 21CN have traded for a sustained period since the Whitewash Transaction was announced at multiples above this and the price at which the shares in 21CN were issued to Alibaba. It is also apparent that most, if not all, of the increase in the price of the shares in 21CN is attributable to Alibaba itself and the market's expectation of the value it can add to 21CN. An offer at the market price would result in Alibaba paying a substantial amount for the value which was largely attributable to its anticipated contribution to 21CN. This does not appear to be either fair or reasonable. Further, whatever additional value that the Panel may have determined should have been added to the base offer price of HK$0.30, it was most unlikely to be material in the context of the prevailing market price of the shares in 21CN or the prices at which they have traded for over the more than two year period since the Whitewash Transaction was announced. For these reasons, the Panel has decided to waive the mandatory general offer obligation which would have otherwise arisen for Alibaba on the invalidation of the whitewash waiver granted to it by the Takeovers Executive.

61. Finally, the Panel wishes to place on record that, to the extent there is any discrepancy between the reasons given in the brief oral summary of the decision at the end of the hearing and this written decision, the written reasons should prevail.

17th May, 2016

Parties:

The Takeovers Executive, advised by Mr. Laurence Li

Alibaba Group Holdings Limited, advised by Mr. Benjamin Yu S.C., Slaughter & May and Freshfields Bruckhaus Deringer. Expert witness – Rothschild (Hong Kong) Limited

Ms. Chen Xiao Ying, advised by Mr. Daniel Fung S.C. and H M Chan & Co.

Mr. Chen Wen Xin, advised by Mr. Jose-Antonio Maurellet and O'Melveny & Myers

Alibaba Health Information Technology Limited, advised by Debevoise & Plimpton