

TAKEOVERS AND MERGER PANEL

Panel Decision
in relation to a review of the decision of the Takeovers Executive
to waive the mandatory general offer obligation which would otherwise have arisen
for Mittal Steel Holdings AG (“ArcelorMittal” and where the context
requires its ultimate listed holding company) and, in the event that
the decision to grant a waiver were not to be upheld, on a number
of issues which may need to be addressed as to the conditions, timetable and price of
the mandatory general offer and to enable the mandatory
general offer to be made while being in compliance with laws and
regulations in The People’s Republic of China (the “PRC”)

Introduction

1. The Panel met on 6th October, 2015 to review the decision made by the Takeovers Executive to waive the mandatory general offer obligation which would otherwise have arisen for ArcelorMittal upon the unwinding of the share purchase and option arrangements between it on the one hand and ING Bank (“ING”) and Macquarie Bank Limited (“Macquarie”) on the other in relation to shares in China Oriental Group Company Limited (“China Oriental”). In the event that the Panel decided not to uphold the decision of the Takeovers Executive to grant the waiver a number of issues arose on implementing the mandatory general offer. These were in summary:

whether the mandatory general offer may be made conditional upon regulatory clearance from the Ministry of Commerce of the PRC;

whether or not the 50% acceptance condition as required by Rule 30.2 of the Code on Takeovers and Mergers (the “Takeovers Code”) should be waived in respect of the mandatory general offer;

the timetable for the mandatory general offer; and

the price at which such mandatory general offer should be made.

2. Given the Panel decided to uphold the waiver granted to ArcelorMittal by the Takeovers Executive it was not necessary for the Panel to rule on the mechanics and the price to be paid under the mandatory general offer and, accordingly, this decision is confined to the single issue of whether to uphold, alter or reverse the Takeovers Executive’s decision to waive the mandatory general offer obligation.
3. The application to the Panel was made under

to
be made in the event that the Panel reversed the decision to waive ArcelorMittal’s mandatory general offer obligation. The Takeovers Executive did not regard its waiver decision itself to be either novel, important or difficult. After the Takeover Executive’s waiver decision was made public by the announcement made by China Oriental dated

29th May, 2015, two minority shareholders of China Oriental, Mr. Chan Pak To (“Mr. Chan”) and Mr. Churk Shue Sing (“Mr. Churk”) wrote to the Takeovers Executive requesting a review of this decision. The hearing of the Panel, as far as the waiver was concerned, was essentially a response to those requests for a review. As potential offeror and offeree companies respectively, ArcelorMittal and China Oriental were also invited to attend the Panel’s hearing and to make submissions.

4. Reference is made by the Takeovers Executive in the reasons for its decision to the decision by the Panel made on 14th October, 2014 (the “2014 Panel decision”) which also related to China Oriental and arrangements between ArcelorMittal and various banks. In response a number of the parties to the Panel hearing challenged a number of the conclusions reached by the Panel in its 2014 Panel decision. The Panel wishes to make it clear that the proceedings before it did not include a review of the 2014 Panel decision. That decision stands and is final. Given the similarity of some of the issues, the Panel considers that the 2014 Panel decision provided useful guidance and precedent in the present matter.

Background and facts

5. Following the decision of the Panel in 2007, ArcelorMittal made a mandatory general offer for all the shares in China Oriental, other than those held by parties acting in concert with it, including Mr. Han Jingyuan (“Mr. Han”) the chairman of China Oriental, who held approximately 45% of its shares.
6. As a result of ArcelorMittal’s mandatory general offer, it increased its shareholding to approximately 47% of the shares in China Oriental so that between it and Mr. Han, substantial shareholders held some 92% of the shares resulting in the public float falling well below the minimum required by the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the “Listing Rules”).
7. In order to address the public float requirements under the Listing Rules, as it was required to do under its agreement with Mr. Han, ArcelorMittal made the following arrangements with ING and the Maastricht Chamber of Commerce and Industry (the “Maastricht Chamber”) to ensure that the public float requirements were met.

issue shares on which ArcelorMittal voted against. It is also apparent that neither ING nor Macquarie voted at all at the meeting.

16. Towards the end of 2014, when it appeared

19. Note 1 to Rule 26.1 reads as follows:

“The majority of questions which arise relate to persons acting in concert. The definition

21.

24. In case of doubt the Takeovers Code also encourages parties to a takeover or merger transaction to consult with the Takeovers Executive. This is set out in Paragraph 6.1 of the Introduction to the Codes which reads as follows:

“When there is any doubt as to whether a proposed course of conduct is in accordance with the General Principles or the Rules, parties or their advisers should always consult the Executive in advance. In this way, the parties can clarify the basis on which they can properly proceed and thus minimise the risk of taking action which might be a breach of the Codes.”

25. While the Codes state that consultation will not result in provisional rulings,

to some 47% triggered a mandatory general offer under Rule 26.1. Given its central importance in the regulation of takeovers and mergers in Hong Kong, this Rule is very strictly regulated.

37. By its wording, Rule 26.1 gives the Takeovers Executive the discretion to waive the mandatory general offer obligation in reliance on specific Notes to Rule 26.1 and more generally in response

the circumstances which led up to the implementation of these arrangements over some seven years, which of themselves were most unusual; and

the accounting treatment of the investment in China Oriental in the accounts of ArcelorMittal.

These factors form a reasonable basis on which the Takeovers Executive made its decision to grant a waiver. Accordingly, the Panel sees no reason to amend or reverse the decision of the Takeovers Executive.

50. As the Takeovers Executive's decision to grant a waiver has been upheld by the Panel, there is no reason to make a determination on the other matters before it.

19th October, 2015

Parties:

The Takeovers Executive

Mr. Chan Pak To, a minority shareholder of China Oriental

Mr. Churk Shue Sing, a minority shareholder of China Oriental

China Oriental Group Company Limited, advised by Sullivan & Cromwell

Mittal Steel Holdings AG, advised by Linklaters